

## LAWS RELATING TO SCHEDULED PEOPLE: AN ANALYSIS

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### ABSTRACT

*This paper is intended to analyse different Indian laws relating to Scheduled Caste and Scheduled Tribe people along with the Constitutional provisions. All the kinds of offences that are recognised under various related and specific laws are given in tabular form by the researcher. The major objective behind the research article is to make the Scheduled people aware about the legislative provisions so that they could take advantages of those. As India is a multi cultured country, people of each and every corner of the country need to participate in governance and growth of its economy. So it is intended by the researcher that the people who were indifferent, ignored and ignorant could be well informed and would come in the main stream of the society.*

**Keywords:** Scheduled Caste, Scheduled Tribe, legislations, Case laws

### Introduction—

India is a land of multi-faceted culture, tradition, religion and language. The heritage of Indians is enriched not only by ancient scriptures but also by different foreign invasions. However, during the growth of Indian civilisation the townships and the kingdoms had grown on and around the river plains. But the people living in the forests or in mountain valleys stayed much behind. They were maintaining a nomadic life style for which they could not avail any facilities extended for general public by the then kings. Gradually they became indifferent and ignorant of what is going on in the society. When India got independence<sup>1</sup> the National figures of the then time chose India to be a democratic, sovereign, republic. The framers of the Indian Constitution<sup>2</sup> has realised that a remarkable mass of India are laying behind because of their backwardness in education. So, they created constitutional mandates to up lift this section of Indian society. In order to bring these people into the main stream they are provided with facilities in the sector of health, education, employment, and promotions in jobs, reservations and many more.

The major objective behind facilitating these people is to assist them to identify their potential and to utilize them to the fullest; to help them to maintain a dignified life style; and to let them participate in growth of the country. For this purpose many related and specific central and state legislations are passed and these backward mass is designated in different groups. Be it the Scheduled Caste, Scheduled Tribe or Other Backward Classes- they all are parts of the Indian society. So, Indian society cannot claim to be a developed one without the development of these people.

### Scheduled Caste and Scheduled Tribe People—

Actually, no legal definition of scheduled caste or scheduled tribe people is there in any legislation, not even in the Scheduled Castes and Tribes (Prevention of Atrocities) Act<sup>3</sup> which is a specific central legislation in the concerned field. So, according to a layman's understanding it can be inferred that these people are those who are residing in the scheduled areas. Normally, the aboriginal people of the forests of these scheduled areas are known as scheduled tribes whereas the people designated as lowest caste people, usually serve the other general people and live in the scheduled areas are called as scheduled caste people.

Now, the question arises that which area is called as a scheduled area. These areas are mentioned in the 5<sup>th</sup> and 6<sup>th</sup> schedule of the Indian Constitution. The provisions are made so flexible for this purpose that the President of India has the power<sup>4</sup> to declare any area as scheduled area, to increase, decrease or alter the territory of any scheduled area and to declare a scheduled area to be no more a scheduled one. Same power is also conferred upon the Governors of the states Assam, Meghalaya, Tripura and Mizoram in respect of autonomous districts<sup>5</sup> (containing majority population of the aboriginal tribes).

<sup>1</sup> 15<sup>th</sup> August 1947

<sup>2</sup> with effect from 26<sup>th</sup> January 1950

<sup>3</sup> No. 33 of 1989

<sup>4</sup> See Part C of the 5<sup>th</sup> Schedule to the Constitution of India

<sup>5</sup> See the 6<sup>th</sup> Schedule to the Constitution of India

As per the aforesaid Schedules those areas are designated as Scheduled areas in order to take special care of those as far as the administration or governance of the country is concerned.

### **Legislative proclamation—**

Though the difficulties and hazards for the Scheduled caste and Scheduled tribe people were realised even in the pre independence era, the legislative actions properly started to be taken after independence. Some of the important pre and post independent laws (to the extent they are protecting and up lifting) and are discussed as follows.

- **Indian Constitution**

The Government of India Act, 1935<sup>6</sup> was passed during the British Colonial period and from which it was evident that the Britishers had also recognised some areas as tribal area<sup>7</sup>. The Constitution of India apart from setting provisions for identification and declaration of scheduled areas also empowers the President of India to declare any caste or tribe or a portion of any caste or tribe as scheduled caste or scheduled tribe in consultation with the concerned Governor<sup>8</sup>. And many orders were passed in furtherance of those constitutional provisions. The identification of scheduled areas and the scheduled tribes and castes are only meant to extend extra privilege and administrative care to those people.

In case of education and employment reservation is given to all the down trodden people including socially and economically backwards. Though no specific central legislations are there still the protective discrimination given under the Indian Constitution and many decisions of the Apex Judiciary are acting as lamp posts.

