

## **Chapter 4**

### **LEGAL ASPECTS OF RESERVATION WITH SPECIAL REFERENCE TO INDIAN CONSTITUTION**

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### **LEGAL ASPECTS OF RESERVATION WITH SPECIAL REFERENCE TO INDIAN CONSTITUTION**

Reservation as such is statutory provisions embodied in Indian Constitution. These provisions have undergone numerous Constitutional amendments subsequently. Central government's important instructions known as Office Memorandums (OMs) on vital issues and various other operational instructions pertaining to reservation during all these sixty years form very important bearing on the entire reservation policy.

A few most important of these are covered in this part with some discussions thereon. This includes important reservation related constitutional provisions and amendments, few office memorandums (OMs), some Supreme Court verdicts/cases etc. Reservation is also surrounded with many wrong notions with regard to constitutional provisions, its interpretations, some debatable court verdicts, conceptual ambiguity in administrative instructions etc. And finally an attempt is also made to throw some light on some such aspects of reservations carrying wrong notions.

#### **4.1 Constitutional Provisions**

India became a republic in 1950. The preamble and directive principles of the Constitution envisage building a social order around principles of equality, liberty and fraternity. The intervention of the State in social transformation for an egalitarian and secular social order is the core and the spirit of the Constitution.

Keeping this core spirit at heart various articles have been embodied in the Constitution which *inter alias* covers provisions relating to reservation initially for the scheduled castes and scheduled tribes and later on other backward castes.

The Constitution has defined each of these three categories, enlisted eligible castes/tribes/classes and has also laid down authority and procedure in case of modification if any required therein. Facilities under reservation include reservation in electoral seats, admission in educational institutions and employment i.e. in recruitment and promotion both in the government and public sector services.

Primarily, Indian Constitution is based on premises of equality of all before the law i.e. it considers everybody equal irrespective of whatever status, social, educational, positional one may have.

Article 14 of Constitution of India enumerating this important provision of Equality before Law states that the State shall not deny to any person equality before law or the equal protection of law within the Territory of India.

The Constitution has defined Scheduled Castes and Scheduled Tribes as under:

**Article 341: Scheduled Castes (SCs)<sup>74</sup>**

(2) The President may with respect to any State or Union Territory and where it is a State, after consultation with the governor thereof, by public notification specify the castes, races, or tribes or part of or groups within castes, races, or tribes which shall for the purpose of

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74 Basu D.D. Constitutional Law of India: Seventh Edition: New Delhi: Prentice-Hall of India Pvt. Ltd.; 1998

this constitution be deemed to be scheduled caste in relation to that State or Union Territory as the case may be.<sup>75</sup>

(3) Parliament may by law include in or exclude from the list of scheduled castes specified in a notification issued under clause (1) any caste, race or tribe or part of a group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be verified by any consequent notification.

### **Article 342: Scheduled Tribes (STs)<sup>76</sup>**

(2) The President may with respect to any State or Union Territory and where it is a State, after consultation with the governor thereof, by public notification specify the tribes or tribal communities or part of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be scheduled tribes in relation to that State or Union Territory as the case may be.

(3) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued under clause (1) any tribe or tribal community or part of a group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be verified by any consequent notification.

Besides reservation and all other devices of protective discrimination at par with schedule castes, there are certain additional provisions for the people under scheduled tribe category. This includes provision of "Scheduled Areas" under 5<sup>th</sup> Schedule of

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75 Muthuswamy and Brinda. Swamy's Compilation on Reservations and Concessions for Scheduled Castes and Scheduled Tribes OBC (Mandal Commission) Ex-Servicemen, Sportsmen Compassionate Appointments and Physically Handicapped: C-45th Edition; Chennai: Swamy Publishers (P) Ltd.; 2002

76 Basu D.D. Constitutional Law of India: Seventh Edition; New Delhi: Prentice-Hall of India Pvt. Ltd.; 1998

the Indian Constitution entailing direct central control over administration of these areas and direct central financial responsibility, extensive executive powers in respect of these scheduled areas to insulate them from the application of inappropriate laws and to fashion protective regulation especially regarding allotment and transfer of land and money lending. The President promulgates these scheduled areas.

