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## Positive discrimination: Constitutional provisions in India

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### Abstract

This research paper explains the condition of socially weak people and the measures taken by the government of India and the constitutional provisions to improve the position of people living in pathetic social condition. This paper also tries to estimate the impact of government policies on the reduction of poverty and on improvement in the deteriorating conditions of the socially weak. The implementation of various programs and policies and their poor result is due to a number of factors which are primarily responsible for it. In the first place, a significant proportion of scheduled castes children continued to remain out of school. The reason may be poverty, ignorance or indifferent attitude of their parents.

**Keywords:** Position of people, constitutional provisions, government policies

### Introduction

Chanana (1993)<sup>[1]</sup> found that the recognition of socially disadvantaged groups began in the 19th Century under the colonial rule and the policy of positive discrimination in order to uplift their status began in India. Positive discrimination means making sure that people such as women, members of smaller racial groups and disabled people get a fair share of opportunities available in a country. A democratic society like India faces the challenges of harmonizing the essentially contradictory political concepts- One, equality before the law, irrespective of religion, caste, creed, race and gender, and the other, social justice at the cost of same commitment for equality before the law. In India, large number of people has experienced social discrimination through centuries on account of its peculiar institutions called the caste system. Efforts have been made to provide redress for these under-privileged section known as scheduled caste in India, though the policy of reservations or quotas for them in jobs, seats in educational institutions and legislatures, and in governmental aid, loans and other developmental assistances. In all, five under-privileged categories have either received benefits or have been seeking such benefits under the concepts of positive discriminations. These include Scheduled Castes, Scheduled Tribes, Other Backward Classes, Religious Minorities or Sections and lately, the women force. The reservations for the Scheduled Castes were made for the first time in 1943 when 8.33 percent of vacancies in government services were reserved for the Scheduled Castes through a government order. In June 1946 this was raised to 12.5 percent to correspond with their proportion in the population (Chanana 1993)<sup>[1]</sup>.

A scheme of post matriculation scholarships was prepared for Scheduled Castes and was extended to the Scheduled Tribes in 1948-49 (Chanana 1993)<sup>[1]</sup>. It was the influence of the British rule in India, struggle and strong will of its leaders that the country enjoys affirmative actions in India. And the objective of the incorporation of the provision of positive discrimination in the Constitution of India is to bring equality, liberty and fraternity.

The Constitution of independent India, which largely followed the pattern of Government of India, Act 1935, made provisions for positive discrimination in favour of scheduled castes and scheduled tribes which constituted 23 percent of divided India's population. Some of the constitutional provisions which aimed at positive discrimination included abolition of untouchability under Article 17, promotion of educational and economic interests under Article 46, preferential treatment in the matter of employment in public services under Article 16 and 335 and reservations of seats in legislatures under Article 330 and 332 of the Constitution of India.

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Later on, job related positive discrimination was further extended to government supported autonomous bodies, a government order of 1974 laid down that all such bodies which employed more than 20 people, and where 50 percent of the recurring expenditure was met out of grants-in-aids from the central government should invariably provide all reservation of scheduled castes in all posts and services. Consequently, this policy of positive discrimination revealed positive results on the position of these people. The percentage of scheduled castes in class I central government services which were simply 0.7 percent in 1957 improved to 2.58 percent in 1971. Similarly, the position of class II officers improved from 2.01 percent to 4.6 percent and for class III services from 7.3 percent to 9.59 percent, respectively during the same period (Ghosh 1996)<sup>[13]</sup>.

There are three aspects of Indian experience of positive discrimination. In the first place, positive discrimination in India predates affirmative actions in the United States by several decades. Secondly, there is an important difference between the American policy of preferential treatment and the Indian policy which relies primarily on reservations through quota. Thirdly, Indian policies are primarily located in educational, political and administrative domains and have not yet been legislated for the corporate sector. This program is directed at the members of scheduled castes which comprise sixteen percent of the total population in India. The majority of the scheduled castes are poorly paid manual laborers. They are subject to day to day humiliation associated with untouchability practices, and violence and brutality associated with their enforcement. They also include the prohibition of access to public places and public resources. Atrocities remained serious enough to warrant the introduction of the Scheduled Castes Prevention of Atrocity Act in 1989. Scheduled castes are victims of deep seated prejudices supporting power and privileges at all levels of society.

