

SOCIAL AND POLITICAL JUSTICE TO SCHEDULED CASTES IN INDIA - SOME GLIMPS OF DR. B.R. AMBEDKAR'S CONTRIBUTION

RATTAN SINGH

Professor, University Institute of Legal Studies (UILS), Panjab University, Chandigarh

“Turn in any direction you like, caste is the monster that crosses your path. You cannot have political reform; you cannot have economic reform, unless you kill this monster”

*Dr. B.R. Ambedkar**

INTRODUCTION

The social structure of India remained almost static during the two hundred years of British rule. The hereditary untouchability of certain communities created man made inequalities which were perpetuated by the inhuman treatment meted out by the Hindus to the untouchables that led to the backwardness of them.[†] Indian society was and had been caste ridden. In the past, there existed no such area of social existence and governance, where caste as political, social, economic, educational and cultural factor was not present. Even today, after more than six decades of introduction of Republican Constitution, the caste factor is dominant in every sphere of life of the people of this country. Jurisprudence concerns with functional aspect of law, therefore social justice jurisprudence concerns with the functional role of law. It encompasses the protective, corrective, distributive and pro-motive justice.[‡] The rights of the Scheduled Castes are sought to be preserved, first, through the Fundamental Rights. These rights apply generally to all citizens as well as to Scheduled Castes, but this is not correct at all.

In India social exclusion is practiced on the base of caste and untouchability where a group of people are denied of the rights and opportunities which the majority of people enjoy. Indian society was divided into four varans on the base of their birth i.e. Brahmins should cultivate the knowledge, that the kshatriya should bear arms, the vaishya should trade and the shudra should serve all the above

*Babasaheb Ambedkar (1979). *Annihilation of Caste*, Dr. Babasaheb Ambedkar Writings and Speeches, Education Department, Government of Maharashtra, compiled Vasant Moon, 1.

† D.N. Sandanshiv, *Reservations for Social Justice-A Socio Constitutional Approach*, 16(Current Law Publishers, Bombay, 1986) P 34.

‡ Ibid.

three classes. Three upper classes beat down the Shudra. They were not allowed to acquire wealth. They were prohibited from acquiring knowledge. They were prohibited from bearing arms. According to Manusmriti a Brahman is purified by water that reaches his heart, a kshtriya is purified by water that reaches his throat, a vaishya by water taken in to his mouth and a shudra by water touched with the extremity. Due to varansshudras could not receive education, they could not think out or know the way to their salvation, they were condemned to be lowly and not knowing the way of escape and not having the means of escape they became reconciled to eternal servitude, which they accepted as they inescapable fate.

Even today the Indian society is following the same varna system where the society is categorized in to four, namely the Brahmans, kshtriya, vaishya, and the shudra and the practice of the varna system is still in existence which has a practice of discriminating the shudras. Today in contemporary Indian society the shudras are known as the Dalits. Dalits are subjected to social, economical, political and cultural exclusion deeply imbedded in social practices. Dalits are social and physically separate they most live in outside areas of the village in rural areas and in specified areas in cities. They are denied basic human rights not allowed to own property rights and to use public and common property such as the wells, tanks and temples. Untouchables who are at the bottom of the caste hierarchy suffered the most from unequal assignments and entitlements of rights. The untouchables suffered from social exclusion and discrimination involving certain rights which include civil, cultural, religious and economic rights. The indicators of social exclusion can be traced by a suitable situation described by Dr Ambedkar in his paper "Annihilation of caste" in which he points that under the rule of Peshwas in Maratha country the untouchables were not allowed to use the public streets if a Hindu was coming along lest he should pollute the Hindu by his shadow the untouchable was required to have a black thread either on his wrist or neck as a sign or a mark to prevent the Hindus from getting themselves polluted by his touch through mistake. In Poona the capital of Peshwas the untouchable was required to carry, strung from his waist, a broom to sweep away from behind the dust he treaded on lest a Hindu walking on the same should not be polluted. In Poona the untouchables was required to carry an earthen pot, hung in his neck were ever he went for holding his spit lest his spit falling on the earth could pollute a Hindu who might unknowingly happen to tread on it. Socially, the exclusion is based on caste untouchability such as the excluded member of a community do not have the right to entry a public places like temples, schools, hospitals, housings, etc. restriction on entry of various educational institution, unequal treatment in teaching. The untouchables are made to practice some identifiable cultural practices separate from the society such that they have their separate gods, marriage system, crimation system and different food culture from the other people of the society. In economic spheres, denial of equal rights and opportunities to the low caste groups, assets like agricultural lands and non land assets employments social needs like education, health, housing and others which lead to lower income and high poverty among the Dalits. In economical exclusion practice the Dalits or the members of excluded group are denied for jobs, and in agricultural through denial of purchase and sale, lower wages paid for Dalits, in credit markets were the Dalits has to pay high interest for the