### **Article 340: Formation of Commission for Other Backward Classes (OBCs)<sup>77</sup>**

Reservation for other backward classes is one of the most controversial issues under the provisions of reservation. Article 16 (4) of the constitution for the reservation as such covers all backward classes i.e. scheduled castes, scheduled tribes and Socially and Economically Backward Classes (SEBC), also known as Other Backward Classes (OBCs).

Other backward castes as defined by Kalelkar Commission are those who have ideas of ceremonial purity, restriction on inter-caste marriages, taboos on food and drink, social segregation and feeling of caste loyalty and superiority, all of which have contributed to the backwardness of a large number of communities in Indian society.

As stated earlier, there were no specific provisions for OBC reservation at the time of enactment of the Constitution. Hence, there is no uniformity in its implementation in the country. Different States on the basis of their own set up Commissions for the purpose formed and adopted a policy of OBC reservation in their States on

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77 Diwan Paras Dr. Constitution of India: First Edition: Allahabad: Allahabad Law Agency; 1998

the basis of local conditions coupled with the political considerations.

At centre, its implementation commenced after 1990 upon adoption of Mandal Commission Report by the then V.P.Singh Government. It was again halted due to judicial injunctions in September 1990 and other odds and finally got Supreme Court nod of clearance in November 1992 after passing through all odds.

## **4.2 Appointment of a Commission to investigate the conditions of backward classes**

The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and economically backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any States to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grant should be made and the order appointing such Commission shall define the procedure to be followed by the Commission.'

### **4.2.1 Kaka Kalelkar Commission<sup>78</sup>**

A Commission under the Chairmanship of famous Educationalist Kaka Kalelkar was set up on 29<sup>th</sup> January 1953. There were other ten members in the Commission representing Members of Parliament and Bihar/Mysore legislative Assemblies. The Commission started functioning from 18 March 1953 and was

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<sup>78</sup> Rana Mulchand. Reservations in India – Myths and Realities: First Edition: New Delhi: Concept Publishing Company; 2008



supposed to submit its report before the Parliament on 3<sup>rd</sup> December 1955. The Commission considered the following criteria for ascertaining OBC status of a particular caste.

1. Social status of the caste in the traditional Hindu caste stratification.
2. Position of education in the majority sections of such caste or class.
3. Status of representation of such caste/class in the government jobs.
4. Their similar representation in trade, commerce and industries.

The Commission listed 2399 as OBC castes, of which it categorized 837 castes/classes as the most backwards. The Commission made several recommendations such as ascertaining the cast-wise OBC population as per 1961 census, reserving 70% seats in technical and professional educational institutions, reserving job quota of 25% in class I, 33.5% in class II, and 40% in class III, also making financial provision of Rs. 200 crores for economic upliftment of these OBCs and creation of a separate ministry and secretarial at centre and all States for OBC Welfare.

#### **4.2.2 Mandal Commission**

Issue of OBC reservation thereafter came on the fore after a long stint of 23 years after emergency in the country was over in 1977, which brought a major power shift at centre for the first time with Non-Congress political majority.

The new Janata Dal Regime led by the Prime Minister Late Morarji Desai set up a Commission to examine the need of reservation for Other Backward Class (OBC) under the Chairmanship of B.P. Mandal Ex-Chief Minister of Bihar along with six other members including one seating M.P. R.R.Bhole and another Ex-Member of Parliament L.R.Nayak on 11 April 1978.

Incidentally, the Chairman M. P. Mandal was the first OBC Chief Minister of Bihar in the country having headed the State of Bihar in the year 1962. The Commission was supposed to submit its report by 31 December 1979. The Commission after four extensions finally submitted its report on 31 December 1980. With their note apprehending that OBCs of the Nation have high hopes for positive response to the recommendations of this Commission, but is also afraid of its fate similar to that of the Kalelkar Commission.

#### **4.3 Reservation in Electorate/Political Seats**

Article 330 and 332: The Constitution has provided for reservation in all electorate positions in Lok Sabha wide Article 330 and in constituent assemblies wide Article 332, so that members belonging to scheduled castes and scheduled tribes can have their share in the political power which is very important in democratic governance. Reservation under these provisions in case of electorate positions were initially allowed for a period of ten years from 1950 with a sub-provision of its extension under Article 334 in case of felt need by peoples' representatives.<sup>79</sup>

The reservation for electorate political positions as provided above were accorded five times periodical extensions of ten years each

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<sup>79</sup> Jain M.P. Professor. Indian Constitutional Law: Fifth Edition: Nagpur: Wadhwa and Company; 2006

through Constitutional amendment (1) No. 8 dated 5 January 1960 up to 1970, then by (2) No. 23<sup>rd</sup> dated 5 November 1971 up to 1980, (3) 45<sup>th</sup> dated 14 April 1980 up to 1990, (4) 62<sup>nd</sup> dated 25 January 1990 up to 2000, and (5) finally 79<sup>th</sup> amendment dated 25 January 2000 up to 2010.