Indian Constitution promises under Part III<sup>9</sup> that if the backward class citizens could not be adequately represented (in any public office) by the members of their community then the Nation would make provisions for their reservation in spite of the fact that it originally proclaims equal opportunity in case of employment in the government sectors. Under Part IV<sup>10</sup> which is also known as the idealistic goals of Indian Constitution, the Constitution promises to provide special care and extend its hand of help to up lift the economic and education related interest of the weaker section of the Indian society and that specifically such interest of the Scheduled caste and Scheduled tribe people would be looked into. It is also laid down under the same provision that all kinds of social injustice and financial, physical, social- exploitations in all forms would be eradicated and the weaker section of people will be tried to be protected from these.

Part XVI<sup>11</sup> of the Indian Constitution which deals with privileges given to certain special class of people- the scheduled caste and scheduled tribe people also covered there under. Article 330 and 332 provide for reservation of the Scheduled caste and Scheduled tribe people in the Lok Sabha and in the state legislative Assemblies respectively. In case of union and state government employment the claims of the Scheduled people would be considered<sup>12</sup>. Two National Commissions are constituted for the Scheduled caste and tribe people according to the constitutional mandate<sup>13</sup>. The two Commissions are empowered to regulate themselves<sup>14</sup>. Such Commissions are endowed with the duties<sup>15</sup>

- to monitor and investigate into the protection provided to the Scheduled people under Constitutional law and any other laws;
- to have enquiries into any specific complaints if the Scheduled people are having some;
- to advise for and to participate in social and economic development of such people and to evaluate that;

<sup>6</sup> 25 & 26 Geo. 5 c. 42

<sup>7</sup> See section 11

<sup>8</sup> See article 341 and 342 of the Constitution of India

<sup>9</sup> See article 16(4)

<sup>10</sup> See article 46

<sup>11</sup> articles 330 to 342

<sup>12</sup> See article 335

<sup>13</sup> See article 338 and 338A

<sup>14</sup> See article 338(4) and article 338A(4)

<sup>15</sup> See article 338(5) and article 338A(5)

- to make recommendations and reports and present them to the President once a year or whenever it's necessary;

Other educationally and socially backward people may be identified by investigation by a Commission appointed by the President. The report of such Commission and the action plan upon that are to be presented before both the houses of the Parliament<sup>16</sup>.

• **Protection Civil Rights Act, 1955**

The bad practice of untouchability whose victims are mostly the members of Scheduled caste or Scheduled tribe communities was curbed out by prohibiting the same under the umbrella of right to equality<sup>17</sup>. But in order to achieve the goal of social justice; equality in status; to establish fraternity among the Indians as mentioned in the Preamble; and moreover to implement article 17 the Protection of Civil Rights Act, 1955<sup>18</sup> was passed. The Act within the territory of India uniformly bans and penalises the practice of untouchability all through its 17 sections. And being a central legislation it repealed 21 state and provincial legislations (of same nature) which became unnecessary under its only Schedule.

The Scheduled caste and tribe people cannot be denied to have access to hotels, restaurants, other public entertainment places, hospitals, other public utility service places and places of worship. They also can't be compelled to be the labourers. The major offences created under the 1955 Act are as follows—

Sections	Offences	Punishments
Sec-3	Compelling religious disability	Imprisonment of more than 1 month and less than 6 months and fine of Rupees more than 100 and less than 500.
Sec-4	Enforcing social disability	Imprisonment of more than 1 month and less than 6 months and fine of Rupees more than 100 and less than 500.
Sec-5	Refusing to admit to hospital, educational institution or hostel	Imprisonment of more than 1 month and less than 6 months and fine of Rupees more than 100 and less than 500. If any grant of land by the government is there then it may be suspended wholly or partly <sup>19</sup> .
Sec-6	Refuse to sell or to render service	Imprisonment of more than 1 month and less than 6 months and fine of Rupees more than 100 and less than 500. The licence (if held under any existing law) of such seller or the service provider may be cancelled or suspended <sup>20</sup>
Sec-7	Other offences arising out of untouchability	Imprisonment of more than 1 month and less than 6 months and fine of Rupees more than 100 and less than 500.
Sec-7A	Unlawful and compulsory labour	Imprisonment of more than 3 month and less than 6 months and fine of Rupees more than 100 and less than 500.
Sec-10	Abetment of any of the above offences	Same punishment as for the offence abetted

Though under sec 339 the Indian Penal Code defines the offence of wrongful restraint and penalises the same offence with a maximum imprisonment of 1 month or a maximum fine of Rs 500 or both<sup>21</sup> still neither it gives a minimum limit to the punishment nor it specifies the victim of the offence. That's why the

<sup>16</sup> See article 340

<sup>17</sup> See article 17 of the Indian Constitution

<sup>18</sup> Act 22 of 1955

<sup>19</sup> See section 9

<sup>20</sup> See section 8

<sup>21</sup> See section 341 of IPC

Protection of Civil Rights Act, 1955 has incorporated offences like compelling religious disability<sup>22</sup> and enforcing social disability<sup>23</sup> etc.