loans taken[§]. Education discriminations in schools take the form of denial of access to education and the skill development among the Dalits children. Denial of education leads to high rate in illiteracy, low functionally literacy and high dropout rates and limited skill development, discrimination in education may cause high representation in menial jobs, low wages, low income and ultimately high poverty. Through denial of admission in the primary health centre through discriminatory access to primary health centers and private health providers which may take following forms. Denial of visiting to Dalits home, denial of giving information about health facilities, lack of care leading to requirement of private medical attention and loss of income, delay in complication delivery leading to private medical attention^{**}. Dalits are denied to practice they political rights such as rights and means to participate in the exercise of political powers and denial of justice, freedom of expression, rule of law. The constitution of India has made certain provision to empower the Dalits politically but the exclusion has made them to think for political participation. At the reserved political constituency where the deciding people will not be the Dalits himself but the upper caste voter who purposely elect a candidate who can represent the upper caste not for the Dalits. Due to this the Dalits cannot elect they representative who can participate on their behalf in the policy making.

To liberate Dalits from traditional slavery was the prime objective of Dr. Ambedkar's life, philosophy, and work, something he would never hide. Hence Dr. Ambedkar considered the liberation of Dalits more important than the struggle for independence. He said that if ever his interests clashed with the interests of Dalits, he would give priority to the interests of Dalits.⁶ Social rights can only be promoted if dignity of all the human beings is accepted in social life. Nobody should be considered superior or inferior based on gender, colour, caste, religion, region etc. Everyone should receive equal opportunities for education and progress and all human beings together should be able to avail the means and resources related to literature, art, culture, technology etc. Dr. Ambedkar emphasized on creating social, economical and political awareness amongst the depressed class as they will not be able to defend their rights due to lack of awareness.^{††}

Dr. Ambedkar came from a humble background and had to struggle for his livelihood. Despite the struggle, he gave more importance to his goal of eradicating the adversities and injustice that prevailed in the society. As Dalits were the most distressed; to liberate them from their sufferings became his prime objective. Dr. Ambedkar on 27th January 1919 presented a memorandum before, "Southbaron committee". In this memorandum he raised the issue of giving Dalits adequate representation proportionate to their population in the people's representative form of government. In 1919, Dr. Ambedkar also came in contact with Naresh Shah Chattrapati Maharaj. On 13th January 1920, he launched a fortnightly Maratha magazine called, "Moolnayak". On 21st March 1920, Dr. Ambedkar

[§] Pradeep. B. Kadun, Social Exclusion –Its types and impact on Dalits in India, *IOSR Journal Of Humanities And Social Science* (IOSR-JHSS) Volume 19, Issue 4, Ver. IV (Apr. 2014), PP 81-85

^{**} Ibid

^{††} Singh Ramgopal, Dr. Ambedkar Ka Vichar Darshan, (Bhopal: Madhya Pradesh Hindi Granth Academy) P. 222

presided over a gathering at a place called Bhangaon in Kolhapur. While addressing the gathering, Kolhapur Naresh Shah Chattrapati Maharaj said that in Dr. Ambedkar, they have got a saviour who will liberate them

In 1924, Dr. Ambedkar formed an organization named, “Bahishkrit Hitkarini Sabha”. The various objectives of the organization included promoting education and culture amongst Dalits community, providing hostels, running libraries etc. The organization took up the responsibility to liberate the untouchables of their pitiable condition. Dr. Ambedkar paved way for the upliftment of the social status of Dalits. He spread the message that self-help is the best form of help. It is this belief that can encourage the untouchables and Dalits follow the path of progress. In this way the formation of, “Bahishkrit Hitkarini Sabha” marked the beginning of an era of self-support and self-respect. As architect of the constitution of India, Dr. Ambedkar introduced the system of reservation for the depressed class and a respectable way of addressing them as, “Scheduled Castes”, “Scheduled Tribes” and “Other Backward Classes”.

