

National Commission for Scheduled Tribes Agenda Note

Agenda Item III Proposal to amend Article 341 of the Constitution of India to confer enabling powers for categorization of Scheduled Castes (SCs), specified in respect of a State or a Union Territory-issue of Sub-Categorization of Scheduled Castes in Andhra Pradesh.

A Proposal

Ministry of Tribal Affairs have sought comments on the proposal received from the Ministry of Social Justice & Empowerment to amend Article 341 of the Constitution of India to confer enabling powers for categorization of Scheduled Castes (SCs), specified in respect of a State or a Union Territory-issue of Sub-Categorization of Scheduled Castes in Andhra Pradesh. Ministry of Social Justice & Empowerment has prepared a **Note for the Cabinet** for the proposed amendment. The background of the proposal is given below:

341 Scheduled Castes – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe but save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.

2 The Government of Andhra Pradesh had in September, 1996, constituted a one man Commission of Enquiry, headed by Justice P. Ramachandra Raju (Retd.), to ascertain whether a disproportionately large number of benefits had gone to any group among Scheduled Castes of the State, and if so, to recommend the steps required for equitable distribution of benefits. The Commission, in its report of May, 1997, inter-alia, gave the finding that there was disproportionate distribution of reservation benefits inasmuch as the "Mala" and "Adi-Andhra" among SC communities were over-represented both in public employment and in educational institutions. The Commission also recommended that SC communities of the State should be categorized into four groups 'A', 'B', 'C' and 'D' on a rational basis and that there is no Constitutional bar in doing so. The percentage of reservation recommended for these 4 categories is as given below:

Group category	Name of group and No. of SC Communities in the group	Recommended %age of reservation for the group
'A'	Relli- 12 Castes	1%
'B'	Madiga- 18 Castes	7%
'C'	Mala- 25 Castes	6%
'D'	Adi-Andhra- 04 Castes	1%

3. The then National Commission for Scheduled Castes and Scheduled Tribes, on a reference received in the year 1998 from the Government of Andhra Pradesh, regarding sub-categorization of Scheduled Castes, observed that the findings of the Raju Commission were based on limited and inadequate data and so scientific method had been adopted to

obtain holistic picture of the varying levels of development of different SC communities and that any orders based on such findings and recommendations could not be treated as rational.

4. The Government of Andhra Pradesh, however, accepted the Report mentioned in para 2 and promulgated an Ordinance in June, 1997, sub-categorizing 59 Scheduled Castes of the State into four groups (A, B, C, & D) based on relative backwardness, and fixing separate quota in reservation in services of the State and seats in their educational institutions, for each of the four groups as mentioned in para 2 above, The Ordinance was challenged in the Andhra Pradesh High Court. During its pendency, the State Govt. replaced the Ordinance with the Andhra Pradesh Scheduled Castes (Rationalization of Reservation) Act, 2000 (AP Act of 2000) in May, 2000. The validity of the said Act was upheld by the High Court in its judgment during November, 2000.

5. Appeal against the above order of the Andhra Pradesh High Court was filed in the Supreme Court (E.V. Chinnaiah Vs. State of Andhra Pradesh and Others) challenging the validity of the aforesaid Act. A five judge bench of the Supreme Court struck down the Act by a unanimous judgment on 05.11.2004, mainly on the ground that the State Act was beyond the legislative competence of the State and also violation of Article 14 of the Constitution.

6. After the above judgment of the Supreme Court, the Andhra Pradesh Legislative Assembly unanimously adopted the Resolution to recommend to the Government of India to take up the matter in Parliament.

7. The Ministry of Social Justice & Empowerment examined the matter and sought the views of the Ministry of Law & Justice on 28.03.2005. The Law Ministry obtained the opinion of the Attorney General for India (AGI) in the light of the Supreme Court's judgment. The AGI opined that any such classification must be based on unimpeachable evidence to indicate a necessity for such a classification and that the classification of Scheduled Castes is not fraught with dangers. AGI also opined that suitable constitutional amendments can be brought in to effectuate the guarantee of equality.

8. In the light of AGI's opinion, and with the approval of the Cabinet Committee on Political on Political Affairs (CCPA), set up a National Commission for Sub-Categorization of Scheduled Castes of Andhra Pradesh headed by Justice Usha Mehra, a retired Judge of Delhi High Court. The NCSCSC submitted its report in May, 2008. The NCSCSC recommended for insertion of a new Clause (3) in Article 341 of the Constitution as under:

"341(3) Parliament may by law provide for sub-categorization or de sub-categorization of caste, race or tribe or part of or group within any caste, race or tribe specified in a notification issued under clause (1) or by law made by parliament under clause (2), upon receiving a resolution from legislature of a State/ U.T passed unanimously."

9. The above recommendation was sent to National Commission for Scheduled Castes for advice under Article 338 (9) of the Constitution. The NCSC has not supported the recommendations of the NCSCSC to amend the Article 341 of the Constitution, suggesting that Article 16(4) of the Constitution of India is an enabling provision which enables the State to provide for making of the reservation in appointments and if the State does so, it decides its promotion and that the State Government of Andhra Pradesh may adopt provisions of aforesaid Article of the Constitution.

