

# Practical Status of Human Rights of Weaker Sections

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**ABSTRACT:** In this paper author has tried to highlight what are the various legal steps that have been taken to meet the changing needs of the society to ensure the members of the general public to enjoy a dignified life in India. Man is a social animal who lives in society only exception on the earth. The term society is referred as a web of relations which is dynamic in nature. The great old civilization of man lived in the Indus valley. Before the advent of Britishers the religious texts were used as instruments with binding force to regulate society. It is pertinent to mention here that the conditions of women or untouchables were very miserable; there are evidences in the support of the assertion. The Hindu Varnasystem or social evil of untouchability, child marriage or sati Pratha etc. is the glaring examples of the human rights violations of the weaker sections. The regime of Britishers in India, which ruled for about 200 years tried to remove the social evils as mentioned above by introducing the modern concept like democracy or system of education in English medium etc. After Indian independence, 1947 the constitution became the supreme law of the land which came into force in 1950, eliminating all kinds of inequalities and discrimination based on caste, colour, gender or religion etc. Moreover the UDHR of 1948 proved an ideal document for the Indian constituent assembly. Accordingly the part third of the Indian Constitution incorporates various human rights as fundamental. But still the violations of human rights persists in the form of, untouchability, starvation, poor health condition, child rights abuse, women exploitation at work places, insanitary conditions and manual scavenging etc. Thanks to Indian parliament for enactment of the various legislations to deal with above referred few mentioned incidents of human rights violations especially of the weaker sections. The recent example is prohibition of manual scavenging. Various commissions like the NHRC, NSKC, NCSC, NCST, MCW and NCM etc at national to monitor the violations of human rights and other incidental matters connected thereto of this vulnerable sections.

**KEYWORDS:** practical, weaker, sections, human, rights, status

## I. INTRODUCTION

Weaker sections of society such as scheduled castes, scheduled tribes, women, disabled, children, elderly, etc. need special provisions and measures by the government to pull them out of their disadvantaged position. In general, members of such groups suffer many socio-economic difficulties such as inadequate access to healthcare, nutrition, educational facility, inaccessibility to government-sponsored schemes and measures. Therefore, the government of the day has to ensure that the fruits of development reach these people as well through special provisions and schemes tailored especially for their benefit. Vulnerable sections also include people suffering from certain diseases notably HIV/AIDS, cancer, and also sexual minorities.

Special provision for weaker sections of the society[1,2,3]

The government provides various schemes for the weaker or vulnerable sections of society to improve the condition of their lives by offering them educational facilities, employment opportunities, livelihoods, affordable healthcare access, and other necessary amenities. Some of them, focus on economic empowerment, which is described below.

Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS)

- SRMS was started in 2007 to rehabilitate the remaining manual scavengers and their dependents in alternate occupations.
- Features include one-time cash assistance, training with a stipend, and concessional loans with a subsidy for engaging in an alternate occupation.

National Scheduled Castes Finance & Development Corporation (NSFDC)

- This scheme has an objective to “fight poverty through entrepreneurship”.
- Incorporated in 1989, NSFDC operates under the Ministry of Social Justice and Empowerment to finance, facilitate and mobilize funds for the economic empowerment of people belonging to the SC category and living below double the poverty line.
- It finances income generation schemes for the target audience.
- Eligibility criteria for this scheme: SC community + family income below double the poverty line (DPL – less than Rs.98000 for rural and less than Rs.120000 for urban candidates).

#### National Safai Karamcharis Finance & Development Corporation (NSKFDC)

- Established in 1997 and operating under the Ministry of Social Justice and Empowerment, NSKFDC works as an apex organization for the all-around socio-economic upliftment of the Safai Karamcharis, Scavengers, and their dependents all over India, through various loan and non-loan based schemes.
- The scheme promotes economic development activities of the safai karamcharis.
- It also promotes self-employment ventures for them.
- The scheme also helps safai karamcharis in income-generating schemes by way of loans, subsidies, advances, or grants.
- The scheme extends loans to students from the community for pursuing professional or technical education.
- It also engages in promoting training, quality control, technology up-gradation, and common facility centers for carrying out sanitation works.
- It helps in the upskilling of personnel from the community in technical and entrepreneurial skills.
- The scheme also assists self-employed members of the community in procuring raw materials or other outputs or in marketing finished goods and services in units set up by them.