The above provisions of reservation in Lok Sabha and Legislative Assemblies do not include other backward classes (OBCs).

73rd Constitutional Amendment became an organ of realizing real democracy at the grass root level with reservation brought in the institutions of local self governments such as village Panchayat, Tehsil and District Councils, Municipalities and so on. This amendment specified categorically reservations down up to village Sarpanch as per the roster points for SC/ST/OBC. The noteworthy aspect of the reservation provisions under this amendment is 33% reservation made for the first time for the women section of the society.

#### **4.4 Reservation in Admission to Educational Institutions**

##### **Article 15(4) and 15(5)**

Educational backwardness of scheduled castes, scheduled tribes and other backward classes had a multiplier effect which leads in continuing social backwardness and coupled therewith economic backwardness. Education is also an instrument of social change apart from shaping the nation's overall development.

Realizing the urgency for enhancing education spread in these communities, the Constitution has from very beginning provided for reservation in admission to all educational institutions either run or aided by the government.<sup>80</sup>

### **Article 15: Prohibition on the Grounds Only of Religion, Race, Caste, Sex, Place of Birth or Any of Them**

1. The State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, and place of birth or any of them.
2. Nothing in this article or in clause 2 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.

Implementation of these Constitutional provisions of reservation has contributed in substantial spread of education in these communities.

### **4.5 Reservation Extended to Self Finance Educational Institutions (93rd Constitutional Amendment)**

Reservation hitherto was available in educational institutions either run by or aided out of the government funds. With enormous increase in number of self finance educational institutions, reservation in such educational institutions knocked the Supreme

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<sup>80</sup> Basu Durga Das. Constitution Law of India: Seventh Edition: New Delhi: Prentice-Hall of India Pvt. Ltd.; 1998

Court door recently in the matter of *P.A. Inamdar and Pai Foundation*.<sup>81</sup>

The Supreme Court contemplate that as the unaided colleges do not take government funding, they are under no obligation to follow central government quota for socially deprived classes. The Apex court in its judgment in *P.A. Inamdar and Pai Foundation*<sup>82</sup> gave a right to decide its own admission policies to self finance educational institutions.

The judgment had long consecutive repercussions. With new economic reforms and more and more liberalizing policy, non-availability of reservation in unaided private educational institutions for SC/ST/OBC was reviewed by the government and accordingly 93<sup>rd</sup> Constitutional amendment was passed in the Parliament which nullified the above judgment by making following addition in Article 15.

### **Article 15(5): Reservation in Self-Finance Educational Institutes**

Nothing in this Article or sub clause (g) of Clause (1) of Article 19 shall prevent the State form making any provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than minority educational institutions referred to in clause (1) of Article 30.<sup>83</sup>

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81 AIR 2005 SC 3226

82 AIR 2005 SC 3226

83 Pandey J. N. Dr. The Constitutional Law of India: Forty Fifth Edition: Allahabad: Allahabad Central Law Agency; 2008

## **Article 46: Promotion of Educational and Economic Interests of SCs, STs and Other Weaker Sections**

This Article reflects the noblest intention of the framers of Constitution for the total upliftment of all backward classes of the nation. It is pertinent to note that the Constitution has spoken about '**weaker sections**' of the society and not merely scheduled castes, scheduled tribes and other backward classes for promotion of educational and economic interests.

'The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the scheduled casts and scheduled tribes and shall protect them from social justice and all forms of exploitation.'

This is a very important Article, clearly spelling the goal of the Constitution and in its fulfilment, the defined role of the State. The Article categorically states that –

It shall be the duty of the State to protect the weaker sections of the society from prevailing social injustice and all forms of exploitation of this section.

It shall be the duty of the State to promote with special care their educational and economic interests.

There has been a specific mention of scheduled castes and scheduled tribes for care to be taken and protection to be given.

