

SUMMARY SHEET



*Social Justice: Positive
Discrimination in
Favour of the Under
Privileged*





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1 Part I: Understanding Social Inequality

What is the basis of social inequality? What is social stratification? What is the key distinction between prejudice, stereotype, and discrimination? Why is social justice important? These are some of the important questions that we will try to answer in this part.

1.1 Social Inequality

In every society, **some people** have a **greater share of valued resources** – money, property, education, health, and power – than others. These **social resources** can be divided into **three forms of capital**

Economic capital	In the form of material assets and income
Cultural capital	Such as educational qualifications and status
Social capital	In the form of networks of contacts and social associations

- Often, **these three forms of capital overlap and one can be converted into the other**. For example, a person from a well-off family (economic capital) can afford expensive higher education, and so can acquire cultural or educational capital. Someone with influential relatives and friends (social capital) may – through access to good advice, recommendations, or information – manage to get a well-paid job.
- **Patterns of unequal access to social resources** are commonly called **social inequality**. Some social inequality reflects **innate differences between individuals** for example, their varying abilities and efforts. Someone may be endowed with exceptional intelligence or talent or may have worked very hard to achieve their wealth and status. However, **by and large, social inequality is not the outcome of innate or ‘natural’ differences** between people but is **produced by the society in which they live**.

Term **social stratification** refers to a system by which **categories of people in a society are ranked in a hierarchy**. This **hierarchy** then **shapes** people’s **identity** and **experiences**, their **relations** with others, as well as their **access to resources** and **opportunities**.

1.2 Prejudice, Stereotype & Discrimination

1. **Prejudices** refer to **pre-conceived opinions or attitudes** held by members of one group towards another.
 - The word literally means ‘**pre-judgement**’, that is, an **opinion formed in advance of any familiarity** with the subject, before considering any available evidence.
 - A prejudiced person’s **preconceived views** are often **based on hearsay** rather than on direct evidence and are **resistant to change even in the face of new information**.
 - **Prejudice** may be either **positive or negative**. Although the word is generally used for **negative pre-judgements**, it can also apply to **favourable pre-judgement**. For example, a person may be prejudiced in favour of members of his/her own caste or group and – without any evidence – believe them to be superior to members of other castes or groups.
 - **Prejudices** are often **grounded in stereotypes, fixed and inflexible characterisations of a group of people**. Stereotypes are often **applied to ethnic and racial groups and to women**.
2. **Stereotypes** fix **whole groups** into **single, homogenous categories**; they refuse to recognise the variation across individuals and across contexts or across time. They treat an entire community as though it were a single person with a single all-encompassing trait or characteristic.
3. **Discrimination**: If **prejudice** describes **attitudes** and **opinions**, **discrimination** refers to **actual behaviour towards another group or individual**.

- Discrimination can be seen in practices that disqualify members of one group from opportunities open to others, as when a person is refused a job because of their gender or religion.
- Discrimination can be very hard to prove because it may not be open or explicitly stated. Discriminatory behaviour or practices may be presented as motivated by other, more justifiable, reasons rather than prejudice.
- **For example**, the person who is refused a job because of their caste may be told that they were less qualified than others, and that the selection was done purely on merit.

To correct such discrimination which have been sanctified through religion, the concept of social justice was introduced. Let's understand its Importance.

1.3 Importance of Social Justice

- Social justice is based on the **values of fairness, equality, respect for diversity, access to social protection, and the application of human rights** in all spheres of life, including in the workplace.
- It is an **underlying principle for peaceful and prosperous coexistence** within and among nations.
- The principles of social justice are upheld when we promote gender equality or the rights of indigenous peoples and migrants.
- Social Justice is advanced when we remove barriers that people face because of gender, age, race, ethnicity, religion, culture, or disability.
- **20th February is proclaimed as the World Day of Social Justice** by the United Nations General Assembly.

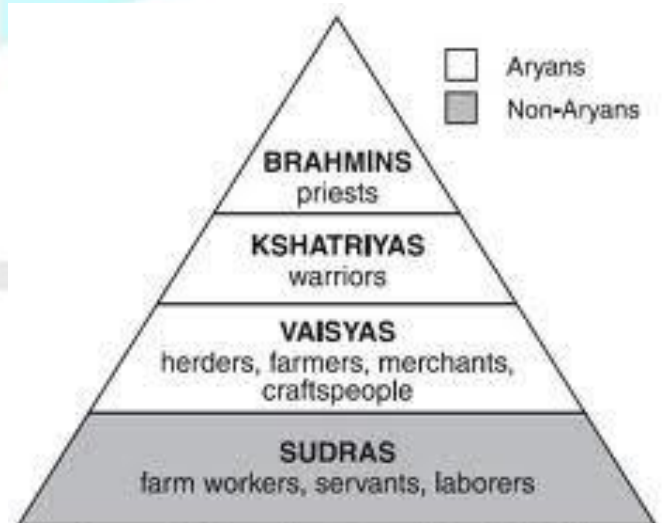
Having understood the Social Inequality and its importance, it is essential to understand the need for Social Justice by understanding nature of India's society since ages. Let's now understand the marginalized sections of Indian Society.

2 Part II: Historically Marginalised Sections of Indian Society

What are the essential features of caste system and how did it become the basis for systematized discrimination of a large section of the Indian society? Who were the untouchables and how difficult their lives were? What kind of challenges have forest dwellers faced in India? Who comprise 'other backward classes' and what challenges did they face? These are some of the questions that we will try to answer in this part.

2.1 Caste System in India

1. **The Caste System - Distinct Indian social institution:** It legitimises and enforces practices of **discrimination** against people born into particular castes. These practices of discrimination are **humiliating, exclusionary and exploitative**.
2. **Classification of Caste system:** Historically, the **caste system classified people by their occupation and status**. Every caste was associated with an occupation, which meant that **persons born into a particular caste** were also **'born into' the occupation** associated with their caste – they had no choice.
3. **Hierarchy of Caste:** Moreover, and perhaps more importantly, **each caste** also had a **specific place in the hierarchy of social status**, so that,



Source: Guide to the Essentials of World History, Prentice Hall, 1999 (adapted)

roughly speaking, not only were occupational categories ranked by social status, but there could be a further ranking within each broad occupational category.

4. In strict scriptural terms: Social and Economic status were supposed to be sharply separated.

-For example, the ritually highest caste – the Brahmins – were not supposed to amass wealth and were subordinated to the secular power of kings and rulers belonging to the Kshatriya castes. On the other hand, despite having the highest secular status and power, the king was subordinated to the Brahmin in the ritual-religious sphere.

