

## CHAPTER III

### CONSTITUTIONAL SAFEGUARDS

The Constitution of India provides to all the citizens, social, economic and political justice and equality of status and opportunity Article 46 under the Directive Principles of State Policy provides that “the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”. For achieving this objective social, economic, educational, cultural, political and service safeguards and certain protective measures have been provided in the Constitution for the deprived, weaker and vulnerable sections to ensure their all round development so as to bring them into the mainstream of the nation and at par with other sections of the society.

#### Social Safeguards

3.2 As per **Article 17** “Untouchability is abolished and its practice in any form is forbidden.” The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law. There are two important legislations relating to this Article viz. the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3.3 **Article 23** prohibits traffic in human beings and ‘begar’ and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SCs & STs but since the majority of bonded labour belongs to SCs/STs this article has a special significance for them. In pursuance of this article Bonded Labour System (Abolition) Act, 1976, has been enacted and there is a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labourers. However, even after the working of this Act for the last twenty-three years, incidence of bonded labour still exists and preventive and rehabilitation activities need to be geared up further.

3.4 **Article 24** provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. Since substantial portion of child labour engaged in hazardous employment belong to SC/ST, this Article is significant for SCs/STs. It may be mentioned that despite the existence of these legal instruments and publicity to check this evil, child labourers are engaged in Glass Bangle Industry, Carpet Weaving, and Beedi industry etc. The pitiable conditions of these children and the violation of these laws has received wide coverage in the Mass Media i.e. Press and Television. Unfortunately, the anti-child legacy still continues and steps for complete eradication of this evil, special measures are required for bringing about social awareness through voluntary efforts. At the same time about implementation of the legal provision and vigilance on the part of the Labour Department of the Central and State Government is absolutely essential.

3.5 **Article 25(2)(b)** provides that Hindu religious institutions of a public character shall be open to all classes and sections of Hindus. The term Hindu includes persons

professing Sikh, Jain and Buddhist religions. This provision is relevant as some sects of Hindus used to claim that members belonging to SC/ST had no right to enter the temples. Though this social evil is gradually vanishing yet incidents of prohibiting SC/ST people from entering the temples are sometimes reported in the press and have also been brought to the notice of the Commission. Collective efforts of all sections of society is necessary for providing unhindered access for SCs/STs to Hindu temples and Hindu religious institutions.

### **Economic Safeguards**

3.6 Fifth Schedule contains provisions regarding the administration and control of the Scheduled Areas and Scheduled Tribes. There are eight States having Scheduled Areas, viz., Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The Governors of these States have special responsibilities and powers. These States have Tribes Advisory Councils. They have the power to make regulations for the peace and good governance of any Scheduled Areas, particularly for the following purposes:

- i. to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such areas;
- ii. to regulate the allotment of land to members of the Scheduled Tribes in such area;
- iii. to regulate the carrying on of business as money lender by persons who lend money to members of the Scheduled Tribes in such areas.

3.7 In addition to these eight States, Tamil Nadu and West Bengal which do not have any Scheduled Areas, also have statutory TACs.

3.8 According to **Article 244** clause (1), the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

3.9 **Article 275(1)** provides that “there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of State such Capital and recurring sum as may be necessary to enable that State to meet the cost of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the Welfare of Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State”.

3.10 A similar provision exists in this article for paying such special grants to the States covered under the Sixth Schedule out of the Consolidated Fund of India. Sixth Schedule contains provisions relating to the administration of the Tribal Areas in the States of Assam (North Cachar Hills District and Karbi Anglong District), Meghalaya, Mizoram and Tripura (Autonomous Hill District). There are Autonomous District Council and Autonomous Regional Council in these areas which have a long tradition of self-management systems. These Autonomous Councils not only administer the various Departments and development programmes but they also have powers to make laws on a variety of subjects, e.g. land, forest, shifting cultivation, Village and town administration,

including village and town police, public health and sanitation, inheritance of property, marriage and divorce and social customs.