#### **4.6 Weaker Section under Article 46 and Backward Classes under Article 16(4) as Distinguished<sup>84</sup>**

Weaker section under Article 46 has a wider expression and it extends to individuals and their weaknesses, which may be due to several causes such as poverty, natural calamity or physical handicap. Individuals belonging to weaker sections under Article 46 may not form a class and they may be weaker as individuals only. Their weakness may not be the result of past social and educational backwardness or discrimination.

Weaker section under Article 46 could be a bigger lot which would also include backward classes as defined under Article 16(4). Article 46 stipulates certain measures for removal of weaknesses of such section, while Article 16(4) provides for reservation for the class known as backward class covered under this Article.

Justice Hegde has commented in light of the provisions under Article 46, "One of the greatest drawbacks in our social structure is the existence of caste system dividing the society according to status and rank. Whatever might have been the origin of the caste system, it has given rise to various gradations in the societies, which in turn, has resulted, into social inequality and discrimination are not compatible with a democratic society. These social gradations have created economic and educational disparities. The caste system among the Hindus has its repercussions to an extent on other religious groups also. With view to remove these gradations in our social life and to reshape the society on democratic lines, the Constitution directed the State under Article 46 to promote with special care the educational and economic interests of the weaker

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<sup>84</sup> Shukla V.N. Dr. The Constitution of India: Fourth Edition: Lucknow: Eastern Book Company, 1964





using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a SC or a ST:

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a SC or a ST to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine, and if an innocent member of a SC or a ST be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death,

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a SC or a ST to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine.

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of

worship or as a place for human dwelling or as a place for custody of the property by a member of a SC or a ST shall be punishable with imprisonment for life and with fine.

(iv) Commits any offence under the Indian Penal Code punishable with Imprisonment for a term of ten years or more against a person or property or the ground that such person is a member of a SC or a ST or such property belongs to such members, shall be punishable with imprisonment for life with fine.

(v) Being a public servant, commits any offence under this section, shall be punishable with imprisonment of a term which shall not be less than one year but which may extend to the punishment provide for that offence.

### **Special Court**

For the purpose of provide for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a court of session to be a special court to try the offences under this Act.

### **Special Public Prosecutor**

For every special court, the State Government shall by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that court.

## **Duty to Government to Ensure Effective Implementation of the Act<sup>102</sup>**

(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of their Act.

(2) In particular and without prejudice to the generality of foregoing provisions, such measures may include:

(i) The provision for adequate facilities, including legal aid, to the person subjected to atrocities to enable them avail themselves of justice.

(ii) The provision for trading and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act.

(iii) The provision for the economic and social rehabilitation of the victims of the atrocities.

(iv) The appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act.

(v) The setting up of committees at such appropriation levels as the State Government may think fit to assist that government in formulation or implementation of such measures.

(iv) Provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act.

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102 Parmar M.N. and Solanki Jagdish. The Study of Atrocities on Harijans (Project): Faculty of Social Work, The Maharaja Sayajirao University of Baroda, Vadodara; 1993

(vii) The identification of the areas where the members of the SCs/STs are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

### **Provisions of Economic Help for Rehabilitation of Victims of Atrocities**

Under the SCs and STs (Prevention Of Atrocities ) Act , 1989 following economic helps given to the victim of atrocities through District Social Welfare Officer of Government of Gujarat State.

<b>Sr. No.</b>	<b>Type of Atrocity</b>	<b>Help</b>
1	Murder	Rs. 1,00,000/-
2	Permanent disability	Rs.25,000/-
3	Temporary disability	Rs. 5,000/-
4	Serious injuries	Rs. 5,000/-
5	Rape	Rs. 10,000/-
6	Damage to house	Rs. 15,000/-
7	Damaged to property	Rs.10,000/-
8	Damage to assets which are use	Rs. 5,000/-
9	Damage to food grains, clothes etc.	Rs. 5,000/-
10	Damage to wells used for irrigation, Drinking water, Fruits, Trees etc.	Rs. 5,000/-
11	Social boycott	Rs.4/- per day with the Limit of six months.