- However, in **actual historical practice economic and social status tended to coincide**. There was thus a fairly **close correlation** between **social** (i.e., caste) status and **economic status** – the ‘high’ castes were almost invariably of high economic status, while the ‘low’ castes were almost always of low economic status.

5. Link between Caste and Occupation: In **modern times**, and particularly since the nineteenth century, the **link between caste and occupation** has become much **less rigid**.

- **Ritual-religious prohibitions on occupational change are not easily imposed** today, and it is **easier** than before to **change one’s occupation**. Moreover, compared to a hundred or fifty years ago, the correlation between caste and economic status is also weaker – **rich and poor people** are to be found in **every caste**.
- But this is the key point – the **caste-class correlation is still remarkably stable at the macro level**. As the system has become less rigid, the distinctions between castes of broadly similar social and economic status have weakened. Yet, between different socio-economic groupings, the distinctions continue to be maintained.

6. Inequalities Persist: Although **things have certainly changed, they have not changed much at the macro level** – it is still true that the **privileged** (and high economic status) sections of society tend to be **overwhelmingly ‘upper’ caste** while the **disadvantaged** (and low economic status) sections are dominated by the **so called ‘lower’ castes**.

2.2 Untouchability

1. Phenomenon of ‘Untouchability’: It is an **extreme and particularly vicious aspect** of the **caste system** that prescribes **stringent social sanctions** against **members of castes** located at the **bottom of the purity-pollution scale**.

- Strictly speaking, the **‘untouchable’ castes are outside the caste hierarchy** – they are considered to be **so ‘impure’** that their **mere touch severely pollutes** members of all other castes, bringing terrible punishment for the former and forcing the latter to perform elaborate purification rituals.
- In fact, notions of **‘distance pollution’** existed in many regions of India (particularly in the south) such that even the mere presence or the shadow of an ‘untouchable’ person is considered polluting.
- Despite the limited literal meaning of the word, the **institution of ‘untouchability’** refers not just to the **avoidance or prohibition of physical contact** but to a **much broader set of social sanctions**.

2. Dimensions of Untouchability: It is important to emphasise that the **three main dimensions of untouchability** – namely, **exclusion, humiliation-subordination, and exploitation** – are all equally important in defining the phenomenon.

3. Experience of Dalits: Although other (i.e., ‘touchable’) low castes are also subjected to subordination and exploitation to some degree, they do not suffer the extreme forms of exclusion reserved for ‘untouchables.’

- Dalits experience forms of exclusion that are unique and not practiced against other groups – for instance, being prohibited from sharing drinking water sources or participating in collective religious worship, social ceremonies, and festivals.
- At the same time, untouchability may also involve **forced inclusion in a subordinated role**, such as being **compelled to play the drums at a religious event**.

4. Manifestation of Untouchability: The performance of publicly visible acts of (self-)humiliation and subordination is an important part of the practice of untouchability.

- Common instances include the imposition of gestures of deference (such as taking off headgear, carrying footwear in the hand, standing with bowed head, not wearing clean or 'bright' clothes, and so on) as well as routinised abuse and humiliation.
 - Moreover, **untouchability** is almost always associated with **economic exploitation** of various kinds, most commonly through the imposition of **forced, unpaid (or under-paid) labour**, or the **confiscation of property**.
 - Finally, untouchability is a **pan-Indian phenomenon**, although its specific **forms and intensity vary** considerably across regions and socio-historical contexts.
5. **Addressing the Injustice:** The so-called '**untouchables**' have been **referred to collectively by many names** over the centuries. Whatever the specific etymology of these names, they are all **derogatory** and carry a strongly **pejorative** charge. In fact, many of them continue to be used as forms of abuse even today, although their use is now a criminal offence.
- **Mahatma Gandhi** had popularised the term '**Harijan**' (literally, children of God) in the 1930s to **counter the pejorative charge** carried by caste names.
 - However, the **ex-untouchable communities and their leaders** have coined another term, '**Dalit**', which is now the generally accepted term for referring to these groups. In Indian languages, the term Dalit literally **means 'downtrodden'** and conveys the **sense of an oppressed people**.
 - Though it was **neither coined by Dr. Ambedkar nor frequently used by him**, the term certainly resonates with his philosophy and the movement for empowerment that he led. It **received wide currency during the caste riots in Mumbai in the early 1970s**.
 - The **Dalit Panthers**, a radical group that emerged in western India during that time, used the term to assert their identity as part of their struggle for rights and dignity.

Concept Check

Q. Which of the following is/are the principal characteristics of caste system in India?

- (a) Hierarchy
- (b) Endogamy
- (c) Hereditary status and occupation
- (d) Concept of pollution
- (e) All of the above

Answer: E

Having understood the brutal form of social practices against the Dalits, let's now understand the injustice meted out to Adivasis.

2.3 Adivasi Struggle

1. **Introduction:** Like the Scheduled Castes, the **Scheduled Tribes are social groups** recognised by the Indian Constitution as specially marked by **poverty, powerlessness, and social stigma**. The jana or tribes were believed to be '**people of the forest**' whose distinctive **habitat in the hill and forest areas** shaped their economic, social, and political attributes.
2. **Infiltration of their Habitation:** In the case of adivasis, the movement of populations from one area to another further complicates the picture. Today, **barring the North-Eastern states, there are no areas of the country that are inhabited exclusively by tribal people**; there are only areas of tribal concentration.
 - Since the middle of the nineteenth century, non-tribals have moved into the tribal districts of central India, while tribal people from the same districts have migrated to plantations, mines, factories, and other places of employment.
3. **Poor Standard of living:** In the **areas where tribal populations are concentrated**, their **economic and social conditions** are usually **much worse than those of non-tribals**. The **impoverished and exploited circumstances** under which adivasis live can be traced historically to the **pattern of accelerated resource extraction** started by the **colonial British government** and continued by the **government of independent India**.