### **Prohibition of Manual Scavenging Laws**

After almost forty-six years of independence the Indian Central Government has taken a very important legislative step by passing the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act<sup>24</sup>. This Act was passed with dual purpose i.e. to facilitate and spread good sanitation habit and to prohibit general people from appointing the manual scavengers. And moreover, the major objective behind passing of this Act is to justify the phrase “Fraternity assuring dignity of the individual” mentioned in the Preamble to the Constitution. The Act was creating an offence in case of contravention of any provision of the said Act for which the punishment was either imprisonment up to one year or fine up to Rs 2000.00 or both<sup>25</sup>, but however no convictions were obtained under the law during the 20 years it was in force<sup>26</sup>.

Another Enactment named as the prohibition of employment as manual scavengers and their Rehabilitation Act was passed in 2013<sup>27</sup>. The legislation in its very Preamble mentions that the manual scavenging practice is an outcome of the traditional caste based society. This Act is passed in confirmation of article 21 of the Indian Constitution. Article 21 says about right life which does not at all mean right to mere animal existence, but right to life of a human being with self respect and dignity.

The Act is having 39 sections distributed over 8 chapters. Instead of manual scavengers the local authorities of every area are endowed with the duty to clean the sewage and latrine tanks etc by use of modern technology and appropriate instruments<sup>28</sup>.

Chapter IV (section 11 to section 16) specifically deals with the rehabilitation of not only the manual scavengers but also their family members. They first of all are to be identified and then they are to be supplied with residential plot and financial assistance. This Act imposes legal liability upon the municipalities to identify the persons engaged in manual scavenging for which suo motu proceedings are to be taken up by survey etc.

- **Laws Preventing Atrocities**

In the year 1989 the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was passed<sup>29</sup> in spite of the general penal provisions present in the Indian Penal Code. This Act is both preventive and remedial by nature. The major objectives behind the enactment are to prevent the offences of atrocities against the scheduled caste and scheduled tribe people and to establish special judicial bodies i.e. courts to resolve such issues of atrocities and to rehabilitate such victims.

The Legislation is having 23 sections in total distributed over five chapters. The second Chapter elaborates extensively the offences of atrocity. To call an offence an atrocity the person committed it must not be a member of any schedule caste or tribe. Section 3 is divided into two parts. One part deals with offences of comparatively lower degree for which punishment prescribed is same whereas the second part of section 3 and other sections (section 4 to section 9) deal with special atrocities and the punishments therefor are higher and different from each other. The convicted person will be punished with an imprisonment minimum of 6 months and up to 5 years along with fine if the offences committed are the followings—

- Forcing a member of Scheduled person to eat or drink any inedible or unpleasant thing;
- Throwing animal-dead body, excreta or any unpleasant thing to injure, annoy or insult such person;
- Removing clothes from such person which is derogatory to a human dignity;
- Wrongfully taking the possession of or cultivating the land of any such person;
- Interfering with the right relating to enjoyment of a land of such a person;
- Compelling such a person to be a beggar, bonded or forced labour;

<sup>22</sup> See section 3

<sup>23</sup> See section 4

<sup>24</sup> Act No. 46 of 1993

<sup>25</sup> See section 44

<sup>26</sup> *The Hindu*. Chennai, India. September 13, 2013. Retrieved September 16, 2013.

<sup>27</sup> No 25 of 2013

<sup>28</sup> See section 33

<sup>29</sup> Act No. 33 of 1989

- Forcing or threatening such a person regarding voting;
- Instituting malicious or false civil, criminal or any legal proceeding against such a person;
- Causing a public servant to annoy such a person on the basis of false information;
- Humiliating such a person in a public place;
- Assaulting or outraging modesty of such a female person;
- Exploiting such a female person sexually taking undue advantage of his position;
- Polluting the public water being used by the scheduled community;
- Denying a scheduled caste or tribe person a customary right of passage to a public place.
- Forcing such a person to leave the village, house or any other place where he or she is residing.

The most essential ingredient of each of the aforesaid offence is that the offender should not himself/herself belong to the scheduled community. Again the said Act defines some more offences which are more serious in nature and for which more severe punishment is provided.