#### Assistance to Scheduled Castes Development Corporations (SCDCs)

The chief objectives of the SCDCs are the identification of eligible SC families and encouraging them to take up economic development schemes, sponsoring the schemes to financial institutions for credit support, offering financial assistance in the form of the margin money at a low rate of interest, providing subsidy out of the funds made available to the States under the Scheme of Special Central Assistance to Special Component Plan of the States to reduce the repayment liability and giving the necessary link-up with other poverty alleviation programmes.

#### Scheme of Development of Primitive Tribal Groups

- This scheme is for family-oriented income-generating schemes in the sectors of agriculture, minor irrigation, horticulture, animal husbandry, soil conservation, education, forests, fisheries, cooperatives, village, and small scale industries, and for minimum needs programme.[4,5,6]
- Primitive Tribal Groups (PTGs) were identified based on certain criteria like the pre-agricultural level of technology, literacy level, and declining or stagnant populations.
- The scheme includes infrastructure development, housing, land development, health, education, cattle and agriculture development, insurance, social security, etc.

#### Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG)

This offers assistance to adolescent girls in the following ways:

1. Nutrition provision
2. IFA (iron & folic acid) supplements
3. Health check-up and referral services
4. Nutrition and health education (NHE)
5. Life skill education
6. Accessing public services
7. Guidance on family welfare, ARSH (Adolescent Reproductive and Sexual Health Programme), home management, and child care practices
8. Vocational training for girls 16 and above under the National Skill Development Programme

#### STEP (Support to Training and Employment Programme for Women)

Launched in 1986-87 as a central scheme, STEP provides skills that give employability to women and to provide competencies and skills that enable women to become self-employed/entrepreneurs.

#### Stree Shakti Puraskaar Yojana

Instituted in 1991, this scheme awards women achievers on the occasion of the International Women's Day (8th March) every year.

Objectives of this scheme are as under:

1. To strengthen the economic development process of women in rural areas and create a conducive atmosphere for social change.
2. To form one lakh Self Help Women Groups based on thrift and credit principles which inculcates self-reliance and enables women to have greater access to control over resources.
3. Poverty alleviation by building confidence in rural women by involving them in income-generating activities.

Kishori Shakti Yojana (KSY)

Objectives of KSY (aimed at girl children):

1. Providing literacy and numeracy skills by non-formal means of education.
2. Stimulating desire for more social exposure and knowledge and thereby improving decision-making capabilities.
3. Improving the nutritional, health, and development status of adolescent girls.
4. Promoting awareness of health, hygiene, family care, and nutrition.
5. Making available more opportunities for life-learning skills, training, and equipping adolescent girls to improve home-based and vocational skills.
6. Improve understanding of the social environment and help become productive members of society.

National Family Benefit Scheme (NFBS)

This is a 100% centrally-sponsored scheme and is a part of the National Social Assistance Programme (NSAP). Under this scheme, a lump sum of Rs.10000 is given to households under the poverty line upon the death of the primary breadwinner due to natural or accidental causes.

National Old Age Pension Scheme

Under this scheme, a person 65 years or older, will be eligible to receive Rs.75 per month if he/she is found destitute with little or no means of subsistence by himself/herself or through family members.[7,8,9]

## II. DISCUSSION

Recently, the Attorney-General of India articulated that the 10% quota for Economically Weaker Sections (EWS) of society does not erode the rights of the Scheduled Castes, the Scheduled Tribes or the Other Backward Classes.

What are the Government's Views?

- Doesn't Harm Quota of Other Classes: The EWS quota was given independently of the already existing 50% reservation granted for the backward classes, that is, the scheduled communities and the OBCs.
  - The Attorney general rejected arguments by petitioners that the exclusion of backward classes from the EWS quota amounted to discrimination, as they have been loaded with benefits by way of affirmative actions.
    - For example, the members of the Scheduled Caste and Scheduled Tribe communities have been given several benefits under the Constitution, including Article 16(4)(a) (special provision for promotion), Article 243D (reservation in panchayat and municipality seats), Article 330 (reservation in the Lok Sabha) and Article 332 (reservation in state legislative assemblies).
- Necessary to Uplift the Weaker Section: The reservation for the backward classes, and now the EWS quota, should be considered by the court as "one single approach of the state intended for the upliftment of the weaker sections of the society".
  - Altogether 18.2% of the total population in the general category belonged to EWS and referred to the Multi-dimensional Poverty Index used by the Niti Ayog, which would be about 350 million (3.5 crores) of the population.
- Confer the Constitution: The reservation for OBCs, SCs and STs fall under different silos other than the EWS quota and it does not violate the basic structure of the Constitution.
- Examples: As per the written submissions submitted by government referred to how the top court had stood by the validity of the Right of Children to Free and Compulsory Education Act, 2009.
  - The court had held that the 2009 Act seeks to remove all barriers, including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission and therefore upheld it under Article 21 of the Constitution.
- What are the Opponent's views?
- The amendments run contrary to the constitutional scheme, where no segment of available seats/posts can be reserved, only on the basis of economic criteria.
- The amendments also run contrary to the judgment pronounced in the Indra Sawhney V. Union of India 1992 case, that a backward class cannot be determined only and exclusively with reference to economic criteria.
- The amendments alter the 50% quota limit set up in Indra Sawhney V. Union of India 1992 case, which according to the petitioner is a part Basic Structure of the Constitution.
- What is Economically Weaker Section (EWS) Quota?
- About:
  - The 10% EWS quota was introduced under the 103<sup>rd</sup> Constitution (Amendment) Act, 2016 by amending Articles 15 and 16.