We can say that whenever scheduled castes people have tried to assert for their rights and improve their lots, they have to meet with the atrocities behaviours of those who were socially and materially better off. This behaviour was more distinctively found in the beginning of the present century in some parts of Bihar, Andhra Pradesh Punjab, Gujarat, Maharashtra etc. However, the cases of atrocities have gone multiplied in the recent times and have been

known to the people at large through the media of communication including newspapers, radio, T.V. and other government machineries though these have not always played a fair role.<sup>103</sup>

At times, Reports presented in Medias and news papers and the actual practice of atrocities, we find there is sea change. The realities become myth and myths become reality due to various personal to political reasons. But these happenings do not hide the fact that the atrocity is prevalent in all sates of India.

#### **4.15.4 The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1989**

In exercise of the powers conferred by sub section (1) of section – 23 of the SC and STs (Prevention of Atrocities) Act 1989, the Central Government hereby makes the following rules as Precautionary and Preventative measures –

With a view to prevent atrocities on the SCs and STs, the Government shall:

(a) Identify the area where it has reason to believe atrocity may takes place or there is apprehension of reoccurrence of an offence Order the District Magistrate or Superintendent of Police or any other officer to visit identified area and review the law and order situation.

(b) If it deem necessary by the authority in identified area cancel the arms licenses of the person not being a member of SC and ST

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103 Parmar M.N. and Solanki Jagdish. The Study of Atrocities On Harijans (Project): Faculty of Social Work, The Maharaja Sayajirao University of Baroda, Vadodara; 1993

their near relatives, family, friends, servants etc. and get deposited such arms in the Government Armoury.<sup>104</sup>

(c) Seize any illegal firearms and prohibit any illegal manufacture of fire arms.

(d) With a view to ensure the safety of SC and ST members, if it deem necessary to provide arms license to them.

(e) Constitute the High Power State level, District level, and Divisional committee as deemed proper and necessary for the assisting of Central Government.

(f) Set up vigilance and monitoring committee to suggest effective measures to implement the provisions of the Act.

(g) Set up awareness centres and organize workshop in identified area or at some other place to educate the person belonging to the SC and ST about rights and the protection available to them under provisions of various Central and State enactment's or rules, regulations and schemes framed there under

(h) Encourage Non-Government Organizations (NGOs) for establishing and maintaining awareness Centres and workshops and provide them financial and other sort of Assistance.

(i) Deploy special force in identified area.

(j) By the end of every quarter review the law and order situation and responsible officers for implementing the provisions of the act and the cases registered under the act.

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104 Shukla Nigamendra. The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Rules: Second Edition: New Delhi: Modern Law Publications; 2009

### **Supervision of prosecution and submission of Report (Sec-4)**

The State Government on the recommendation of the District Magistrate shall prepare for each district a panel at such number of eminent senior advocates who have been in practice for not less than seven years. This panel shall remain in force for the period of 3 years.

The District Magistrate and the Director of Prosecution/Officer-In-Charge of the prosecution shall review at least twice in calendar years on the month of January and July the performance of public prosecutor.

Information to police officer in charge of a Police Station:- Every information relating to the commission of an offence under the Act, if given in oral or in writing shall be entered into book to be maintained by that police station.

### **A copy of information given to the informant**

If the information is not taken by the in-charge of police station then such information sends in writing and by post to superintendent of police.

### **Spot inspection by officers**

Whenever the information receives from any person or upon the knowledge that an atrocity has been committed on the member of SC/ST within his jurisdiction, he shall immediate visit the place and submits the report to the State.

### **Investigating officers**

An investigation under this Act is conducted by the Police Officer not below the rank of Deputy Superintendent of Police.

The investigation should be complete on priority and with 30 days and report submit to the superintendent of Police and who forward report to Director General of Police of the State Government.

### **Setting up of the Scheduled Castes and Scheduled Tribes protection cell**

The state government shall set up a SC/ST protection cell at the State headquarter under the charge of Director General of Police, Inspector General of Police.

### **Nomination of Nodal Officer**

The State Government shall nominate a Nodal Officer of the level of Secretary to the State Government preferably belonging to SC and STs, for co-coordinating the functioning of the District Magistrate and the Superintendent of Police or other officers authorized by them.

### **Appointment of a Special Officer**

In the identified area a special officer not below the rank of an Additional District Magistrate shall be appointed to co-ordinate with District Magistrate, Superintendent of Police or other officers responsible for implementing the provision of the Act.



The Special Officer shall be responsible for immediate relieves to the victims of atrocity and initiate necessary measures to prevent or avoid re-occurrence of atrocity.