<b>Sections</b>	<b>offences</b>	<b>punishment</b>
Sec-3(2)(i)	Fabricating evidence to cause a scheduled member to be convicted by a capital offence	Life imprisonment and fine
Sec-3(2)(i)	If an innocent scheduled person is convicted on the basis of aforesaid evidence	Death sentence
Sec-3(2)(ii)	If in case of offence covered under sec 3(2)(i) the offence is not a capital one, but is punishable with more than 7 years of imprisonment	Imprisonment not less than 6 months and up to 7 years or more and fine
Sec-3(2)(iii)	Causing damage to any property of a scheduled person by explosive matter or fire with bad intention	Imprisonment starting from 6 months to 7 years and fine
Sec-3(2)(iv)	Causing destruction to any residence or place of worship of a scheduled member by explosives or fire	Life imprisonment and fine
Sec-3(2)(v)	Committing any offence under Indian Penal Code punishable with imprisonment of 10 years or more	Life imprisonment and fine
Sec-3(2)(vi)	Disappearing any evidence in support of an offender under this Act or giving false information regarding the same with criminal knowledge or intention	Punishment as provided for the same offence
Sec-3(2)(vii)	If the offender under this Act is a public servant	Imprisonment up to 1 year and up to punishment provided for that offence
Sec-4	A public servant knowingly neglecting his duties under this Act	Imprisonment not less than 6 months and up to 1 year
Sec-5	Subsequently committing offences under this Act	Imprisonment more than 1 year and up to punishment for the same offence
Sec-7(i)	In committing any offence under this Act if some movable or immovable properties found to be used.	Along with the prescribed punishment such movable and immovable properties of such convicted may be forfeited
Sec-10	If anyone is going to commit any of the aforesaid offences in any scheduled area	He may be removed from such area for a period up to 2 years

The aforesaid removal of a person under section 10 is to be done by the order of the Special Court. And for the purpose of this Act it would be notified by the State Government in the Gazette Notification that for

every district the Court of Session will be the Special Court<sup>30</sup>. Anticipatory bail is not available in case of any offence under this Act<sup>31</sup>.

The Act under section 3(2)(v) makes it clear that committing an offence under IPC against a scheduled person is standing on a different footing in comparison to the same offence committed against a general person. And the intention of the legislature behind this is only to give more protection to the scheduled people.

#### **Judicial Trend—**

Recently on 20<sup>th</sup> March of this year it was held by the Supreme Court that the arrest of an accused under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is not mandatory and recourse to coercive action would only be taken after a preliminary enquiry and sanction by a competent authority. Anticipatory bail was also held to be granted if there is no prima facie case or the complaint was known to be done with malafide intention after proper judicial enquiry. As a result of this decision there was a mass agitation by the Scheduled Caste and Tribe Community in India. Further it was made clear by the Apex Court itself that the Supreme Judiciary is not against the Entire Act, but it is against those who are taking undue advantage of the Act by taking help of unilateral criminal proceedings<sup>32</sup>.

In *Dinesh @ Budha Vs State of Rajsthan*<sup>33</sup> a girl of 8 year of age was sexually abused by a fellow and the said appellants were found to be guilty under sec 376 of Indian Penal Code and sec 3(2)(v) of the 1989 Act. The convicted was sentenced by the High Court with life imprisonment with a fine of Rs 1000. Simultaneously the State Government was also directed to pay a compensation of Rs 50,000 to the victim. But in the Appeal the Supreme Court has reduced the life imprisonment into imprisonment of 10 years as the girl could not be proved to be a member of the Scheduled community and the convicted was belonging to the lower economic strata of society.

*T. Elangovan Vs Soundarya*<sup>34</sup> was a case based on illegal demolition of residential building. In this case the Madras High Court has given direction to the Chief Secretary and Home Secretary to consider the transfer of the involved IAS and IPS officer. As per the High Court they have not performed their duties properly rather they have acted in a very melodramatic manner.

In the case of *State By Vs Nagesha @ Penne*<sup>35</sup> one of the issue was that whether the accused persons not being member of the scheduled community and knowing that the prosecutrix to be a scheduled person used filthy language at her, outraged her modesty, committed gang rape robbery while being on a public road or not. And all the offences were alleged to be done in furtherance of common intention as provided under sec 34 of IPC. Finally the Bangalore District Court has convicted all the accused persons differently under different provisions of the Prevention of Atrocities Act, 1989.

#### **Conclusion—**

The discrimination towards the Scheduled Caste and Scheduled Tribe people is the darkest of the social evil of caste system. A lot of care and caution was tried to be taken at the level of both Centre as well as State for the Scheduled Caste and Scheduled Tribe community in order to bring them into the main stream of the Society. If these people would be aware about the laws then they could be more effectively beneficial for them. And they also could be the equal stake holders in the nation-building.

<sup>30</sup> See Section 14

<sup>31</sup> See Section 18

<sup>32</sup> ([www.financialexpress.com](http://www.financialexpress.com))

<sup>33</sup> <https://indiankanoon.org/doc/1086322/>

<sup>34</sup> <https://indiankanoon.org/doc/64995620/>

<sup>35</sup> <https://indiankanoon.org/doc/195681209/>