### 3.11 **Article 339. Control of the Union over the administration of Scheduled Areas and the Welfare of Scheduled Tribes-**

(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States 1\*\*\*

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions, as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to 2[a State] as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

### **Educational and Cultural Safeguards**

3.12 **Article 15(4)** empowers the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for SCs & STs. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several articles. This provision has enabled the State to reserve seats for SCs/STs in educational institutions including technical, engineering and medical colleges. In this article as well as in Article 16(4) the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz. Scheduled Castes/Scheduled Tribes, (Other Backward Classes, Denotified Communities (Vimukta Jatiyan) and Nomedic/Semi-nomedic Communities.

3.13 **Article 29(1)** provides that "any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same." This Article has special significance for the Scheduled Tribes as many of them have distinct languages and some Communities such as Santhals have a script of their own viz., Olchiki. However, this provision need not be understood to mean that the tribals should be educated only in their language and thereby isolating them further. They should also be educated in the language of the State as well as the national languages to facilitate their integrative interaction with the national mainstream.

3.14 **Article 350(A)** also provide "It shall be the endeavour of every local authority within the State to provide adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities." Most of the tribal communities have their own languages or dialects which usually belong to a different family of languages than the one to which the State's official language belongs. With a view to improve the accessibility and acceptances of education among tribal communities, it is desirable that they are given education in their own dialect, to the extent possible, and measures are initiated taken for developing curricula training material etc. for the purpose on top priority basis.

## Political Safeguards

3.15 **Article 164(1)** provides that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister-in-charge of tribal welfare who may in addition be in-charge of the welfare of the Scheduled Castes and Backward Classes or any other work.

3.16 **Article 330** provides for reservation of seats for SCs & STs in the Lok Sabha. In pursuance of this Article, 106, out of 545 seats are reserved for members of SC/ST communities. In the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Lok Sabha, there were respectively 123, and Members of Parliament belonging to SC/ST communities, which indicates that besides the reserve Constituencies SC/ST candidates are elected against unreserved Lok Sabha seats also. It is a healthy sign of social transformation.

3.17 **Article 332** provides for reservation of seats for SCs & STs in the State Vidhan Sabhas (Legislative Assemblies).

3.18 **Article 334** lays down the provision relating to the reservation of seat for SCs and STs in the Lok Sabha and the State Vidhan Sabhas (and the representations of the Anglo-Indian Community in the Lok Sabha and the State Vidhan Sabhas by nomination). This provision has been extended by amending the Constitution every ten years. At present this provision expires in the year 2000. Commission recommends that keeping in view the uneven development of SCs and STs, as discussed in other parts of this Report, the provision in the constitution, for reservation in Lok Sabha & State Vihan Sabhas may be extended till 2010.

3.19 **Under Article 243-D** which came into existence with the Constitution (Seventy-third Amendment) Act, 1992, seats in Panchayats from village Panchayats to Zila Parishads will be reserved for SCs & STs in proportion to their population at respective level, in direct election. Out of the seats reserved for SCs & STs one-third seats will be reserved for women of these communities. These reserved seats for SCs/STs shall be allotted by rotation to different constituencies in a Panchayat at each level.

3.20 With the enactment of the Panchayats (Extension to the Scheduled Areas) Act, 1996. (No. 40 of 1996), the provisions of Part IX of the Constitution relating to Panchayats have been extended to the Scheduled Areas subject to exceptions and modifications that a Legislature of a State shall not make any law inconsistent with any of the following features:-

Customary law, social and religious practices and traditional management practices of community services.

3.21 **Article 243-T.** In accordance with the Constitution (Seventy-Fourth Amendment) Act, 1992, out of total seats to be filled by direct elections, seats shall be reserved for SCs/STs in proportion to their population in the Municipal Bodies at each level. Out of these reserved seats for SCs/STs at least one-third shall be reserved for SC/ST women.

3.22 **Article 371** contains special provision with respect to Nagaland.

3.23 **Article 371B** contains special provisions with respect to Assam.

3.24 **Article 371C** contains special provisions with respect to Manipur.

- 3.25 **Article 371F** contains special provisions with respect to Sikkim.
- 3.26 **Article 371G** contains special provisions with respect to Mizoram.
- 3.27 **Article 371H** contains special provisions with respect to Arunachal Pradesh.