The chief pre-occupation of the founders of the Indian republic was the creation of the society whose citizens shared a strong sense of national identity despite cultural diversity. Consequently, different types of provisions were made in the Constitution of India for different types of cultural differences. The policy attention to the economic and educational backwardness of scheduled castes precluded simultaneous efforts to remove the damaging effects of social prejudice, legislating against untouchability proved to be an inadequate strategy in this respect. The overlapping nature of cultural and material inequalities was insufficiently addressed in the policy. The benefits of positive discrimination policy were further extended to other backward classes in 1990, following the acceptance of the report of the Backward Classes Commission, also known as the Mandal Commission Report in 1980. This report adopted the criteria of social and educational backwardness to identify a list of castes deserving positive discrimination. It was estimated in the Report that 52 percent of India's population belongs to those castes groups which needed the benefits of the policy of positive discrimination. However, the Supreme Court of India ruled that creamy layer among them should be excluded from the ambit of reservation. It refers to the upper strata that have become prosperous partly as a result of land reform policies and partly as a result of effectively mobilizing political power. At present, there is a

whole range of programs and policies supplementing positive discrimination, taking it well beyond the quotas in public institutions. There are measures to improve the positions of scheduled castes and encompassing both reservations in government jobs, higher education and political bodies, and have more general programs with special provisions for them (Heyer *et al.* 2009)<sup>[24]</sup>.

### Constitutional Provisions

Constitution of India under Article 15(4), 16(4), 330, 332, 334 provide a number of benefits to scheduled castes under various programs including reservation, educational quota, social empowerment and general programs for economic uplift. The constitutional orders of 1950 established state-specific lists which identified the castes and tribes that fall in the categories of scheduled castes and scheduled tribes respectively. The caste identification criteria of the 1931 census formed the basis for the selection of scheduled castes (Pande 2003)<sup>[48]</sup>. It was a caste-based census under the British rule, and the reservations and other affirmative actions and policies are based on it. Thereafter, the rulers of India never conducted the caste-based census till date, though it is needed for better implementation of the policies. The scheduled caste and scheduled tribe lists have been revised twice-in 1956 to remove anomalies arising from the linguistic reorganization of states, and in 1976 to remove within-state discrepancies in the identification of certain castes and tribes as scheduled castes and scheduled tribes respectively (Pande 2003)<sup>[48]</sup>. One may view the special position of certain social groups and the Constitutional provisions for preferential treatment keeping in view of this concern of the Indian political leaders. The Constitution also recognizes the Scheduled Castes on the basis of untouchability, the Scheduled Tribes on the basis of geographical isolation and distinct cultures along with socially and educationally Backward Classes (OBCs) and guarantees protection and special supports to them (Pande 2003)<sup>[48]</sup>. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth while Article 16 assures equality of opportunity in matters of public employment. Article 17 decrees the abolition of untouchability. Article 15 (4) states that the State may make special provisions for the advancement of the Scheduled Castes and Tribes (Chanana 1993)<sup>[1]</sup>. Besides, Article 46 states that 'the state shall promote with special care the education and economic interest of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes. Article 29 (2) prohibits discrimination in government aided educational institutions.

The 1950 Indian Constitution mandates political reservation in favour of scheduled castes and scheduled tribes in every state and national election (Pande 2003)<sup>[48]</sup>. The aim of the social provisions enshrined in the Constitution is to ensure that no handicap prevents their meaningful participation in the new emerging social order and that the state helps to secure economic and political justice to all its citizens (Chanana 1993)<sup>[1]</sup>. In addition (Pande 2003)<sup>[48]</sup>, it explicitly directs state governments to use public policy to improve the economic well-being of these two groups. Thorat (2004)<sup>[55]</sup> is of the view that scheduled castes and scheduled tribes constitute a vast section of India's population and they together account for about one fourth of India's population

(equivalent to about 250 million). Reservations are designed to encourage proportionate representation in the public health sector. There is still a long way to go if proportionality is to be achieved despite the fact that it has been many decades since reservations first made their appearance in India. It is so because there is a short fall in their recruitment in the elite services and smaller percentage rise to the highest levels of the administration. Their concentration in the central government is at the lower level of bureaucracy that is known as class III and IV jobs. This is explained in the following table-

**Table 1:** Scheduled Castes in Government Jobs by category (percentages)

Category	I	II	III	IV	All
1965	1.64	2.82	8.88	17.8	13.2
1995	10.1	12.7	16.2	21.3	17.4
2001	11.4	12.8	16.3	17.9	16.4

**Source:** National Commission for SC and ST, 1998; Planning Commission, 2005

On the basis of this table, it can be observed that the percentage of SCs in central government jobs of category I and II are very low relatively and in category III and IV it is comparatively high. However, there was a drastic change after 30 years when there was 5 to 8 time increase in the percentages of SCs in category I and II and 1.5 to 2 time increase in lower categories. Another feature that can be observed from this table is that since 2001, there has been saturation of percentages for category I, II and III, while the percentage of SCs in central government in category IV virtually declined in 2001. On the basis of these observations, it can be concluded that better educational facilities improved the competitive position of SCs and the policy of reservation helped them to occupy more posts for category I and II, but the saturation condition reveals that the benefits are not accruing at the grass root level. Moreover, the decline of percentage in the category IV shows that more people among scheduled castes prefer better jobs rather than jobs for lower grades.