Baba Saheb Ambedkar understood the importance of education, hence laid down the foundation of, “People’s Education” that aided in the foundation of Siddhartha College in Mumbai on 20th June 1946 and Milind College in Aurangabad in August 1951. Various education institutes were formed in Maharashtra from time to time, in order to create awareness in the society Dr. Bhim Rao Ambedkar did put in efforts in every sphere and in every possible manner. Whether the efforts were to put an end to the, “Vatandar Pratha” or solving problems of labourers related to factories and industry. He attacked the caste system from all sides despite facing stiff resistance. On 15th April, 1948, under the civil marriage act, he married Dr. Sharda Kabir that happened to be an intercaste marriage, thus setting an example. On 14th October, 1956, in Nagpur, Dr. Ambedkar devoted himself to Buddhism that resulted in deep unrest amongst conservatives; but Dr. Ambedkar’s decision was not aimed at going against the basic sentiments of Hindu religion^{##}. On 6th December, 1956, the “Messiah” of Dalits attained salvation but the movement started by him to uplift the depressed class continues, as he remains the source of inspiration for all those associated with the movement^{§§}.

The theory of State socialism in India has developed by the contributions of Dr. B. R. Ambedkar^{***}. He submitted a memorandum entitled on “State and Minorities” to the Constituent Assembly on behalf of the All India Scheduled Castes Federation in the year 1946. In the memorandum he has pointed out that the born or naturalised citizens of India should be treated equally. Any privileges or extra privileged arising out of rank, birth, person, family, religion or religious usage should be abolished. All citizens of India without caste, creed, religion, race, birth etc. should be treated by equality before law and equal protection of law. The state should be played a crucial role to protect the fundamental rights of Indian citizens. No religion is to be state religion. They

^{##} Id. P 31

^{§§} Mahesh and Anil Kumar Thakur, Social Justice in India and Contribution of Various People in the Upliftment of Dalits, *International Journal of Multidisciplinary and Current Research*, Available at: <http://ijmcr.com>,

^{***} Badal Sarkar, Dr. B.R. Ambedkar’s theory of State Socialism, *International Research Journal of Social Sciences*, Vol. 2(8), 38-41, August (2013), ISSN 2319–3565

have rights to reside any part of territory of India. The citizenship certificate should be provided by the state. Every citizens should have right to vote. The State shall be given guarantee of liberty to every Indian citizen without discriminations on the basis of caste, creed, religion etc. Right to religious association of the citizens shall be given by the state. One man one value is the principle of Dr. Ambedkar's socialism. No citizen shall be disqualified on the basis of birth or race. All citizens shall have equal access to all institutions, conveniences and amenities maintained by or for the public. The State Socialism should prescribe by the law of the Constitution. The right of a citizen to vote shall not be denied on any ground other than immaturity, imprisonment and insanity. No law shall be made abridging the freedom of speech press, form of association and assembly except for consideration of public order and morality. The state shall guarantee to every Indian citizen liberty of conscience and free exercise including right to worship, right to form of religious association and its spread. The state shall not recognise any religion as state religion. Every religious association shall be free from state religion^{†††}.

SOCIALISM IS BASED ON LIBERTY, EQUALITY AND FRATERNITY

The aims and objectives of his State Socialism are to remove the extreme inequalities and evils castes system from the society. The concept of State Socialism is based on the principles of justice. To him, men are different from each other due to their birth, mental ability and faculty, hereditary and social atmosphere, but they should enjoy equal Opportunities for their upliftment. The individual has the right to economic development from both public and private enterprises under the guidance of state control. The individual shall be enjoyed the economic liberty under the State Control. The state should take initiative for the maintaining the trinity principles of liberty, equality and fraternity. He advocated the inter-caste marriage, inter-dining system to eradicate discrimination from Hindu society and he embraced Buddhism. Indian society is caste based society. Castes and sub-castes system of Hindu society is an anti-democratic and anti-humanity. In his essay entitled on "Philosophy of Hinduism" Dr. Ambedkar has described relating to fraternity. To him, "I and my neighbours are we all brothers, are we even fifteenth cousins, any I their keeper, why should I do right to them"^{†††}. Fraternity is another name for fellow feeling. In his another essay entitled on "The Hindu Social Order: Its Essential Principle" has pointed out that the concept of fraternity as one of key essential element of a just society. In this essay he said that "fraternity is the name for the disposition of an individual to treat as