10. The Ministry of Social Justice & Empowerment has now prepared a Note for the Cabinet seeking approval for introducing a Constitution Amendment Bill in Parliament for insertion of following two new clauses, (3) (4) to Article 341 of the Constitution.

341. Scheduled Castes –

"(3) Parliament may, by law provide for sub-categorization or de-sub-categorization of the castes, races or tribes, or part of or group within any castes, races or tribes specified in a notification issued under clause (1), or by law made by Parliament under clause (2), in respect of a State or Union Territory, upon receiving a resolution from the legislature or that State or, as the case may be, Union Territory passed unanimously, recommending such sub-categorization or, as the case may be, de-sub-categorization.

(4) Upon the Scheduled Castes of a State/ Union Territory being sub-categorized as per clause (3) above, it shall, notwithstanding anything contained in clauses (1) and (2) above, be lawful for such sub-categories to be treated as a distinct entity for the purpose of reservation in the services in connection with the affairs of that State or, as the case may be, Union Territory, in pursuance of clause (4) of Article 16, and in admission to educational institutions run or substantially aided by the Government of that State or, as the case may be, Union Territory, in pursuance of clause (5) of Article 15".

B Position

11. It is a fact that certain communities, for various factors, were already empowered enough and have been able to avail the facilities available for the development of Scheduled Castes and were enjoying a very large share in the matter of educational and economic development and reservation in services and posts reserved for Scheduled Castes. On the other hand certain other communities were still on the thresh hold and such communities may not be able to enjoy the fruits of reservation in the next several years as the facilities that may empower them to enjoy the fruits were not available or accessible to them. The population of such communities may not be substantial or only a fraction and therefore, a very small percentage reserved for them, in proportion to their population percentage may simply guarantee a seat/ post after decades or even a century. For instance the reservation suggested by the Raju Commission for SC communities included in category 'A' and category 'D' is 1% only. Most of the service cadres have a very small cadre strengths and therefore, it cannot be assured as to when the share of 1% reservation will be available to the Scheduled Castes in categories 'A' and 'D' respectively. Even availing of this reservation will be possible only if fully empowered candidates are available at the time when the point reserved for them occurs, otherwise such a reserved point, that would occur remotely would also be utilized by the advanced communities which are already empowered and are proposed to be given fixed percentage of reservation. Some what similar situation will arise in the case of those communities which are in the process of getting empowered. Therefore, Sub-Categorisation of marginalized or semi-marginalized communities will never help them in availing reservation unless all out efforts are made to empower them by extending educational and health care facilities at their door step and preparing them to enjoy the fruits of development.

12. There are also certain communities which were originally tribals but in the process have been excluded from the tribal category i.e. De-notified Tribes, Nomadic and Semi-Nomadic Tribes and ex-Criminal Tribes. Some of them were now categorized as Scheduled Castes, Scheduled Tribes or OBCs in different States. It is difficult to group them with any other community, for the purpose of sub-categorisation. Due to their occupational and

traditional activities it is not possible to assess the exact population percentage of these communities in each State. The state of their development is not yet visible as, neither Governments have been able to ensure that adequate schemes for their development were available near them nor they have been able to have access to such schemes due to their way of life.

13. The categories of communities which are either undeveloped, under-developed or, are in the process of development cannot avail the benefits of reservation unless they are empowered. Some of the under-developed or developing communities may be able to avail reservation in posts and academic field which were normally in the lowest strata of the service. The reservation in the higher classification will remain unfilled for decades unless the educational and other related facilities are made available to them on priority and in a very short span of time.

14. Ultimately, it is the process of empowerment through extending educational, housing, health care, and economic activities at the door step of the large number of undeveloped, under-developed or developing SC communities that only will help them in availing the reservation. Therefore, the SC communities in each State may be categorized into broadly 3 categories viz; developed, under-developed and undeveloped including those in the totally marginalized way of living. Various schemes may be launched separately for each category of communities, keeping in view the level of development of the communities in each category. If it is felt that certain communities have reaped the major share of educational and economic development, it may better be considered to exclude them from the list of Scheduled Castes.

C Draft Recommendation of NCST

15. No purpose will be served by Sub-Categorization of SC communities only for the purpose of reservation in posts and in seats in academic institutions, as such Sub-Categorisation will not automatically ensure availing of reservation and accrual of benefits to those communities which do not fall in the developed category. Even if separate reservation is earmarked for communities falling in undeveloped or under-developed categories, they will not be able to avail the benefits of reservation.

16. Therefore, on the one hand, the names of such SC communities which, in the opinion of the Government, have so far enjoyed the fruits of reservation (in services and academics) in proportion larger than their population percentage may be considered for either exclusion from the list of Scheduled Castes or giving restricted benefits, while special schemes may be launched for development of other communities keeping in view the level of their development. Already there are various schemes like Post-Matric Scholarships (with income limits), Pre-Matric Scholarships to children of those engaged in unclean occupations, Hostels, Uniform, Books, Mid-Day-Meals, the benefits of which can be availed by people who rank below certain level of development or income level, such as BPL category, or below Creamy layer category or low literacy category or those engaged in unclean occupations etc. among Scheduled Castes, Scheduled Tribes, as well as OBCs. Therefore, launching of new schemes and boosting/ revising of the existing schemes, keeping in view the needs of each sub-category of communities may be taken up for which amendment of the Constitution in any manner may not be needed.