

EMPOWERING MARGINALIZED COMMUNITIES: ANALYSING ARTICLE 341

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ABSTRACT

This article delves into the complexities of Article 341 of the Indian Constitution, which empowers the President to designate certain castes as Scheduled Castes (SCs) to provide them with socio-economic and political protections. The article examines the evolution and mechanisms of caste identification under Article 341, highlighting its role in addressing historical injustices marginalised communities face. The analysis underscores the constitutional balance between affirmative action and legal frameworks by harmonising Article 341 with Article 16(4), which governs reservations in public employment. The article also reviews government policies and welfare programs aimed at empowering Scheduled Castes while acknowledging the ongoing challenges in ensuring the effective implementation of Article 341. It concludes by emphasising the need for continuous efforts to realise the full potential of Article 341 in fostering an inclusive and equitable society.

INTRODUCTION

Amidst a heated debate, the Supreme Court has recently taken a significant stance on the contentious issue of sub-classification within reservation policies, sparking widespread discussion and varied reactions nationwide following the judgement analysing the role of Article 341 becomes necessary to assess how successfully Article 341 has mitigated the inequities suffered by excluded groups and identify the gaps and hurdles that remain as we navigate the complexity of 2024. As we are already familiar with, Scheduled Castes (SC) and Scheduled Tribes (ST) are two historically disadvantaged communities in India that have been established to combat social injustice and provide affirmative action measures to empower them. Article 341 of the Indian Constitution outlines the process for designating a caste as a Scheduled Caste (SC) by giving the President the power to classify specific castes as SCs. The noble goal of safeguarding and elevating the Scheduled Castes (SCs) and giving them a framework for socio-economic growth led to the enactment of Article 341 of the Indian Constitution. So, the question arises - *How effective is Article 341 in addressing the historical*

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and systemic challenges that marginalised populations experience, and what more can be done to ensure its complete execution? Thus, by critically assessing Article 341, we can better understand its role in fostering a more inclusive and equitable society and take informed actions to enhance its effectiveness.

EVOLUTION OF SCHEDULED CASTE

The development of the Scheduled Castes in India can be traced back nearly 2,000 years, shaped by various kingdoms and ruling classes. These groups, along with the Scheduled Tribes, were called the "Depressed Classes" from the 1850s onwards. The term "Scheduled Caste" is used within political and legal contexts. In the early 20th century, British authorities explored the feasibility of self-governance in India through initiatives like the Simon Commission, the Montagu–Chelmsford Reforms Report, and the Morley–Minto Reforms Report. A significant topic of debate was the allocation of seats in provincial and national legislatures for the representation of the Depressed Classes.

With the advent of Indian independence, the Constitution granted specific privileges and protections to these groups. However, the Scheduled Castes and Untouchables are not homogeneous; they are divided numerically based on untouchability and differentiated by occupation. The phrase "Scheduled Castes" was formalised by the Government of India Act of 1935, passed by the UK Parliament, which mandated state governors and the President of India to compile a list of these castes and tribes. The Constitution (Scheduled Tribes) Order, 1950, and the Constitution (Scheduled Castes) Order, 1950, were issued to establish this comprehensive list.

India's post-independence efforts toward inclusivity were significantly influenced by the appointment of B. R. Ambedkar as chairman of the Constitution's drafting committee. Fifteen years after the first amendment that listed the Scheduled Castes, the government revised the criteria for inclusion and exclusion. Ambedkar played a crucial role in advocating for the rights and dignity of the Scheduled Castes and was a vital figure in the fight against untouchability. The Indian Constitution guarantees certain rights and benefits to the Scheduled Castes. Article 341(1) empowers the Constitution, in consultation with a state's governor, to specify the "castes, races, tribes, or parts of groups within castes or races, tribes which shall be deemed Scheduled Castes for the Constitution." However, under Article 341(2), Parliament retains the authority to add or remove any group from the Scheduled Castes list through legislation.

MECHANISM OF SCHEDULE CASTE IDENTIFICATION & PROTECTION

To exercise power under Article 341, the first step is to identify a specific caste that can be brought under the safeguard of scheduled caste. For this purpose, the President may designate castes or tribes to be recognised as Scheduled Castes in a specific state or union territory after conferring with the governor of the state in question. These communities' social, educational, and economic disadvantages form the basis of this acknowledgement. These protections align with the fundamental rights guaranteed by the Constitution, particularly Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth) and Article 17 (Abolition of Untouchability).