^{†††} Ambedkar B.R., State and Minorities, Dr. Babasaheb Ambedkar Writings and Speeches, Education Department, Government of Maharashtra, compiled Vasant Moon, 1, 392-393 (1979)

^{†††} Ambedkar B.R., Philosophy of Hinduism, Dr. Babasaheb Ambedkar Writings and Speeches, compiled by Vasant Moon, Higher Education Department, Government of Maharashtra, 3, 44 (1987)

the object of reference and love and the desire to be is unity with the fellow beings”^{§§§}. To him, collective liberty is “Real Liberty”^{****}.

The wise founding fathers of the Indian Constitution abolish all discriminations against any class of persons on grounds of the religion, race, caste, sex or place of birth. The preambular spirit of our National Charter discloses that the founding fathers of our Constitution were quite eager to draw up a pious document which could embody the fundamental principle of new social order. This is clearly echoed in the Preamble which states that WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST^{††††}, SECULAR^{††††}, DEMOCRATIC, REPUBLIC and to secure to all its citizens: JUSTICE social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to provide among them all, FRATERNITY assuring the dignity of the individual and the unity [and integrity]^{§§§§} of the Nation.

Ambedkar wanted to have the social justice with a heart, a humanistic Jurisprudence, sensitive to the disabled sections, a versatile legal technology rich with substantive rules, operational process and sympathetic personnel, judicature and executive ready to give relief in the spirit care and armed with law^{*****}.

The expression “Justice” briefly speaking is “harmonious reconciliation of individual conduct with the general welfare of the society. Therefore the attainment of the common goods as distinguished from the good of individuals is the essence of Justice”^{†††††}. The Constitution secure to the citizens social, economic and political justice. Social Justice means the abolition of all sorts of inequalities which may result from the inequalities of wealth, opportunity, status, race, religion, caste, title and the like^{†††††}. A number of specific provisions have also been incorporated in the Constitution safeguarding specifically the social, economic, educational and political rights of the Scheduled Castes. The term reservations denote the body of the rules recognized and applied to correct the historic distortions crept into the early Hindu Society, the rules recognized and enforced by the state in the administration of social justice; it may be a working definition.^{§§§§§} These recognized rules are not only valuable in form

§§§ Ambedkar B.R., State and Minorities, Dr. Babasaheb Ambedkar Writings and Speeches, Education Department, Government of Maharashtra, compiled Vasant Moon, 1, 97-98 (1979)

**** Ambedkar B.R., Philosophy of Hinduism, Dr. Babasaheb Ambedkar Writings and Speeches, compiled by Vasant Moon, Higher Education Department, Government of Maharashtra, 3, 41 (1987)

†††† Inserted by Constitution (42nd Amendment) Act, 1976.

†††† Ibid.

§§§§ Ibid.

***** S. Mohan-Social Justice in India, All India Reporter, Vol. 2. Aug.1995, p.100

††††† Narender Kumar, *Constitutional Law of India* 29 (Allahabad Law Agency, Haryana, 2004).

††††† D.D. Basu, *Commentary on the Constitution of India* 147 (Sarkar & Sons (P) Ltd., Calcutta, Vol.A, 1982).

§§§§§ D.N. Sandanshiv, *Reservations for Social Justice-A Socio Constitutional Approach*, 147(Current law Publishers, Bombay, 1986)

but also in action.***** Ambedkar maintained the view that legal justice at the formal or at theoretical level would be ineffective at the practical level. He observed:

“It might have been thought that this principle of equal justice would strike a death blow to the established order. As a matter of fact, far from suffering any damage, the established order has continued to operate. It might be asked why the principle of equal justice has failed to have its affect. The answer to this is simple. To enunciate the principle of justice is one thing. To make it effective is another thing. Whether the principle of equal justice is effective or not must necessarily depend on the nature and character of the civil services who administer the principle. If the civil services are by reason of class bias the friend of the established order and the enemy of the new order, the new order can never come into being. That a civil service in tune with the new order was essential for the success of the new order was recognized by Karl Marx in 1871 in the formation of the Paris Commune and was adopted by Lenin in the constitution of Soviet Communism. Unfortunately, the British government never cared about the personnel in the civil service. Indeed, it opened the gates of the administration to those classes who believed in the old established order of the Hindus in which the principles of equality had no place. As a result of this fact, India has been ruled by the Britishers but administered by the Hindus”

The Constitution enshrines the right to equal opportunities, provides protection against social dogmas and economic exploitation, and makes specific financial allocations for expediting the development of SCs and STs. Constitution of India contains various provisions for the development of SCs. It guarantees protection from social injustice and all forms of exploitation^{†††††}. It guarantees equality before law^{†††††}, and enjoins upon the State not to discriminate against any citizen on grounds of caste^{§§§§§}. Through enacting Anti-untouchability law, the practice of any form of untouchability is an offence^{*****}. The Constitution mandates that no citizen shall, on grounds of caste or race be subjected to any disability and restriction^{†††††}. While recognizing the historical disadvantage which SCs and STs faced in their education and employment, Constitution empowers the State to make provisions for reservation in educational institutions^{†††††} and in public employment^{§§§§§}. For political empowerment, the Constitution guarantees reservation of seats in Lok Sabha under article 330, in the State Legislative Assemblies under Article 332 and in Local Self-Government bodies under

***** Ibid.

††††† Article 46, Constitution of India.

††††† Article 14, Constitution of India.

§§§§§ Article 15(1), Constitution of India.

***** Article 17, Constitution of India.

††††† Article 15 (2), Constitution of India.

††††† Article 15(4) and 15(5), Constitution of India.

§§§§§ Article 16(4), Constitution of India.

Article 243D and 340T. To check crime against SCs, Untouchability (Offences) Act, 1955 was enacted which was renamed as Protection of Civil Rights Act in 1976. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has been enacted to protect from SCs and STs from atrocities on them.

POLITICAL EQUALITY TO DALITS

According to Ambedkar, political power is the key to all social progress and the backward castes can achieve their salvation if they capture this power by organizing themselves into a political party and holding the balance of power between the rival political parties. Taking a considered stance on this, he led relentless political struggles for the elimination of injustice spread all over the country. He built his theory of social and political organization around his central concept of the individual and his rights. Ambedkar says that “no government should violate the fundamental rights of people. For some rights are so fundamental that no human society can be prosperous without them.”***** This recognition for political equality led him to take up the mantle of a political leader for the depressed classes. Dreaming to build an organization for the victims of Brahmanic ideology, he advocated, “I want to put the depressed classes on terms of equality with other communities in India. I don’t want to remain servile to other communities, but I want to place the reins of Government in your hands.”+++++++ In the post-independence period, Ambedkar strongly emphasized that there was an urgent need to strengthen the Scheduled Castes Federation, which he founded in 1942. To share political power, the Scheduled castes had to be organized as one solid unit before fighting for their rights in the future governances of the country. He remarked: “The days of domination of one community over another were certainly over and I want to make it known that the Scheduled Castes are determined to fight for their rights and claim their due share in the administration of the country. In fact, the political movements involving the deprived classes in India has largely relied on his concepts of social justice. He served as the law minister and as the chairman of the Constitution Drafting Committee of the Constituent Assembly. During this historic period, he did his best to accelerate the process of establishing democratic provisions and empowerment for the depressed classes in the governance of the country. Ambedkar had further realized that a mere political awakening would not ensure equal status for the untouchables in Indian society. He advocated that a political awakening must be complemented with a conversion to Buddhism, in order to safeguard the political rights.

In the original drafts of the Constitution, there was not a whisper of panchayats or the gram sabha. This is because both Nehru and Ambedkar were west-educated “modernists” inclined towards the mature-conquering model of development.+++++++ In their thinking, agriculture’s basic inputs would

***** Jatava D.R. (2000). B.R Ambedkar: A vision of man and morals. Abd Publisher

+++++++ Ambedkar, B. R., & Moon, V. (1994). *Dr. Babasaheb Ambedkar, Writings and Speeches* (Vol. 17). Education Department, Government of Maharashtra.