Travelling Allowance, Daily Allowance, Maintenance Expenses and Transport facilities to the victim of atrocity, his or her dependent and witnesses:

Every victim of atrocity or his or her dependent witness shall be paid to and fro rail fare by second class expenses/mail/passenger train or actual fare from his or her residence to trial or investigation place.

### **Measures to be taken by the District Administration**

The District Magistrate and the superintendent of police shall take the visit of place where the atrocity has been committed to assess the loss of life and damage to the property and draw a list of victims, their family members and dependants entitled for relief.

Superintendent of Police shall ensure that first information report is registered in the book of concern police station and effective measures for apprehending the accused are taken.

The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or kind or both to the victims of atrocity, their family members and dependants according to the scale as in Schedule annexed to these rules.

### **Selection of officers and other staff members for completing the work relating to atrocity**

It shall also ensure by the State Government that persons from the SCs and the STs are adequately represented in the administration in police force at all levels, particularly at the level of police posts and police station.

### **Contingency plan by the State Government**

The State Government shall prepare a model contingency plan for implementing the provisions of the Act and notify the same in the officers' gazette of the State Government.

#### **4.15.5 The National Commission for Backward Classes Act, 1993<sup>105</sup>**

It came into force on the 1<sup>st</sup> day of February, 1993.

The commission consist of chair person who is or has been Judge of Supreme Court or of a High Court. Two persons who have special knowledge in matters relating to backward classes and a member secretary who is or has been an officer of the Central Government in rank of secretary to the Government of India.

Every person shall hold office for 3 years.

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<sup>105</sup> Shukla Nigamendra. The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Rules: Second Edition: New Delhi: Modern Law Publications; 2009 Appendix XXV

## **Functions of the commission**

Section 9(1): The commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class.

The advice of the Commission shall ordinarily be binding upon the Central Government.

## **Powers of the commission**

The commission while performing under section 9 (1) shall held all powers of a Civil Court trying a suit and in particular,

- (a) Summoning and enforcing any person for examining on oath from any part of India.
- (b) Requiring the discovery and production of documents, receiving evidence on oath
- (c) Requisitioning any public record or copy of witness and documents.

Periodic revision of lists by the Central Government of the commission at the expiration of 10 year from the coming into force of this Act and every succeeding period of ten years thereafter, undertake the revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.

The Central Government shall, after due time pay the commission by way of grants for the purpose of this Act.

The commission shall spend such sum for performing the functions under this Act.

The Commission shall maintain proper accounts and audit and other relevant records and also prepare annual report for each financial year. Such report shall be put before the Parliament.

The chair person, members and employees of the commission are the public servant as per section 21 of I.P.C.-1860. The Central Government may by notification in the official gazette make rules for carrying out the provisions of this Act.

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may by order published in the official gazette, make provisions, not inconsistent with the provisions of this Act as necessary or expedient for removing the difficulty, provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

#### **4.15.6 The Gujarat Backward Classes Development Corporation Act, 1985<sup>106</sup>**

An Act to provide for the establishment of a corporation for the advancement of socially and educationally backward class citizen in the State of Gujarat and for the matters concerned therewith.

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<sup>106</sup> Shukla Nigamendra. The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Rules: Second Edition: New Delhi: Modern Law Publications; 2009 Appendix XIX

This act applies to whole State of Gujarat. Definition of "Backward Class Organization" means a firm registered under the Indian Partnership Act 1932 or a society wherein all or a majority of partners or, as the case may be, call or a majority members of such society, are socially and educationally backward class citizens.

### **Establishment and Constitution of the Corporation**

Section 3 - Power of State Government to add to Schedule. The State Government shall add to the schedule any class which in its opinion is a socially and educationally backward class.

### **Establishment and Incorporation of Corporation**

For the purpose of securing the uplift a backward class citizens in the State of Gujarat, the State Government may by notification in the Official Gazette, establish a corporation by the name of the Gujarat Backward Classes Development Corporation with effect from such date as specified in the notification. The corporation shall be a legal body in the eyes of law. The head quarters of the corporation shall be at Gandhinagar.

### **Section 6 Constitution of Corporation**

The Corporation shall consist not more than 15 directors who shall be nominated by the State Government.

Provided that not less than three directors shall be official and remaining directors shall be non-officials who shall be nominated from amongst person who, in the opinion of the State Government have special knowledge or practical experience in matters relating

to agriculture, agro-industries, water development projects, finance, co-operation and socio-economic problems of socially and educationally backward class citizens.