The list containing the caste of SCs and STs is dynamic, and through a constitutional amendment, the President can add or remove castes or tribes from the list of SCs and STs. The suggestion of the relevant state or union territory administrations determines whether castes should be added to or removed from the list. During these revisions and amendments, the National Commission for Scheduled Castes is consulted. This commission provides expert opinions and ensures that the changes align with the broader objectives of social justice and equality.

Thus, these mechanisms ensure that Scheduled Castes are identified and protected in a way that keeps up with changing social and economic conditions. The method preserves social justice and equality, reaffirming the constitution's commitment to protecting the rights of marginalised populations by regularly updating the SC/ST list and involving professional bodies such as the National Commission for Scheduled Castes.

WHETHER ARTICLE 341 CREATES A DEEMING FICTION?

Article 341(1) consists of three parts. The first part describes the procedure for notifying a caste as a Scheduled Caste. In consultation with the Governor (if the notification concerns a State), the President is empowered to specify castes that shall be Scheduled Castes. In the second part, a provision similar to Article 366(26) clarifies who could be notified as a Scheduled Caste: a caste, race, or tribe or parts of or groups within the caste, race or tribe. The third part, using the words "for this Constitution, be **deemed** to be Scheduled Castes," includes a substantive provision.

Without the word “deemed”, the provision would have solely been a procedural clause, empowering the President to notify the Scheduled Castes. Using the word “deemed” ensures that the castes or groups of castes shall be regarded as Scheduled Castes by the very act of notifying them. Thus, including the word ‘deemed’ in Articles 341(2) and 342(2) does not create a legal fiction since it does not provide any artificial construction.

HARMONIZING ARTICLE 341 & 16(4)

Article 16(4) stipulates that “Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”. The debate around reservation in India is primarily centred on Article 16(4), which allows the State to reserve posts in appointments and promotions to public services “for the benefit of backward classes of citizens, who, in the State’s opinion, are inadequately represented in the services”. Article 16(4) is often deemed a proviso to Article 16(1). Article 16(1) entrenches the right to equality in matters of public appointment.¹ In *Bir Singh v. Delhi Jal Board*², one of the issues before this Court was whether the power of the State to make provisions for affirmative action for the Scheduled Castes and Scheduled Tribes under Article 16(4) is impacted by the power of the President under Articles 341(1) and 342(1) of the Constitution. The Constitution Bench held that a State, exercising its power under Article 16(4), cannot extend the benefits accorded to the Scheduled Castes to a caste not enumerated in the Presidential list notified under Article 341(1). The Court held that the enabling provision under Article 16(4) must be harmoniously read with Articles 341 and 342. Therefore, if a statute extends the policy of affirmative action to groups not explicitly enumerated concerning that State/Union Territory, it would circumvent the mandate of Article 341(2) and would be an impermissible expansion of the List, contrary to the mandate of Article 341(1). Thus, the Supreme Court in the *State of Punjab v. Davinder Singh*³ held that the benefit of reservation cannot be extended to a caste that is not enumerated as a Scheduled Caste in that State. However, it has found a place on the presidential list concerning other states.

GOVERNMENT POLICIES AND WELFARE PROGRAMS

¹ Anushka PS, Reservation under Article 16(4) of our Constitution: Placing a ‘Power plus Duty’ upon the State (2023) Law and other things < <https://lawandotherthings.com/reservation-under-article-164-of-our-constitution-placing-a-power-plus-duty-upon-the-state/> > 18 August 2024

² *Bir Singh v. Delhi Jal Board* [2018] 10 S.C.R. 513, [2018] INSC 766

³ *State of Punjab v. Davinder Singh* [2014] INSC 562

Now, we focus on various spheres and initiatives taken to uplift depressed classes. The Indian Constitution and government initiatives provide comprehensive protections and opportunities for Scheduled Castes, including legal safeguards, educational scholarships, and financial assistance to address historical injustices and promote their socio-economic development. The Ministry of Social Justice and Empowerment and state governments play a vital role in implementing these measures to ensure the upliftment and full inclusion of SCs in society. Following are the various initiatives:

Constitutional Provisions for the Protection of Scheduled Castes:

The Indian Constitution provides numerous tools to help Scheduled Castes and other Backward Classes. Untouchability is abolished under Article 17, and the State is required under Article 46 to promote their educational and economic interests while protecting them from social injustice. Article 335 addresses the rights of Scheduled Castes and Scheduled Tribes in appointments to services and offices. Article 338 established the National Commission for Scheduled Castes and Tribes, which evaluates protections, investigates complaints, and provides advice on socio-economic development. The Constitution also guarantees reserved seats in the House of People and legislative assemblies, and the Ministry of Social Justice & Empowerment looks after the interests of Scheduled Castes.

Educational Empowerment and Scholarships for Scheduled Castes:

The Indian government provides various scholarships to ensure that financial challenges do not hinder the education of Scheduled Castes (SCs). These include pre-matric and post-matric scholarships for studies in India and abroad and programs offering top-tier education, national fellowships, and international scholarships. Additionally, economically disadvantaged SC students receive free coaching for competitive exams, and initiatives like the Babu Jagjivan Ram Chhatrawas Yojana provide hostel facilities and financial support for professional education. Loans for higher education are also available through national SC finance corporations.

Ministry of Social Justice and Empowerment's Role in Scheduled Castes Welfare:

The Ministry of Social Justice and Empowerment oversees the Scheduled Castes' interests. Though all central ministries in their areas of operation and state governments bear primary responsibility for promoting the interests of Scheduled Castes, the ministry supplements its

efforts by intervening in critical sectors through specially designed schemes. The Ministry's Scheduled Castes Development (SCD) Bureau seeks to improve the lives of Scheduled Castes by providing them with educational, economic, and social opportunities. The efforts of state governments and central ministries to preserve and promote the interests of Scheduled Castes are also monitored.

Legislation for the Protection of Civil Rights and Prevention of Atrocities

The Protection of Civil Rights Act 1955 was enacted in 1955 and amended in 1976. It provides punishment for untouchability and is implemented by State Governments and Union Territory Administrations. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, provides financial assistance to states/UTs to implement these Acts. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, amended the PoA Rules, 1995, and the MS Act, 2013, to address the issue of manual scavengers and their rehabilitation. The Act aims to eliminate insanitary latrines, prohibit hazardous manual cleaning of sewer and septic tanks, and identify and rehabilitate manual scavengers. The amendments were notified in the Gazette of India Extraordinary on 14th April 2016.

Financial Assistance for Scheduled Castes:

The National Scheduled Castes Finance and Development Corporation (NSFDC) sponsors income-generating activities for Scheduled Caste beneficiaries with annual household income up to Rs. 3.00 lakh in rural and urban locations. The National Safai Karamchari Finance and Development Corporation (NSKFDC) offers loan facilities to beneficiaries for socio-economic development. The Scheme of Assistance to Scheduled Castes Development Corporations (SCDCs) is a centrally sponsored scheme that identifies eligible SC families, encourages them to participate in economic development schemes, sponsors schemes for financial institutions, provides financial assistance, and collaborates with other poverty alleviation programs the self-employment scheme for rehabilitating manual scavengers and their dependents.

CONCLUSION

Article 341 is a vital provision in India's Constitution, serving as a foundation for the upliftment and empowerment of Scheduled Castes. By legally recognising certain castes as Scheduled Castes, Article 341 ensures these communities can access crucial protections, benefits, and opportunities designed to redress historical injustices. This legal recognition is essential for

implementing affirmative action policies in education, employment, and political representation, thereby helping to dismantle the systemic barriers that have long impeded their progress.

However, the true impact of Article 341 depends on its effective implementation and the continuous efforts of both the government and civil society to ensure that these communities are aware of and can access the rights and benefits provided to them. While significant steps have been taken to promote social justice, much work remains to be done, mainly to ensure that the benefits of these provisions reach the most marginalised within the Scheduled Castes.

In conclusion, while Article 341 has laid the groundwork for social justice, its potential can only be fully realised through sustained efforts to implement it effectively, raise awareness, and address the specific needs of Scheduled Castes. By doing so, we can move closer to a society where equality and inclusivity are constitutional promises and lived realities for all.