How the composition of bureaucracy will change in future is yet to be seen, because age is an important factor in reaching to top and these groups are entitled to age relaxation. Unlike in the general category in civil services, there is almost consistently, a shortfall in the availability of candidates for government jobs that require specialized or technical education. One of the key assumptions behind the reservation of government posts was that SCs would speak up for SCs. And they would get their due. However, the record has been disappointing because they have not achieved as much power and influence that was expected as a result of public sector reservations. It is so because they have failed to get sufficient representation, particularly at higher level in public sector. Moreover, majority of them who have been appointed at higher level jobs, have found it difficult to champion the cause of scheduled castes (Galanter 1991)<sup>[11]</sup>.

Besides the policy of reservations in jobs, Constitution of India also provides quotas for scheduled castes in public sector higher educational institutions. Hence, the other crucial provision is the reservation of seats (15 percent for

the Scheduled Castes and 7.5 percent for the Scheduled Tribes) in all educational institutions and jobs in organizations run by the central and state governments in accordance with their proportion in the population (Chanana 1993)<sup>[1]</sup>. The Constitution also provides for the appointment of a Commissioner for the Scheduled Castes and Scheduled Tribes and enjoins upon them the responsibility to submit periodic reports. Pursuant to this, the Office of the Commissioner for Scheduled Castes and Scheduled Tribes was established. Moreover, scholarships, subsidized tuition fees, bursaries and free hostel accommodations are also provided to the students of these categories. This facility has increased the proportion of scheduled castes graduates in India (Weisskopf 2004)<sup>[66]</sup>.

Higher education quotas have not increased the representation of SCs in the higher levels of occupational distribution. However, Deshpande and Newman (2007) looked at the reasons responsible for difficulty in translating their qualifications into employment opportunities at par with others with similar qualifications. The reasons include lower expectations of scheduled castes with respect to employment opportunities which prevent them from applying for the better opportunities and prevent them from presenting themselves well when they do so. Higher education quotas have been important, both in raising aspirations and incentives to pursue education. There are still major problems in the lower level of education system. These things make it difficult for scheduled castes to take advantage of opportunities in the higher education and hence the existing quotas are also not fully utilized.

General programs for economic, social and educational empowerment of scheduled castes in India were introduced during the Fifth Five Year Plan. These included measures to improve education and human resource development along with the measures to enhance capital and skill for self employment. It also included the measures to improve the access to housing and basic social services. Some of these programs are part of anti-poverty and other government programs for the uplift of scheduled castes. These are general programs which do not make special provisions for this category (Stewart et.al.2007). These include general improvement in basic health and education which may have a disproportionate effect on scheduled castes.

There are also anti-poverty programs which provide subsidized credits for small scale business and for agriculture. Programs like IRDP and various employment guarantee schemes including MGNREGA are general in nature but, conducive to the welfare of weaker categories in particular. There are dedicated special developing funds to support scheduled castes engaged in business, agriculture and allied activities. There are funds to support them in higher secondary education and above. There are also funds dedicated to the constructions of houses and other infrastructure which can be of many benefits to scheduled castes. Under the special component plan introduced in 1979 and subsequently, renamed as scheduled caste sub plan (SCSP), both at the centre and state levels, earmarked funds in proportions to the population of scheduled castes in India (Viswanathan 2007)<sup>[64]</sup>.