+++++++ Sailendra Nath Ghosh, “Fundamental Flaws in the Present-day Panchayati system and the cure” Vol.XLINO.35, Mainstream 31, Aug.16 (2003).

have to be chemicals fertilizers, chemicals pesticides, and flow irrigation through trunk canals connected to big dams and electricity from large power stations. This resulted in a big protest. In the face of this storm of protest, the constitutional Advisors, Sir B.N.Rau, said that he also was in sympathy with the demand for village self-governance but “it was too late to make any attempt to change the basis of the Constitution, which has gone so far”. To resolve this, a one-sentence^{§§§§§§§§} was inserted in the Directive Principles of the state policy saying “The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-governance”^{*****}. The protestors accepted this compromise.

The Constitution (Seventy-third Amendment) Act, 1992 has been enacted to give constitutional status to the Panchayati Raj. The incorporation of the provision for the Panchayati Raj is in consonance with the Directive Principle embodied in Article 40. The amendment has, thus, opened a new era in decentralization of the power in the country. The amendment has added a new part IX to the Constitution, consisting of 16 Articles and the Eleventh Schedule to the Constitution. The Amendment gives power to the Panchayati Raj Institutions (PRIs) to make them truly representative bodies of the people^{††††††††}.

RESERVATION OF SEATS (ARTICLE 243-D)

Article 243-D (i) provides for the reservation of seats in Panchayats for the Scheduled Castes and Scheduled Tribes. The number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area and such seats may be allotted by the rotation to the different constituencies in the Panchayats. Clause (2) of Article 243-D requires that there shall be reserved for women belonging to Scheduled Castes or as the case may be, the Scheduled Tribes, at least one-third of the total number of seats reserved for these categories under the Clause (1). Out of total seats to be filled by direct election in every Panchayats, not less than one-third (including the seats reserved for the SC and STs women) seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a panchayat^{††††††††}.

Clause (4) of Article 243-D lays down that the legislature of a states may, by law, provide the manner for the reservation of the offices of the chairpersons in the panchayats at village or other level, for Scheduled Castes, Scheduled Tribes and women. However, it shall be in proportion to the population of each category^{§§§§§§§§}.

§§§§§§§§ Article 40, Constitution of India.

***** Ibid.

†††††††† State of U.P. v. Pradhan Singh Kshettra Samiti, AIR 1995 SC 1512.

†††††††† Clause (3) of Article 243-D.

§§§§§§§§ First Proviso to Clause (4) of Article 243-D.

Prashant Bansilal Bamb v. State of Maharashtra and others ^{*****}, under the Constitution of India, Article 243 D, Article 243 K the legislation Maharashtra Zilla Parishad and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules 1996, Rule 4 states that in general election to panchayat there is a rotation policy. Non observance of the rules of rotation of seats not only violates legislative mandate and expectation but would go contrary to the spirit of Article 243 D. In this case the state election commissioner's version was that in view of delimitation of divisions' rotation of seats in accordance with rules not possible. Under these circumstances the High Court directed State Election Commission that in exercise of its powers take effective and meaningful steps in implementing spirit of Constitutional and legal provision of rotation policy while reserving seat in ensuring panchayat elections in State of Maharashtra.

In *Parmjit Singh v. State of Punjab & Ors.* ⁺⁺⁺⁺⁺ Case post reserved for the candidate belonging to Scheduled Castes category for the post of sarpanch. In this case it was held that the Scheduled Caste women can contest election for reserved post, plea that she can contest only for post reserved for SC women was not tenable, being violative of Article 15 of Constitution.

In *Sarwan Singh & Ors. v. Lakhwinder Singh & Ors.* ⁺⁺⁺⁺⁺ in this case a post of Sarpanch was reserved for the Panch belonging to the Scheduled Caste category. Both male and female Panch as from the Scheduled Caste category would be allowed to contest for post of sarpanch in SC category. But the returning officer gave an impression that only Scheduled Caste male had right to contest the election and not SC female. In this case SC female was deprived of her right to contest election. Order of the election tribunal setting aside election and directing to hold fresh election was proper.