- It inserted Article 15 (6) and Article 16 (6).
- It is for economic reservation in jobs and admissions in educational institutes for Economically Weaker Sections (EWS).
- It was enacted to promote the welfare of the poor not covered by the 50% reservation policy for Scheduled Castes (SCs), Scheduled Tribes (STs) and Socially and Educationally Backward Classes (SEBC).
- It enables both the Centre and the States to provide reservations to the EWS of society.
- Significance:
  - Addresses Inequality:[10,11,12]
    - The 10% quota is progressive and could address the issues of educational and income inequality in India since the economically weaker sections of citizens have remained excluded from attending higher educational institutions and public employment due to their financial incapacity.
  - Recognition of the Economic Backwards:
    - There are many people or classes other than backward classes who are living under hunger and poverty-stricken conditions.
    - The proposed reservation through a constitutional amendment would give constitutional recognition to the poor from the upper castes.
  - Reduction of Caste-Based Discrimination:
    - Moreover, it will gradually remove the stigma associated with reservation because reservation has historically been related to caste and most often the upper caste looks down upon those who come through the reservation.
- Concerns:
  - Unavailability of Data:
    - The Union or state governments have no such data to prove that ‘upper’ caste individuals, who have less than Rs 8 lakh annual income, are not adequately represented in government jobs and higher educational institutions. There is a strong possibility that they are actually over-represented in these places.
  - Arbitrary Criteria:
    - The criteria used by the government to decide the eligibility for this reservation is vague and is not based on any data or study.
    - Even the SC questioned the government whether they have checked the GDP per capita for every State while deciding the monetary limit for giving the EWS reservation.
      - Statistics show that the per capita income in states differs widely - Goa is the state having the highest per capita income of almost Rs. 4 lakhs whereas Bihar is at the bottom with Rs.40,000.

### III. RESULTS

“Weaker section” is a term which is usually used to refer to that portion of the population which is economically, socially and politically lags behind the population as a whole and have endured with a range of infirmities due to the fact of their being backward.

Due to the ill practices such as untouchability, tribal backwardness etc, the Government of India Act, 1935 describes “weaker sections” as individual, or groups of individuals or a particular class of individuals those who have struggled with socio-cultural, educational and economic backwardness, as well as others aspects of life.

Various resolutions that have been passed by the Indian government has divided the weaker sections of the society in three chief categorization –

- Scheduled Castes
- Schedules Tribes
- Other Backward classes

But this list does not include all the categories of people who should be considered under the weaker sections. Class of people such as senior citizens, sexual minorities, women, poverty ridden migrants, disabled, people suffering from sexually transmitted diseases have also suffered historical injustice and inequality. These have also been victimised from antiquity.

What is legal exploitation?

Legal exploitation refers to the use of laws and legal mechanisms to exploit weaker sections of society. This could take various forms, from the exploitation of vulnerable workers to the systematic disenfranchisement of certain groups. In many cases, legal exploitation is enabled by the very laws and regulations that are meant to protect vulnerable populations.

One of the most obvious examples of legal exploitation is the exploitation of workers. This can take many forms, including unpaid wages, unsafe working conditions, and excessive working hours. In many cases, workers are forced to work in these conditions due to their vulnerable status, such as being undocumented or lacking access to legal resources. Employers may use legal mechanisms to exploit these workers, such as by classifying them as independent contractors rather than employees or denying them the benefits they are entitled to under the law.