**Government programs and policies**

The framers of the Constitution of India realized the overall

poor socio-economic conditions of the scheduled castes and consequently, paid special attention required urgently for their development. Specific provisions have been incorporated in the constitution to provide social justice to the members of these castes through various programs of upliftment and the policies of protective discrimination. The main purpose was to change the traditional social structure of Indian society which is based on social, economic and political inequalities. Economic growth with social justice has remained the major objective of the planning process and rural development program in India. Government has taken into account not only economic goals but also considered social aspects to this deprived section of the society so that it may also participate in the development process of the Indian economy. Both centre and state governments have implemented various programs including Swarn Jayanti Gram Swaraj Yojana and Indira Awas Yojana for the upliftment of the scheduled castes that are living below poverty line. Gaiha (1995) <sup>[9]</sup> also opined for providing wage employment to the rural poor, especially during slack agricultural periods, continues to be a key component of anti-poverty strategy in rural areas. The government of India formulated and implemented a number of schemes and programs to alleviate poverty and uplifting the poor. Integrated Rural Development Program, was launched in 1980 and aims at creating self-employment opportunities for the rural poor by subsidizing assets and inputs, and through term credit advanced by financial institutions. A centrally sponsored scheme with equal contributions by the center and the states, the target group consists of small farmers, agricultural laborers, and artisans. It is stipulated that at least 50 percent of the assisted families should be from scheduled castes that at least 40 percent of those assisted should be women, and 3% should be the physically handicapped. A sub-scheme of IRDP is the Development of Women and Children in Rural Areas (DWCRA), introduced in 1982-83 as a centrally sponsored scheme. DWCRA promotes groups of 15 to 20 women from poor households through provision of credit, training, and other forms of support for self-employment. MGNREGA was introduced in 2006 to insure 100 days guaranteed employment to the poor people. Moreover, special component plans also introduced during the Sixth Five Year Plan to facilitate the monitoring of the development programs meant for scheduled castes population. Government of India also established a national scheduled castes finance and development corporation in 1989 to provide financial help to those members of scheduled castes who are below poverty line. They were provided cheaper interest rates to start various income generation activities for their economic welfare.

Government also made efforts to promote education and employment opportunities for scheduled castes through protective discrimination policies as per the constitutional provisions and through scholarship facilities. Presently, the scheduled castes in India constitute 16.2 percent of the total population. They constitute 45.6 percent of landless agricultural laborers and 20 percent of the cultivators mostly in the category of the small and marginal farmers. One third of them lives below poverty line and do not have access even to the basic necessities of life.

After independence, India made remarkable progress in

science and technology, industrial and infrastructural development. Progress has also been made in the case of socio-economic uplift of scheduled castes but the desirable outcome is still far away from the reality. Thorat (2004) <sup>[55]</sup> also observed that although these policies have brought about some positive changes, however, the process of transformation has been extremely slow and inadequate to minimize the handicaps and disabilities of the past and in reducing the gaps between them and the rest of the Indian society. Forrester (1974) <sup>[5]</sup> made a study of the position of the scheduled castes from the social scale index comprising items like- poverty, social status, health, life expectancy, literacy and education and found them at the bottom the scale. Sivanandan (1996) also held that the strategy of development which takes care of the existing socio-economic disparities and tries to ensure a better deal for the depressed through policies of state intervention would render sufficient support for the uplift of the weaker sections of the society. In India, the central government and the various state governments have resorted to welfare policies in education, employment and landholding. Encouragement of universal primary education, award of scholarships, and reservation of seats, hostel facilities and fee concessions are such measures for improvement of their literacy and education.

For promoting employment, the major policies are confined to reservation of jobs, relaxation of age in central and state government services, financial aid for starting and renovating small-scale industries, formation of multi-purpose and service co-operative societies, and stipulation of minimum wages for industrial and agricultural laborers. Protection of the right of the SCs in land, distribution of cultivable land available for assignment with the government, enforcement of land reforms especially to give ownership rights to occupancy tenants, and financial aid for construction of dwellings are some of the other major policies followed. Another study made by Malik *et al.* (1989) <sup>[38]</sup> observed that the implementation of the schemes for scheduled castes remained very poor. Similarly, Nancharaiah (1990) <sup>[41]</sup> had studied the scheduled castes with reference to access to land, occupational distribution, access to education and incidence of poverty. He also observed that although there is some improvement in socio-economic conditions of the scheduled castes, yet community at large remained as poor agricultural labor.

Gaikwad (1999) <sup>[10]</sup> examined the impact of the government policies and programs on scheduled castes with the help of statistical techniques. He also concluded that there is a need to intensify caste-based targeting to reduce the deprivation of scheduled castes. The basic reason behind their miserable social economic condition is illiteracy, lack of required skill, inequalities in agrarian structure due to failure of land reforms, lack of income generating assets and ineffective implementation of welfare programs. Poverty and social discrimination are the main issues of concern for the scheduled castes. The concept of their well-being would encompass individual attainments in the areas of education, health and other amenities like electricity, water supply, sanitation and housing. If all these amenities are not available to all the people belonging to these categories then government programs and policies for their benefit are not of any use.

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