In *Union of India and Others v. Rakesh Kumar and Others* ^{§§§§§§§§} in this case the issue was whether limit of fifty percent maximum reservation as prescribed in Indra Sawhney case applies to the reservations under Article 243 D? In this case cent percent reservation of post of chairman of panchayat in Scheduled Area for the STs and up to 80 percent reservation of panchayats seats in Scheduled Areas at the various levels for SCs, STs and OBC were reserved. In this case it was held that Article 243 D envisages proportionate representation and is distinct and an independent basis of reservation in the Panchayati Raj Institutions. Reservation under Article 243 D cannot be compared with affirmative action measures under Article 15(4) and 16(4) where the balance is to be maintained between the affirmative action measures and merit. However, even if law laid down in Indra Sawhney case were to be applied, Indra Sawhney case does recognize exceptions where reservation can exceed 50 percent in certain circumstances. Reservation in Panchayats in Scheduled Areas is a fit case where exception should be applied, for the reason that there is compelling need in Scheduled Areas to

***** AIR 2008 Bombay 53.

+++++ AIR 2009 PUNJAB & HARYANA 7.

§§§§§§§§ AIR 2009 (NOC) 2868 (P&H)

§§§§§§§§(2010) 4 SCC 50.

safeguard the interest of tribal communities by giving them effective voice in local self government. Hence said reservation is valid.

MUNICIPALITIES SYSTEM

Part IX-A has been added to the Constitution by the Constitution (seventy-fourth Amendment) Act, 1992. It has inserted 18 new Articles and twelfth Schedule relating to urban local bodies. The Amendment provides for the Constitutional sanction to the urban self-governing institutions, ensuring regular elections to constitute these institutions, so as to enable them to play a greater role in the development of urban areas. Article 243 P to G deals with the Municipalities.

RESERVATION OF SEATS (ARTICLE 243-T)

Article 243-T provides for reservation of seats in every municipality for Scheduled Castes and Scheduled Tribes. The number of seats reserved for the SC and STs shall be, as nearly as may be, in the same proportion to the total seats to be filled by direct election in that Municipality as the population of the Scheduled Castes and Scheduled Tribes in the Municipal area bears to the total population of that area. Such seats may be allotted by the rotation to the different constituencies in a municipality. Of the total seats reserved under clause (1) above, not less than one third shall be reserved for women belonging to the SC/STs, as the case may be. Of the total seats (including the seats reserved for women belonging to Scheduled Castes and Scheduled Tribes) to be filled by direct election in every municipality, not less than one third shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality.

Clause (4) of Article 243-T provides that the offices of the chairperson in the municipalities shall be reserved for SC and STs and women in such manner as the legislature of the state may, by law, provide.

RESERVATION OF SEATS IN LEGISLATURE

In order to create a politically homogenous society, the framers of the Constitution rejected the system of communal representation and separate electorate and instead opted for universal adult franchise^{*****} and joint electorate^{††††††††††}. The Constitution specifically provides reserved seats in proportion to their number for Scheduled Castes in the Lok Sabha (Lower house of Parliament) and the Vidhan Sabha (Lower house of State Parliament). The reservation of seats in legislature has been provided for the reason that the Scheduled Castes were in the disadvantageous position and they could not have competed with the advanced section of the society on the footing of the equality. They had

***** See Article 326.

†††††††††† See Article 325.

neither the resources nor the experience for entering into an open competition for participation in the political process^{††††††††††}. Therefore they have been given guaranteed representation because they suffered social handicaps.

Articles 330 and 332 provide for the reservation of seats for Scheduled Castes^{§§§§§§§§§§} and Scheduled Tribes^{*****} in the house of people and the legislative assemblies of the States. Article 334 as amended by the 62nd Amendment, 1989, provides that the reservations under Articles 330 and 332 would continue upto 25th January, 2000^{††††††††††}. The Constitution (Seventy-ninth Amendment) Act, 2000, has extended it upto 25th January 2010. It may be noted that the seats reserved under Article 330 and 332 shall be in addition to any general seats which the SC/STs may contest. Thus Article 330

^{††††††††††}S.S.Jaswal, *Reservation Policy and the Law-Myth and Reality of Constitutional Safeguards to Scheduled Castes*, 106 (Deep & Deep Publications Pvt. Ltd., New Delhi. 2000).