4. **Snatching the rights of Adivasis:** From the late nineteenth century onwards, the **colonial government reserved most forest tracts** for its own use, **severing the rights that Adivasis had long exercised to use the forest** for gathering produce and for shifting cultivation.
 - **Forests** were now to be **protected** for maximizing timber production. With this policy, the **mainstay of their livelihoods was taken away from Adivasis**, rendering their lives **poorer and more insecure**.
 - Denied access to forests and land for cultivation, Adivasis were forced to either **use the forests illegally** (and be harassed and prosecuted as 'encroachers and thieves) or **migrate in search of wage labour**.
5. **Life in independent India:** The **Independence of India in 1947** should have made life easier for Adivasis but this was not the case.
 - Firstly, the **government monopoly over forests continued**. If anything, the **exploitation of forests accelerated**.
 - Secondly, the policy of **capital-intensive industrialization** adopted by the Indian government required **mineral resources and power-generation capacities** which were **concentrated in Adivasi areas**.
 - **Adivasi lands** were rapidly acquired for **new mining and dam projects**. In the process, **millions of Adivasis were displaced** without any appropriate compensation or rehabilitation.
 - Justified in the name of '**national development**' and '**economic growth**', these policies were also a form of **internal colonialism**, subjugating Adivasis and alienating the resources upon which they depended.
 - Projects such as the **Sardar Sarovar dam** on the river **Narmada** in western India and the **Polavaram dam** on the river **Godavari** in Andhra Pradesh will **displace hundreds of thousands of Adivasis**, driving them to greater destitution.
 - **These processes** continue to prevail and have become **even more powerful since the 1990s** when **economic liberalisation policies** were officially adopted by the Indian government. It is now easier for **corporate firms to acquire large areas of land by displacing Adivasis**.
6. **Loss of Identity:** Like the term Dalit, the **term Adivasi** connotes **political awareness** and the **assertion of rights**. Literally meaning '**original inhabitants**', the term was **coined in the 1930s** as part of the **struggle against the intrusion by the colonial government and outside settlers and moneylenders**.
 - Being **Adivasi** is about **shared experiences** of the **loss of forests**, the **alienation of land**, **repeated displacements** since Independence in the name of 'development projects' and much more.
 - In spite of the heavy odds against them and in the face of their marginalization many **tribal groups have been waging struggles against outsiders (called 'dikus') and the state**.
7. **Achievements of Adivasis:** In post-Independence India, the most significant achievements of Adivasi movements include the **attainment of statehood for Jharkhand and Chattisgarh**, which were originally part of Bihar and Madhya Pradesh respectively. In this respect Adivasis and their struggles are different from the Dalit struggle because, unlike Dalits, Adivasis were concentrated in contiguous areas and could demand states of their own.



Distribution of Tribes

- The Scheduled Tribes are notified in 30 States/UTs and the **number of individual ethnic groups, etc. notified as Scheduled Tribes is 705**.
- The tribal population of the country, as per **2011 census**, is **10.43 crore**, constituting **8.6% of the total population**, **89.97% of them live in rural areas and 10.03% in urban areas**.
- The **decadal population growth** of the tribal's from Census **2001 to 2011** has been **23.66%** against the 17.69% of the entire population.
- The **sex ratio for the overall population is 943 females per 1000 males** and that of **Scheduled Tribes 990 females per thousand males**.

- Broadly the STs inhabit two distinct geographical area – the **Central India** and the **North- Eastern Area**.
- More than half of the Scheduled Tribe population is concentrated in Central India, i.e., **Madhya Pradesh (14.69%)**, Chhattisgarh (7.5%), Jharkhand (8.29%), Andhra Pradesh (5.7%), Maharashtra (10.08%), Orissa (9.2%), Gujarat (8.55%) and Rajasthan (8.86%). The other distinct area is the Northeast (Assam, Nagaland, Mizoram, Manipur, Meghalaya, Tripura, Sikkim, and Arunachal Pradesh).
- There is **no ST population in 3 States (Delhi NCR, Punjab, and Haryana)** and **2 UTs (Puducherry and Chandigarh)**, as no Scheduled Tribe is notified in these areas.

The Main Problems of the Tribals are:

1. They possess **uneconomic holdings** because of which their crop yield is less and hence they remain chronically indebted.
2. Only a **small percentage** of the population participates in occupational activities in the **secondary and tertiary sectors**.
3. A **good portion of the land in tribal areas has been legally transferred to non-tribals**. Tribals demand that this should be returned to them. In fact, the tribals had earlier enjoyed much freedom to use the forest and hunt their animals.
 - Forests not only **provide them materials to build their homes but also give them fuel**, herbal medicines for curing diseases, fruits, etc. Their religion makes them believe that many of their spirit live in trees and forests.
 - **Their folk tales often speak about the relations of human beings and the spirit**. Because of such physical and emotional attachment to forest, the tribals have reacted sharply to restrictions imposed by the government on their traditional rights.
4. **Banking facilities** in the tribal areas are so **inadequate** that the tribals have mainly to depend on the moneylenders.
5. A **good number of tribals are engaged in cultivation** and most of them are **landless** and practice **shifting cultivation**. They need to be helped in adopting new methods of cultivation.
6. Most of the tribals live in **sparsely populated hills** and **communication** in the tribal areas remains **tough**.

In short, the main problems of the tribals are poverty, indebtedness, illiteracy, bondage, exploitation, disease, and unemployment.

The concept of social justice is incomplete without understanding the Story of OBCs. In this section let's demystify them and learn their struggle.

2.4 Other Backward Classes

1. **Introduction:** Untouchability was the most visible and comprehensive form of social discrimination. However, there were a **large group of castes** that were of **low status** and were also subjected to **varying levels of discrimination short of untouchability**. These were the **service and artisanal castes** who occupied the **lower rungs of the caste hierarchy**.
2. The **Constitution of India** recognises the possibility that there may be **groups other than the Scheduled Tribes and Scheduled Castes** who **suffer from social disadvantages**. These groups – which need not be based on caste alone, but generally are identified by caste – were **described as the 'socially and educationally backward classes.'** This is the **constitutional basis of the popular term 'Other Backward Classes' (OBCs)**, which is in common use today.
3. **Definition of OBC:** Like the category of the 'tribe', the OBCs are defined negatively, by what they are not. They are **neither part of the 'forward' castes** at the upper end of the status spectrum, **nor of the Dalits** at the lower end.

- But since **caste has entered all the major Indian religions** and is **not confined to Hinduism** alone, there are also **members of other religions** who belong to the backward castes and share the same traditional occupational identification and similar or worse socio-economic status.
 - For these reasons, the **OBCs are a much more diverse group than the Dalits or adivasis**.
4. The **First Backward Classes Commission**: The **first government of independent India under Jawaharlal Nehru** appointed a commission to look into measures for the welfare of the OBCs. The **First Backward Classes Commission** headed by **Kaka Kalelkar** submitted its report in **1953**. But the political climate at the time led to the **report being sidelined**.
 - From the **mid-fifties**, the **OBC issue** became a **regional affair** pursued at the state rather than the central level.
 5. **Struggle of OBC's**: The **southern states** had a **long history of backward caste political agitation** that had started in the early twentieth century. Because of these **powerful social movements**, **policies to address the problems of the OBCs were in place long before they were discussed in most northern states**. The OBC issue returned to the central level in the late 1970s after the Emergency when the Janata Party came to power.
 6. The **Second Backward Classes Commission** headed by **B.P. Mandal** was appointed at this time. However, it was only in **1990**, when the central government decided to implement **the ten-year old Mandal Commission report**, that the OBC issue became a major one in national politics.
 7. The **Politicisation of the OBCs**: Since the **1990s** we have seen the **resurgence of lower caste movements in north India**, among both the **OBCs and Dalits**. The **politicisation of the OBCs** allows them to **convert their large numbers** – recent surveys show that they are about **41% of the national population** – **into political influence**.
 - This was not possible at the national level before, as shown by the sidelining of the Kalelkar Commission report, and the neglect of the Mandal Commission report.
 8. **Disparity within OBCs**: The **large disparities** between the **upper OBCs** (who are largely **landed castes** and enjoy **dominance** in rural society in many regions of India) and the **lower OBCs** (who are **very poor and disadvantaged** and are often **not very different from Dalits** in socio-economic terms) make this a difficult political category to work with.
 - However, the OBCs are **severely under-represented in all spheres except landholding and political representation** (they have a large number of MLAs and MPs). Although the upper OBCs are dominant in the rural sector, the **situation of urban OBCs is much worse**, being much **closer to that of the Scheduled Castes and Tribes** than to the upper castes.