Another example of legal exploitation is the disenfranchisement of certain groups, such as racial minorities and low-income individuals. This can take many forms, from gerrymandering to voter ID laws that disproportionately impact these groups. These laws are often justified on the grounds of preventing voter fraud or maintaining election integrity, but in reality, they serve to limit the political power of these groups and perpetuate their disenfranchisement.[13,14,15] One of the most insidious forms of legal exploitation of weaker sections is debt bondage. This occurs when individuals are forced to work off a debt that they can never repay, often in harsh or dangerous conditions. Debt bondage is common in many parts of the world, particularly in developing countries where poverty and lack of opportunity can leave people vulnerable to exploitation. In some cases, debt bondage is even used as a means of trafficking individuals into forced labour or sexual exploitation.

Legal exploitation can also take the form of predatory lending practices. Banks and other financial institutions may target vulnerable individuals with high-interest loans or predatory lending practices, which can trap them in cycles of debt and financial insecurity. These practices are often enabled by legal mechanisms that allow lenders to charge high interest rates or engage in other exploitative practices.

Why does legal exploitation occur?

There are various reasons why legal exploitation occurs, but one of the most significant is the power imbalance between different groups in society. Those who hold power, whether through wealth, political influence, or social status, are often able to use the law to their advantage and exploit those who lack these resources. This is particularly true in societies where there is a significant income or power gap between different groups.

Another factor that contributes to legal exploitation is the failure of legal systems to adequately protect vulnerable populations. Laws and regulations are meant to provide a level playing field for all individuals, but in reality, they often fail to do so. This may be due to loopholes in the law or insufficient enforcement mechanisms that allow exploitative practices to continue unchecked.

Finally, legal exploitation may occur due to cultural or social norms that perpetuate the marginalization of certain groups. For example, racial or gender biases may be reflected in the law, making it easier for those in power to exploit vulnerable populations. Similarly, social norms that stigmatize certain groups may make it more difficult for them to access legal resources and assert their rights.

Some of the prevalent forms of legal exploitation

1. **Labour laws:** One of the most common forms of legal exploitation is the violation of labour laws. Workers in industries such as textiles, construction, and agriculture are often paid below the minimum wage, work long hours, and are not provided with basic amenities such as healthcare and safety equipment. Employers also frequently deny workers their right to form unions, which is a violation of their fundamental right to association.
2. **Land laws:** Another form of legal exploitation is through land laws. Weaker sections such as Dalits, Adivasis, and other marginalized communities are often denied access to land, which is their primary source of livelihood. In many cases, land is illegally acquired from these communities, either by the government or by private individuals, without proper compensation or consent.
3. **Caste-based discrimination:** The Indian caste system is one of the oldest and most entrenched forms of social stratification in the world. Despite being outlawed by the Constitution, caste-based discrimination continues to be a pervasive problem in India. Weaker sections such as Dalits and Adivasis are often subjected to caste-based discrimination in various forms, including denial of basic services such as education and healthcare, and exclusion from economic and political opportunities.

4. Gender-based discrimination: Gender-based discrimination is another form of legal exploitation that affects women and girls disproportionately. Despite several laws and regulations aimed at protecting women's rights, gender-based discrimination persists in various forms, including violence, harassment, and unequal pay.
5. Criminal justice system: The criminal justice system is meant to protect the rights of citizens and punish offenders. However, weaker sections of society are often victimized by the system itself. Police brutality, custodial deaths, and wrongful arrests are just some of the ways in which the criminal justice system has failed weaker sections of society.

#### Impact of Legal Exploitation

The impact of legal exploitation on weaker sections of society is devastating. It perpetuates poverty and inequality and denies them the basic rights and opportunities that are essential for a dignified life. The denial of land and livelihoods, the violation of labour laws, and caste-based and gender-based discrimination are just some of the ways in which weaker sections are systematically excluded from mainstream society. It can also have economic consequences, as those who are exploited are often unable to participate fully in the economy or to access the resources they need to thrive. This can lead to a vicious cycle of poverty and exclusion, as the exploited are unable to escape their circumstances and are denied the opportunity to improve their lives. The impact of legal exploitation is not just economic but also psychological, as it perpetuates feelings of helplessness and hopelessness among those who are subjected to it.

Moreover, legal exploitation also undermines the rule of law and erodes public trust in institutions. When laws and regulations are used to oppress weaker sections, it sends a message that the law is not meant to protect everyone equally. This erodes public trust in institutions and undermines the legitimacy of the state.

#### Provisions in the Constitution for weaker sections

The makers of the Constitution envisaged various provisions within the Constitution to safeguard and uplift the weaker sections of the society. These can be listed as follows –

Article 14 – It states that “The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India”.