^{§§§§§§§§§§} Article 330 provides:

- (1) Seats shall be reserved in the House of the people for
 - (a) the Scheduled Castes;
 - (b) the Scheduled Tribes except the Scheduled Tribes
 - (i) in the tribal areas of Assam;
 - (ii) in Nagaland;
 - (iii) in Meghalaya;
 - (iv) in Arunachal Pradesh; and
 - (v) in Mizoram; and
 - (c) the Scheduled Tribes in the autonomous districts of Assam.
- (2) the number of seats reserved in any state or U.T. for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state or U.T. in the house of people as the population of the SC in the State or U.T. or of the Scheduled Tribes in the state or the U.T. or part of the state or the U.T., as the case may be, in respect of which seats are reserved, bears to the total population of the state or U.T.
- (3) notwithstanding anything contained in clause (2) the number of seats reserved in the house of the people the Scheduled Tribes in the autonomous districts of Assam shall bears to the total number of seats allotted to that state a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bear to the total population of the State.

^{*****} Article 332 provides:

1. seats shall be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in Nagaland and in Meghalaya, in the legislative Assembly of every state.
2. seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.
3. the number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the legislative assemblies of any state under clause (1) shall bears, as nearly as may be, the same proportion to the total number of seats in the assembly as the population of the SC in the State or of the STs in the state or part of the state, as the case may be, in respect of which seats are so reserved, bears to the total population of the state.
4. the number of seats reserved for autonomous districts in the legislative assembly of the state of Assam shall bears to the total number of seats in the assembly a proportion not less than the population of the district bears to the total population of the State.
5. the constituencies for the seats reserved for any autonomous districts of Assam shall not comprise any area outside that district.
6. no person who is not a member of Scheduled Tribes of any autonomous district of the State of Assam shall be eligible for election to the legislative assembly of the state from any constituency of that district.

^{††††††††††} Originally under Article 334, these reservations were to continue upto 25th January, 1960. These were extended upto 25th January, 1970 by the 8th Amendment, 1959 upto 25th January, 1980 by the 23rd Amendment, 1969; and upto 25th January, 1990 by the 54th Amendment, 1980.

and 332 do not debar these classes from contesting on general seats. There is however, no reservation of seats in the indirectly elected Upper Houses at both Centre and State. It is however, pertinent to mention here that the provisions regarding the reservations of seats in the legislature were intended to be purely temporary. But due to the unsatisfactory progress of the Scheduled Castes in the different facets of their life, the period has been extended to sixty years.

*Anand Singh Kunwar and others v. Election Commission of India, New Delhi and others****** Article 332 and 324 of the Constitution provided for reservation of seats for SC/ST in legislative assembly. The only paramount consideration is the proportion of Scheduled castes and Scheduled Tribes population in State. Justifications such as special requirement of Tribal areas, public demand for more representation are not justified considerations at all. Mandate of Constitution is supreme and Election commission has no scope to go beyond Constitution.

CONCLUSION

That the political parties' candidates use mal practices in order to make their vote bank strong, they get influenced and they cast their vote who offer the things i.e. cash, wine, clothes, meals etc. Some of the upper caste people pressurize them to cast their votes in favour of their own candidate through these mal practices. Therefore it was observed that some of the representatives of the Scheduled Castes in the political structure are not their real representatives because their votes are being purchased by them. The Constitution mandate completely adheres but the some of the elected members are not elected neutrally by the voters.

While the media broadcast the bitter truth, that the caste continue to play an important role in political power. Not only this, even where the posts are reserved, the dominant castes often had a say in deciding who amongst the Scheduled Castes should contest. Therefore, those who had the support of the dominant caste - contest and win the elections. Even after winning, their opinions were not respected in the Panchayat's meetings. This shows that they are just puppets in the hands of the dominant caste of the villages. The Scheduled Castes are failed to unite as a group or as a regional political party. They have been surrounded by internal rivalries, including their own sub castes. Just because of this, they are unable to protect and implement the reservation policy. Those Scheduled Castes who are elected are the representatives of their parties, rather than the representatives of the Scheduled Castes themselves. Therefore there is a need to unite them. As rightly pointed out by Paramjit Singh Judge in his Book 'Mapping Dalits' that if Scheduled Castes do not break caste barriers among themselves, their struggle for equality will remain futile.

***** AIR 2007 SC 2866