Basis of OBC Reservation

1. The **reservation for the Scheduled Castes and Scheduled Tribes** was provided in the Indian Constitution framed after Independence but the **reservation for other backward castes/classes** was announced by the **Janata Dal government** only on **August 7, 1990**.
2. As many as **27% were proposed to be reserved for 3,742 other backward castes/classes**. This was done in accordance with implementing the **Mandal Commission's Report**. This Commission submitted its report on December 31, 1980.
3. What was the **criteria used by the Mandal Commission** for identifying a specific caste/class as 'backward'?
 - The Commission used **three indicators: social, educational and economic**. With regards to **social indicators** there were **four criteria**, in the **educational indicators** there were **three criteria**, and in the **economic indicators** there were **four criteria**. Thus, in all, there were **11 indicators**.
 - The **four social indicators** were:
 - I. Castes/classes which are considered as socially backward by others,
 - II. Castes/classes which mainly depend on manual labour for their livelihood,

- III. Castes/classes where at least 25% females and 10% males above the state average get married at 17 years in rural areas and at least 10% females and 5% males do so in the urban areas, and
- IV. Castes/classes where participation of females in work is at least 25% above the state average.
- The **three educational indicators** were:
 - I. Castes/classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the state average,
 - II. Castes/classes where the rate of student dropouts in the age group of 5-15 years is at least 25% above the state average, and
 - III. Castes/classes amongst whom the proportion of non-matriculantes is at least 25% above the state average.
- The **four economic indicators** were:
 - I. Castes/classes where the average value of family assets is at least 25% below the state average,
 - II. Castes/classes where the number of families living in kutcha houses is at least 25% above the state average,
 - III. Castes/classes where the source of drinking water is beyond half a kilometre for more than 50% of households, and
 - IV. Castes/classes where the number of households having taken loan is at least 25% above the state average.
- The social indicators were given a **weightage of three points**, the educational indicators **two points** and the economic indicators were accorded **one point**. The total value was 22 points. Castes which secured the 50%, that is, 11 points or above, were listed as 'backward'.

Now that we have developed an understanding of social inequality and see how prevalent it has been in the Indian society, it is time to turn our gaze towards the measures taken for promoting social justice in India. **In next part**, we will look at **the various constitutional, statutory, and developmental measures** taken by the State for the upliftment of the marginalised sections of the Indian society.

3 Measures for Social Justice in India

3.1 State and Non-state Initiatives addressing Caste & Tribe Discrimination

1. **Background:** The Indian state has had **special programmes for the Scheduled Tribes and Scheduled Castes** since freedom struggle.
 - The **'Schedules' listing the castes and tribes** recognised as deserving of special treatment because of the massive discrimination practiced against them were **drawn up in 1935**, by the British Indian government. **After Independence**, the **same policies have been continued** and many new ones added.
 - Among the most significant additions is the extension of special programmes to the Other Backward Classes (OBCs) since the early 1990s.
2. **Affirmative Action by the state:** The **most important state initiative** attempting to compensate for past and present caste discrimination is the one popularly known as **'reservations'**.
 - This involves the setting aside of some places or **'seats' for members of the Scheduled Castes and Tribes in different spheres of public life**. These include reservation of seats in the State and Central legislatures (i.e., state assemblies, Lok Sabha and Rajya Sabha); reservation of jobs in government service across all departments and public sector companies; and reservation of seats in educational institutions.

- The proportion of reserved seats is equal to the percentage share of the Scheduled Castes and Tribes in the total population. But for the OBCs this proportion is decided differently.
- The same principle is extended to other developmental programmes of the government, some of which are exclusively for the Scheduled Castes or Tribes, while others give them preference.

Socio-Economic and Caste Census

- The **identification of the real beneficiaries** is of paramount importance, for the success of any targeted approach. In line with this approach the **Dr. N. C. Saxena Committee** was constituted to advise on the '**methodology for a BPL census in rural areas**.'
- Since **June 2011**, for the first time, a **Socio-Economic and Caste Census (SECC)** is being conducted through a comprehensive '**door-to-door**' enumeration in both rural and urban India, authentic information is being made available on the socio-economic condition and educational status of various castes and sections through the SECC.
- The **exercise was completed by late 2016** and presently, the **errors are in the process of rectification**—the reason the report of the census has not been put in the public domain yet.
- Once the census is fully ready, its findings are expected to be used in as guidelines in several areas such as identifying the level of poverty, target population for the disbursal of subsidies, selection for eligibility for educational scholarships, old age pension, reorienting the existing reservation policy, better implementation (by correct identification the beneficiaries) of the MGNAREGA, National Food Security scheme, etc.

3. Measures against Caste Discrimination: In addition to reservations, there have been a number of laws passed to end, prohibit and punish caste discrimination, especially untouchability.

- One of the earliest such laws was the **Caste Disabilities Removal Act of 1850**, which disallowed the curtailment of rights of citizens due solely to change of religion or caste.
- The most recent such law was the **Constitution Amendment (Ninety Third Amendment) Act of 2005**, which became law on 23rd January 2006. Coincidentally, both the 1850 law and the 2006 amendment related to education.
- The **93rd Amendment** is for introducing **reservation for the Other Backward Classes in institutions of higher education**, while the 1850 Act was used to allow entry of Dalits to government schools.
- In between, there have been **numerous laws**, of which the important ones are, of course, the **Constitution of India itself**, passed in 1950; and the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989**.
- The **Constitution abolished untouchability (Article 17)** and introduced the reservation provisions mentioned above.
- The **1989 Prevention of Atrocities Act** revised and strengthened the legal **provisions punishing acts of violence or humiliation against Dalits and adivasis**. The fact that legislation was passed repeatedly on this subject is **proof of the fact that the law alone cannot end a social practice**.