Article 15 – It states that “The State shall not discriminate any citizens on grounds only of religion, race, caste, sex, place of birth or any of them”.

Article 15(3) – It states that “Nothing in this article shall prevent the State from making any special provision for women and children”[16,17,18].

Article 15(4) – It states that “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 the Scheduled Tribes”.

Article 16 – It provides for equality of opportunity in the matters of public employment.

Article 17 – It states that “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with the law”.

Article 21 – It states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

Article 21A – “provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine”.

Article 24 – It states that “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”.

Article 25 – It provides for “freedom of conscience and free profession, practice and propagation of religion”.

Article 29 – It provides for the “protection of interest of minorities”.

Article 30 – It provides for the “right of minorities to establish and administer educational institutions”.

Article 38 – It states that “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life”.

Article 41 – It states that “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.

Article 42 – It provides for “Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief”.

Article 340 – It “provides that the president has the authority to investigate the condition of socially and economically backward classes through appointing a commission to investigate”.

Part XVI – provides for political empowerment to the scheduled castes, scheduled tribes and other classes. Article 330 and Article 332 reserve seats for scheduled castes and scheduled tribes in the house of people and legislative assemblies of the state respectively.

Constitutional provisions for women

Article 15(3) – It states that “Nothing in this article shall prevent the State from making any special provision for women and children”.

Article 39(a) – The State shall direct its policy towards securing all citizens men and women, equally, the right to means of livelihood.

Article 39(d) – It guarantees Equal pay for equal work for both men and women.

Article 42 – It asks the state to ensure just and humane conditions of work and maternity relief.

Article 51 (A)(e) – To renounce the practices derogatory to the dignity of women

Article 300 (A) – Right of property to women

73rd and 74th Amendment Act 1992 – Reservation 1/3rd of seats in local bodies of panchayats and municipalities for women.

Article 243(D) – Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

Article 243(T) – Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.[19,20]

Provisions for reservation for the weaker sections

Article 332 – Provides for reservation of SC’s and ST’s in the Legislative Assemblies of the State.

Article 334 – Provides for reservation of seats and special representation which was to cease after forty years, to SC and ST and the Anglo-Indian communities to the House of People and Legislative assemblies.

Article 335 – provides for claims of SC and ST to the services and posts.

Article 243(D) – Provides for reservation to SC and ST in Panchayats

Article 243(T) – Provides for reservation to SC and ST in Municipalities.

Statutory Provisions

Protection of Civil Rights Act, 1955 – this act was passed to curb untouchability and bridge the gap between the upper and lower castes.

Scheduled Castes and Schedules Tribes (Prevention of Atrocities act), 1989 – this act was passed to safeguard the marginalised sections and give them their rights.

The National Commission for Backward Class Act,1993 – It was passed after the Indra Swahney judgement. This act aims to protect and uplift the socially and economically backward classes.

Case Laws

Indra Swahney vs Union of India, 1992

This was the landmark judgment where the Supreme Court upheld the OBC reservation under some conditions as was suggested by BP Mandal commission. The concept of “creamy layer” emerged from this judgement. Also, the 50% ceiling on reservation was mandated in this case.

EWS judgement, 2016

The Supreme Court held that 50% cap on the reservation is not flexible and applies on only socially and economically backward classes, though economical weaker section are not included under the category, so they can have reservation outside this 50% ceiling.

The above judgements show that the Judiciary has tried to bridge the gap which is prevalent. There are many more such judgements in the favour of the weaker sections.

#### IV. CONCLUSION

The framers and the founding fathers of the Indian Constitution envisioned the possibility that weaker section of the society which has been historically disadvantaged, requires provisions which would protect them and provide for their upliftment. Hence, the Constitution was framed keeping in mind the need of the section. The weaker sections have been provided enough constitutional and statutory provisions under the Constitution, reservation in educational institution and jobs being one of them. From time to time central government and various state government catapult various schemes in their favour. Various commissions have been established to ensure that they are being given their rights. Over the past few years the government has been trying to promote and uplift them and also bridge the gap between them and the remaining population. India’s progress is possible if and only if, every citizen has all rights and proper access to justice. To make weaker section progress should not only be the duty of government but also of every individual so that they can be merged with the mainstream population. There is also a requirement to properly execute all of the provisions that exist on paper but are not applied. India’s aim of becoming a developed nation may be realised if all of its stakeholders advance and are not exploited.[20]

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