The term of office and appointments of directors other than managing director shall be for the term of two years.

The head-quarter of corporation shall be Gandhinagar or such place as per notification in official gazette.

Director who has any direct or indirect interest in any matter coming up for consideration at the meeting of corporation shall, as soon as possible not to participate.

### **Functions and Powers of the Corporation**

As per Section 17 subject to the provisions of this Act it shall be the primary duty of the corporation to undertake the task of social and economic uplift of the socially and educationally backward class citizens in the State of Gujarat and the State can do all the things to exercise all the powers necessary for performance of such duties.

1. To plan and promote, on its own or in collaboration with or through such backward classes organizations as may be approved by the Corporation any programme of agricultural development, marketing, processing, supply and storage of agricultural produce and small scale industry, building construction, transport and such other activities as may be approved by the State Government.

2. To give on hire agricultural or industrial machinery or equipment's to the members of the backward class organisation.
3. To encourage employment opportunities for the Backward Class citizens.
4. To grants and subsidies to, and to guarantee loans taken by the members of backward class organisation.
5. To grant loan or obtain covered loan to the socially and educationally backward class citizens.
6. To issue bonds and debentures.
7. To borrow money subject to such conditions as the Government may specify.
8. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, hundies, bills, warrants, debentures and other negotiable instruments.
9. To invest or deposits surplus funds of the corporation in Government securities.
10. To discharge other function this is related by this Act.

The State Government provide initial capital not exceeding Rs. 5 Crores to the Corporation and it increase from time. (Section 18)

## **Section 19 Fund of Corporation**

The Government shall have its own fund and also accept grants, donations and gifts from the Central or State Government or local authority.

This corporation shall have to maintain books of account every year and also account shall be audited.

## **Advisory Committee**

The State Government may from time to time constitute an Advisory Committee. The Corporation consult with the Advisory Committee.

## **Section 23 Recovery of money due to Corporation**

Where any amount due to the corporation from any person in respects of advances or other financial accommodation granted will be recoverable as arrears of land revenue by the collector.

## **Section 24 Dissolution**

No permission of law, other than this Act, relating to the winding up, dissolution or liquidation of the companies or corporation shall apply to the corporation.

If the State Government thinks that corporation fails to carry out its function then State Government dissolves the corporation.



Section 26 Protection of action taken in good faith: No suit or other legal action proceeding shall be against the corporation or any directors if any action taken in good faith.

The Corporation have powers to makes regulation and the State Government has power to make rules to carry out all or any of the purpose of this Act.

#### **4.15.7 Gujarat Scheduled Castes Development Corporation Act, 1985**

An act to provide for the establishment of Corporation for the advancement of Scheduled Castes in the State of Gujarat and for the matters connected therewith.

This act came into existence on 10<sup>th</sup> July-1985 and it extends to the whole State of Gujarat.

#### **Establishment and incorporation of Corporation**

Section 3 for the purpose of securing the uplift of Scheduled Caste in the Gujarat State the State Government may be notification in official gazette, establish a corporation by the name of the Gujarat Scheduled Castes Development.

The Corporation is a legal personality in the eyes of law and the headquarters of corporation shall be Gandhinagar or at such other place as the State Government may specify.

## **Constitution of Corporation**

The Corporation shall consist of not more than 15 directors who shall be nominated by the Government. A director shall hold office for a term of two years from the date of nomination.

The Directors who having any personal or pecuniary interest in the case shall not be participate on such case. The Corporation shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meeting as may be provided by regulations.

All proceedings shall be valid in the case existence of any vacancies.

### **4.15.8 Employment of Manual Scavenger and Construction of Dry Latrine (Prohibition) Act, 1993<sup>107</sup>**

This is also similar by another act effective in checking the inhuman work of manual scavenging of non flushing toilets. However, the most distressing things is that not a single person is reportedly convicted and or find in whole of the nation during all this 50 years of its implementation under this statute, though the act carries the vigorous punishment such as imprisonment. This the most glaring instance of how central government responded to a serious issue with a populist mindset without displaying a commitment and sincerity.

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<sup>107</sup> Shukla Nigamendra. The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Rules: Second Edition: New Delhi: Modern Law Publications; 2009 Appendix XXVI