4. Agents of Social Change: State action alone cannot ensure social change. In any case, no social group howsoever weak or oppressed is only a victim.

- **Human beings are always capable of organising and acting on their own** – often against very heavy odds – to struggle for justice and dignity.
- **Dalits** too have been **increasingly active** on the **political, agitational, and cultural fronts**.
- From the pre-Independence struggles and movements launched by people like **Jyotiba Phule, Iyatheedas, Periyar, Ambedkar** and others to contemporary political organisations like the **Bahujan Samaj Party** in Uttar Pradesh or the **Dalit Sangharsh Samiti** of Karnataka, Dalit political assertion has come a long way.

3.2 Indian Constitution & Social Justice

Spirit of The Constitution of India: It aims at **the establishment of a just and equitable social order**. It has established **the supremacy of law**. It is itself a fundamental law. The Constitution is full of ideal of liberty, equality, and social justice.

- The Constitution of Independent India made provisions for positive discrimination in favour of the Scheduled Castes and Scheduled Tribes (SCs & STs) which constituted about **23% of the divided India's population**.
- The Constitution of India prescribes protection and safeguards for the Scheduled Castes (SCs) and Scheduled Tribes (STs) and Other Backward Classes (OBCs) with the object of removing their social disabilities and promoting their varied interests.
- **The main safeguards are:** abolition of untouchability, protection from social injustice and various forms of exploitation, throwing open religious institutions of public character to all sections, removal of restrictions on access to shops, restaurants, wells, tanks, and roads, giving them right of admission to educational institutions and receiving grants out of state funds, permitting the state to make reservation for them in services, giving them special representation in the Lok Sabha and the State Vidhan Sabhas, setting up separate departments and advisory councils to promote their welfare and safeguard their interests, prohibition of forced labour, and making special provision for the administration and control of the scheduled areas.
- The constitution indeed guaranteed the **fundamental right of equality of all citizens before the law** but **it also categorically laid down** that nothing in the constitution "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".
- A number of **specific provisions have been incorporated in the Constitution**, safeguarding specifically the social, economic, educational and political rights of the Scheduled Castes and Scheduled Tribes.

I. Fundamental Rights

1. **Article 14** guarantees to every person the right not to be denied equality, before the law or equal protection of laws.
2. **Article 15** – Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth.
3. **Article 15 (4)** – Empowers the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes.
4. **Article 15 (6)** is added to provide reservations to **economically weaker sections** for admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. The amendment aims to provide reservation to those who do not fall in 15 (5) and 15(4) (effectively, SCs, STs and OBCs).
5. **Article 16** – Equality of opportunity in matter of public employment but special provision for Scheduled Castes and Scheduled Tribes.
6. **Article 16 (4)** – Empowers the State to make any provisions for reservation in appointment of post 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.
7. **Article 16 (4A):**
 - **77th Constitutional Amendment Act, 1995: The Indra Sawhney (1992) verdict of Supreme Court** had held there would be reservation only in initial appointments and not promotions. But the government through this amendment introduced Article 16(4A) to the Constitution, **empowering the state to make provisions for reservation** in matters of promotion to SC/ST employees if the state feels they are not adequately represented.
8. **Article 16 (4B):**
 - **91st Constitutional Amendment Act, 2000:** It introduced Article 16(4B), which says unfilled SC/ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year. **While the Supreme Court**

in the **Indra Sawhney Case** capped the reservation quota at 50%, the government by this amendment ensured that 50% ceiling for these carried forward unfilled posts does not apply.

9. **Article 16 (6)** is added to provide reservations to people from economically weaker sections in government posts.
10. **Article 17** – “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 law.
11. **Article 19 (6)** authorizes the State to impose reasonable restrictions on the fundamental rights guaranteed by clauses (d) (e) and (f) of Article 19 for the protection of interests of any Scheduled Tribes.
12. **Article 23** – Protection of traffic in human beings and forced labour relevant to instances of bonded labour among Scheduled Castes and Scheduled Tribes. In pursuance of this Article, Parliament has enacted **the Bonded Labour System (Abolition) Act, 1976**.
13. **Article 24** which prohibits **employment of Children below the age of 14 years in any factory or mine or in any other hazardous activity** is also significant for Scheduled Tribes as a substantial portion of child labour engaged in these jobs belong to Scheduled Tribes.
14. **Article 25** – Freedom of conscience and profession, practice and propagation of religion – entry into temples of Hindu religious institutions of a public character.
15. **Article 29** – Protection of interests of minorities religion, race, caste, language, no bar to admission in educational institutions.
16. **Article 35** – Legislation to give effect to the provisions relating to fundamental rights.

II. Directive Principles of State Policy

1. **Article 38** – 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. The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations
2. **Article 39a**: That the citizen, men, and women equally, have the right to an adequate means of livelihood.
3. **Article 41**: 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.
4. **Article 43**: The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas
5. **Article 46 of the Directive Principles** enjoins the State to take special care in promoting the educational and economic interests of the weaker sections of the people and in particular the Scheduled Castes and Scheduled Tribes and protect them from social injustice.

III. Other Constitutional Provisions

1. **Article 243 (D)** – Reservation of seats for Scheduled Castes and Scheduled Tribes in panchayats.
 - **Under Part IX of the Constitution** relating to the **Panchayats** and **Part IXA** of the Constitution relating to the **Municipalities**, reservation for Scheduled Castes and Scheduled Tribes in local bodies has been envisaged and provided.
2. **Article 244** – Administration of Scheduled areas and tribal areas and control of the union over the administration of Scheduled areas and the welfare of the Scheduled Tribes.
3. **Article 325** – Prohibition against disenfranchisement in elections based on one’s religion, race, caste, or sex.

4. **Article 330** – Provides for **reservation of seats for Scheduled Castes and Scheduled Tribes** in the **Lok Sabha**.
5. **Article 332** – Provides for **reservation of seats for Scheduled Castes and Scheduled Tribes** in the **State Vidhan Sabhas** (Legislative Assemblies).
6. **Article 335** provides that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
7. **Article 338** – The Amended Article 338 provides for establishment of a **National commission for the Scheduled Caste**.
8. **Article 338 (A)** added by the Constitution 89th Amendment, 2003 provides for the establishment of a **National commission for the Scheduled Tribes**.
9. **Article 339** – The President may at any time and shall, **at the expiration of ten years** from the **commencement of this Constitution** by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of this Scheduled Tribes in the States
10. **Article 341 and 342** – List of Scheduled Castes and Scheduled Tribes.
11. **Article 366 (25)** defined scheduled tribes as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under **Article 342 to be Scheduled Tribes for the purposes of this constitution**".