#### **Service Safeguards:**

3.28 **Article 16(4)** empowers the State to make any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

3.29 **Article 16(4) A** The Supreme Court in their judgement dated 16.11.1992 in Indira Sawhney case held that the existing policy of reservation in promotion is not sustainable under Article 16(4) of the Constitution. The Supreme Court, however, allowed that the existing policy of reservation may continue for a period of five year i.e. up to 15.11.1997. The Government of India, however, considered it necessary to continue with reservation in promotion in the case of SCs/STs as their representation in services had not reached the required level. Accordingly Article 16 was amended vide Constitution (Seventy-Seventh Amendment) Act, 1995 empowering the Government to provide for reservation in promotion for SCs&STs by inserting Clause 4A as under:

“Nothing in this article shall prevent the State from making any provision for reservation in matter of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.”

3.30 Keeping in view the spirit of the amendment it was expected that reservation in promotion would be extended to all levels and all classes of posts, including those above the lowest rung of Group A upto which the present policy of reservation in promotion is restricted as the Scheduled Castes and Scheduled Tribes are not adequately represented in services, especially in Group A & B. Upon consultation on this issues, the National Commission for Scheduled Castes and Scheduled Tribes sent its comments to Department of Personnel Govt. of India stating that reservation in promotion should be extended to all levels including within Group A. However, the DoPT's OM No. 36012/18/95-Estt. (Res.) Part II dated 13.8.97 did not incorporate any such provision and merely extended the 'existing policy of reservation'. In this regard it is observed that the Govt. of India has not implemented amendment in its true spirit. The order was issued ignoring the advice of the Commission and a separate report in this regard has already been submitted to the President. **In its Fourth Report Commission had recommended that the reservation in promotion should be extended to all levels in all classes of posts by modifying the DoPT O.M. dated 13.8.97. Commission reiterates its recommendation to ensure that the most downtrodden sections of the society gets its due share and the opportunity to work and contribute in the management.**

3.31 **Article 335** provides “The claims of the members of Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”

3.32 **Article 338** As provided in amended Article 338 of the Constitution the functions of the Commission include investigation, monitoring and evaluation of various safeguards provided for SCs and STs, inquiry into specific complaints with respect to deprivation of rights and safeguards of SCs and STs and participation in the planning process. Union and State Governments are under obligation to consult the Commission on all major policy matters affecting the SCs and STs. According to the provisions of Amended Article 338 of the Constitution, the Commission, while investigating any matter or inquiring into any complaint, has all the powers of a Civil Court trying a suit and in particular in respect of the following matters.

- i. Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
- ii. requiring the discovery and production of any document.
- iii. receiving evidence on affidavit.
- iv. requisitioning any public record or copy thereof from any court or office.
- v. issuing commissions for the examination of witnesses and documents.
- vi. any other matter which the President may by rule determine.

3.33 The Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of various safeguards for SCs and ST and make recommendations as to the measures for their welfare and upliftment. The Commission set up under the Constitution Sixty-fifth Amendment Act, 1990 has so far submitted Four Reports beside a Special Report. Out of the reports submitted so far by this Commission, 1<sup>st</sup>, 2<sup>nd</sup> and special Reports have been placed in Parliament late as in July 1998. The reason for the delay in submission is stated to be due to delay in collection of information and preparation of action taken report from various Ministries/Departments of Govt. of India and State Governments. As per the existing provisions each report is to be placed in Parliament alongwith action taken report. As a result these reports are not accessible to Members of Parliament and other Public Institutions and the valuable suggestions/recommendations contained in these reports remain unknown to all concerned and become infructuous. **Commission, therefore, reiterates its recommendations made in the Forth Report, that the report of the Commission should be placed before each house of Parliament within three months of its submission to the President and the action taken report placed before the Parliament within six months of its submission. This may be done by suitably amending the respective clauses of Article 338.**

3.34 While the Commission has been given wide ranging responsibilities that not only cover the duties of the erstwhile Commissioner for SCs/STs and the Commission for SCs/STs but also include matters such as participation in planning process and consultation on all major policies affecting SC&ST, the powers with which it is armed are not adequate to deal with the issues effectively. The suggestions are recommendatory in nature and not binding. The Commission feels that there is an urgent need to re-look at the whole issue and give more powers to the Commission under the Constitution itself.