Note on Creamy Layer:

- The expression 'means-test and creamy layer' first found its mention in the Supreme Court's landmark judgment in **the Indra Sawhney vs Union of India case of 1992** (also known as **Mandal Commission case**), that was delivered by a nine-judge Bench on November 16, 1992.
- **The creamy layer** was then described as- "some members of a backward class who are socially, economically as well as educationally advanced as compared to the rest of the members of that community. They constitute the forward section of that particular backward class and eat up all the benefits of reservations meant for that class, without allowing benefits to reach the truly backward members".
- The Court also asked the Central government to fix the norms for income, property, and status for identifying the creamy layer. In 1993, the creamy layer ceiling was fixed at ₹1 lakh. It was subsequently increased to ₹2.5 lakh (2004), ₹4.5 lakh (2008), ₹6 lakh (2013), and at ₹8 lakh since 2017.

Note on Article 15(6) & Article 16(6):

In the year **2019**, there are some **major developments in India** with regard to '**Reservation**'.

The following developments have taken place:

- A very important Constitutional Amendment Act, 103rd Constitutional Amendment Act to provide **10 per cent reservation in government jobs and education to economically backward section in the general category** has come into force.

What are the important Constitutional provisions of the Act?

- The Act amends Articles 15 and 16 of the Constitution, by adding a clause which allows states to make "special provision for the advancement of any EWS (Economically Weaker Sections) of citizens".
- The bill has inserted clause 6 in Article 15 and Article 16 of the Indian Constitution.

Clause under Article 15:

- State can make any special provisions for the advancement of EWS citizens. This includes maximum 10% reservations in educational institutions (it also includes private educational institutions, whether aided or unaided by the state, other than the minority educational institutions).

Clause under Article 16:

- State may make any provision for reservations for jobs in the initial appointment in Government services in favour of EWS citizens upto a maximum of 10%.
- These reservations are **in addition to 50% already granted to SC/ST and OBCs, taking the total reservation to 60%.**

The **Act makes a special mention of the Article 46 of the Indian Constitution:**

According to the objects of the Act:

- The Directive Principles of State Policy contained in Article 46 of the Constitution enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation
- Economically weaker sections of citizens were not eligible for the benefit of reservation.
- With a view to fulfil the mandate of **Article 46**, and to ensure that economically weaker sections of citizens get a fair chance of receiving higher education and participation in employment in the services of the State, it has been decided to amend the Constitution of India.

Who all are eligible for the quota?

- The people who are not covered in existing quotas fulfilling the below requirements are eligible:
- People who have an annual income of less than Rs.8 lakhs.
- People who own less than five acres of farmland.
- People who have a house lesser than 1,000 sq feet in a town (or 100 sq yard in a notified municipal area).

3.3 Fifth and Sixth Schedule of the Indian Constitution:

The **basic thrust** of the Fifth and Sixth Schedule of the constitution is the **protection of cultural distinctiveness of Tribals.**

It also provides **protection to the tribals on account** of their economic disadvantages so that they could **maintain their tribal identity** without any coercion or exploitation.

3.3.1 Fifth Schedule

In **Article 244(1)** of the Constitution, the expression **Scheduled Areas** means such areas as the **President** may by order **declare** to be Scheduled Areas.

The criteria followed for declaring an area as Scheduled Area are

- **preponderance of the tribal population.**
- **compactness and reasonable size** of the area.
- **under-developed nature** of the area; and
- marked **disparity in the economic standard** of the people.

These criteria are not spelled out in the Constitution of India but have become well established.

Special Provisions

1. The **Governor** of each State having Scheduled Areas (SA) shall **annually, or whenever so required by the President**, make a **report to the President** regarding the **administration of Scheduled Areas** in that State.

2. The **Union Government** shall have **executive powers** to give **directions** to the States as to the **administration** of the Scheduled Areas.
3. **Para 4 of the Fifth Schedule** provides for establishment of a **Tribes Advisory Council (TAC)** in **any State having Scheduled Areas**. If the President so directs, there will be established a TAC in a State having **Scheduled tribes** but not Scheduled Areas therein, consisting of not more than **twenty members** of whom, **three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State**. If the number of representatives of the STs in the Legislative Assembly of the State is less than the number of seats in the TAC to be filled by such representatives, the **remaining seats shall be filled by other members of those Tribes**.
4. The **TAC shall advise** on such matters pertaining to the **welfare and the advancement of the STs** in the State as may be referred to them by the Governor.
5. The **Governor** may, by public notification, **direct that any particular Act of Parliament** or of the Legislature of the State shall or shall **not apply to a SA** or any part thereof in the State, subject to such **exceptions and modifications**, as specified. The **Governor** may make **regulations** for the **peace and good government** of any area in the State which is for the time being a SA.
6. In making such regulations, the **Governor may repeal or amend any Act of Parliament or of Legislature** of the State or any **existing law** after obtaining **assent of the President**.
7. No regulations shall be made unless the Governor, **in case a TAC exists, consults such TAC**.

States having Fifth Schedule Areas

- At present, **10 States** namely **Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana** have Fifth Schedule Areas.
- The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes residing in any State other than the States of Assam, Meghalaya, Tripura, and Mizoram. Tribal habitations in the states of Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh, and Jammu & Kashmir have not been brought under the Fifth or Sixth Schedule.

3.3.2 Sixth Schedule

1. Sixth Schedule mentions the provisions related to the **tribal areas of the four states – Assam, Meghalaya, Tripura, and Mizoram**
2. **Sizeable amount of autonomy** has been given to the people belonging to the tribal areas of these four states to govern themselves
3. The **tribal areas** in these four states come under the **name of 'Autonomous Districts,'** but the **state still has its executive authority** over them
4. The **power to organise and reorganise the tribal areas as autonomous districts lie with the Governor** of the state. He can also alter the name, boundary of such tribal areas.
5. **One autonomous district can have different tribes**, which for better administration is divided into **autonomous regions** by the governor
6. There is a **district council for each autonomous district**:
 - It has **30 members**
 - **Four are nominated by the governor** – They perform their duties during the pleasure of the governor
 - **26 are elected using the adult franchise** – Their term of office is five years.
7. There is a **separate regional council for each autonomous district**
8. The **tribal areas in the four states are as given below**:
 - **Assam**: North Cachar Hills District, The Karbi Anglong District, The Bodoland Territorial Areas District
 - **Meghalaya**: Khasi Hills District, Jaintia Hills District, The Garo Hills District
 - **Tripura**: Tripura Tribal Areas District
 - **Mizoram**: The Chakma District, The Mara District, The Lai District

3.4 Legislative Enactment

To fulfill the Constitutional provisions pertaining to Scheduled Castes, India has passed various laws to protect their rights these include the protections of **Civil Rights (Anti-untouchability) Act (1955)**, the **Bonded Labour (Abolition) Act (1976)**, the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989)** and Rules (1995), the **Employment of Manual Scavenger and Construction of Dry Latrines (Prohibition) Act (1993)** and various **land reform laws** to redistribute community land to the landless.

Finally, to monitor enforcement of some of these laws, the Central (i.e., federal) government established the **National Commission for Scheduled Castes** and **National Commission for Scheduled Tribes** and the **National Human Rights Commission**.

Let us discuss some important legislations pertaining to the **Scheduled Tribes**:

3.4.1 Forest Rights Act, 2006

- The act (formally known as **The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**) recognize and vest the forest rights and occupation in Forest land in **forest Dwelling Scheduled Tribes (FDST)** and **Other Traditional Forest Dwellers (OTFD)** who have been residing in such forests for generations.
- The act also establishes the responsibilities and authority for **sustainable use, conservation of biodiversity and maintenance of ecological balance** of FDST and OTFD.
- It strengthens the **conservation regime** of the forests while ensuring **livelihood** and **food security** of the FDST and OTFD.
- It seeks to **rectify colonial injustice to the FDST and OTFD** who are integral to the very survival and sustainability of the forest ecosystem.

The act identifies four types of rights:

1. Title rights

- It gives FDST and OTFD the right to ownership to land farmed by tribals or forest dwellers subject to a maximum of 4 hectares.
- Ownership is only for land that is actually being cultivated by the concerned family and no new lands will be granted.

2. Use rights

- The rights of the dwellers extend to extracting Minor Forest Produce, grazing areas, to pastoralist routes, etc.

3. Relief and development rights

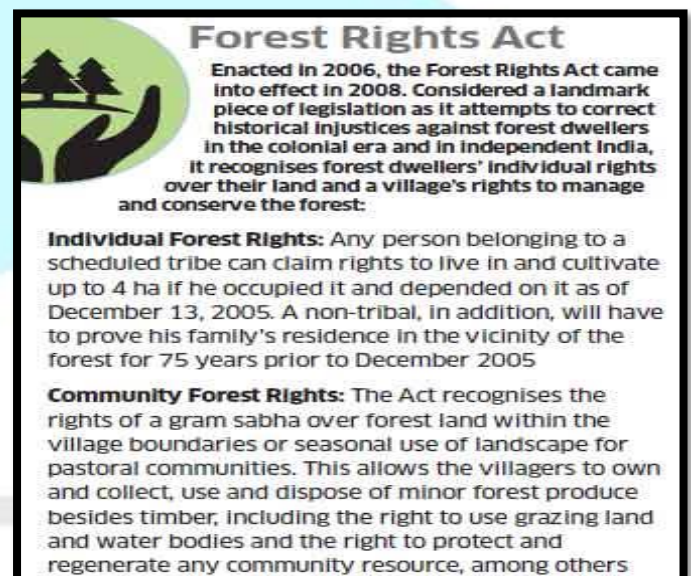
- The rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection

4. Forest management rights

- It includes the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

Who can claim these Rights?

- **Members or community** of the **Scheduled Tribes** who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs.



- It can also be claimed by any **member or community who has for at least three generations (75 years) prior to the 13th day of December 2005 primarily resided in forests** land for bona fide livelihood needs.
- The **Gram Sabha** is the authority to initiate the process for determining the nature and extent of **Individual Forest Rights (IFR)** or **Community Forest Rights (CFR)** or both that may be given to **FDST** and **OTFD**.

Importance of Forest Rights in India

1. **Reversing the historical Injustice:** The Act helps in recognising the rights that were denied to forest-dwelling Scheduled Tribes and other traditional forest dwellers since colonial times.
2. **Poverty alleviation and inclusive growth:** FRA helps in securing traditional livelihood of forest-dwelling communities by granting them access to the forest products and forest land and facilitating commercial trading in MFPs.
 - **For Example,** around 50-gram sabhas in the Gondia district of Maharashtra organised a federation that guaranteed competitive prices and bonus for the communities for their product collection and earned Rs 2.5 crore by selling Tendupatta.
3. **Conservation of forests:** FRA **recognizes the symbiotic relationship of the** forest dwelling communities with the forests and allows them to manage and conserve the forest using their traditional wisdom.
 - **For example,** the forest cover in community forest reserves in Maharashtra increased from 6.81% in 2000 to 9.32% in 2014.
4. **Decentralization:** It provides for democratic decentralization through Gram Sabhas which facilitates communities to discuss, debate, decide, plan, and effectively implement forest management plans leading to their empowerment.
5. **Curbing extremism:** Implementation of FRA in Left Wing Extremism affected districts not only leads to the development of forest dwellers but **also build a relationship of trust and bond between them and the government**, thereby reducing land conflict and other grievances.

Concerns Regarding Implementation of FRA

1. **Little progress in recognition of rights:** FRA has the potential to secure the forest rights of at least 200 million tribals and other traditional forest dwellers over 40 million ha (50 per cent of India's forest land) covering 177,000 villages. However, only 13 per cent of the 40 million ha has been demarcated under the FRA by the environment ministry.
2. **Inadequate efforts to promote co-existence and preservation:** Despite Community Forest Resource (CFR) having being recognized, there have been few efforts from the state forest departments to move towards co-existence and supporting and recognizing CFRs by gram sabhas.
3. **Diversion of tribal Lands:** There have been instances where plantations by forest agencies are being done on land used by tribal communities and other traditional forest dwellers that are entitled to these lands under FRA.
 - As per a study, there has already been a diversion of around 0.39 million hectares (ha) of forest land between 2008 and 2019.
4. **Relocation in violation of FRA:** Several people have been denied rights or relocated from Protected areas or critical wildlife habitats without prior assessment whether co-existence is possible and exercising forests rights would lead to irreversible damage to the habitat or species.
5. **Discrepancies and delays in the process of recognizing claims:** A large number of claims have been pending, rejected or the area recognized has been drastically reduced without any proper reasons along with imposition of extra-statutory and extraneous conditions in the title for recognised rights.
 - **The situation has been worsened** due to misinterpretation of the law by officials, illiteracy among forest dwellers, lack of awareness about their rights and little knowledge about procedure for filing claims.

6. **Other issues:** Inadequate financial and administrative support to implement the law; lack of coordination between the tribal, revenue and forest department; poor or non-functioning of district and sub-division level committees; dissatisfactory Rehabilitation and compensation, etc.

Way Forward

1. **Organizing large scale awareness campaigns:** Efforts should be made to reach out through radio, television, and other media to ensure that people receive the basic communication regarding salient provisions of the Act, interpretation of community right etc.
2. **Intensive capacity building approach:** Sub-division and district administration officers, especially revenue, forest and tribal functionaries entrusted with the task of processing forest rights have to be systematically trained not only the procedural requirements under FRA but also the challenges and contexts of forest resource use and access pattern.
3. **Participation of civil society:** There is a need to identify NGOs working in the area to provide assistance to tribal communities in filing applications, resolving issues of caste certificates, identification, and measurement of land, and negotiating with the officials to resolve conflicts.
4. **Using technology to strengthen outreach:** Technology needs to be utilised to support implementation and make the process more efficient and effective. For instance, GPS survey maps can be used to resolve competing claims at the local level.
5. **Expedite the process of claims:** There is a need for reviewing all rejected and pending claims to individual and community forest rights expeditiously.
6. **Ensuring transparency and accountability:** On decision-making related to claims procedure. The reasons for rejection or delay in recognition of claims should be conveyed to the claimants.

Concept Check

Q. Under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, who shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both?

- (a) State Forest Department
- (b) District Collector/Deputy Commissioner
- (c) Tahsildar/Block Development Officer /Mandal Revenue Officer
- (d) Gram Sabha
- (e) None of the above

Answer: D

3.4.2 Panchayats (Extension to Scheduled Areas) Act (PESA), 1996

- It is a law enacted by the Government of India to cover the "Scheduled areas", which are not covered in the 73rd amendment or Panchayati Raj Act of the Indian Constitution.
- It was enacted on **24 December 1996** to enable Gram Sabhas to **self-govern their natural resources**.
- It is an Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

"Scheduled Areas" means the Scheduled Areas as referred to in **Clause (1) of Article 244** of the Constitution. The Act extended the **provisions of Panchayats to the tribal areas of ten states that have Fifth Schedule Areas**.

Provisions

1. A state legislation on panchayats in the scheduled area should **take care of the customs, religious practices and traditional management practices of community resources**
2. Every village shall contain a grama Sabha whose members are included in the electoral list for the panchayats at village level

3. The **recommendation** of the **gram Sabha** is **mandatory** for **granting mining licenses in the scheduled areas**
4. Planning and management of minor water bodies are entrusted to the panchayats.

It has provided that **the Gram Sabha or Panchayats** at appropriate level shall have the following powers:

- To be consulted on matters of **land acquisition and resettlement**.
- Grant **prospecting license for mining lease** for **minor minerals** and concessions for such activities.
- Planning and management of **minor water bodies**.
- The power to **enforce prohibition** or to regulate or restrict the sale and consumption of any intoxicant.
- The **ownership of minor forest produces**.
- The power to **prevent alienation of land** and to restore any unlawfully alienated land of a scheduled tribe.
- The power to **manage village markets**.
- The power to **exercise control over money lending** to scheduled tribes.

Concept Check

Q. The Government enacted the Panchayat Extension to Scheduled Areas (PESA) Act in 1996. Which one of the following is not identified as its objective?

- (a) To provide self-governance
- (b) To recognize traditional rights
- (c) To create autonomous regions in tribal areas
- (d) To free tribal people from exploitation
- (e) All of the above are identified as objectives of PESA Act 1996.

Answer: C

3.4.3 National Commission for Backward Classes

1. National Commission for Backward Classes is under the **Ministry of Social Justice and Empowerment** established on **14 August 1993**.
2. It was constituted pursuant to the provisions of the **National Commission for Backward Classes Act, 1993**.
3. Currently, this body is responsible to look into **the inclusion and exclusion of backward classes only**.
4. To safeguard the interests of these classes more effectively, **there was a need to give constitutional status to NCBC**.
5. For this purpose, **123rd Constitutional Amendment Bill** was introduced in the Parliament.
6. The President has given his assent to the Bill after it was passed by the Lok Sabha and Rajya Sabha and **became the Constitution (One Hundred and Second Amendment) Act, 2018**.

Salient Features of the Constitution (One Hundred and Second Amendment) Act, 2018

1. It inserted a **new article 342-A** which empowers the **President to notify the list of socially and educationally backward classes** of that state/union territory. However, a law of Parliament will be required if the list of backward classes is to be amended.
2. It inserted **new article 338B in the constitution which provides for NCBC, its mandate, composition, functions, and various officers**
3. **NCBC will comprise of five members appointed by the President**. Their tenure and conditions of service will also be decided by the President through rules.
4. **Duties of the NCBC will include:**
 - I. Investigating and monitoring how safeguards provided to the backward classes under the Constitution and other laws are being implemented,
 - II. Inquiring into specific complaints regarding violation of rights, and

- III. Advising and making recommendations on socio-economic development of such classes. The central and state governments will be required to consult with the NCBC on all major policy matters affecting the socially and educationally backward classes.
5. The NCBC will be **required to present annual reports to the President** on working of the safeguards for backward classes. These reports will be tabled in Parliament, and in the state legislative assemblies of the concerned states.
6. **NCBC will have the powers of a civil court** while investigating or inquiring into any complaints. These powers include:
 - I. Summoning people and examining them on oath,
 - II. Requiring production of any document or public record, and
 - III. Receiving evidence.

3.5 Schemes for SCs, STs & OBCs

List of Schemes being implemented for strengthening the socio-economic and educational conditions of the Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs):

3.5.1 Scheduled Caste (SCs)

Scholarships

1. Pre-Matric Scholarship for SC (IX & X)
2. Pre-Matric Scholarships to the Children of those Engaged in occupations involving cleaning and prone to health hazards
3. Post-Matric Scholarship for SC students
4. Upgradation Of Merit of SC Students
5. Top Class Scholarship for SC students
6. National Overseas scholarship
7. National Fellowship for Scheduled Caste Students

Hostels

- Babu Jagjivan Ram chhatrawas Yojana

Free Coaching

- Free Coaching Scheme for SC Students

Schemes for Economic Development

1. Credit Enhancement Guarantee Scheme for the Scheduled Castes (SCs)
2. National Safai Karamcharis Finance and Development Corporation (NSKFDC)
3. National Scheduled Castes Finance and Development Corporation (NSFDC)
 - NSFDC is an institution under **Ministry of Social Justice & Empowerment**, Government of India for financing, facilitating, and mobilizing funds for the economic empowerment of persons belonging to the Scheduled Castes families living below Double the Poverty Line.
 - NSFDC finances income generation schemes for the target group through the State Channelising Agencies (SCAs) nominated by respective State/UT Governments.
 - The NSFDC is a **Central Public Sector Enterprise** incorporated on 8.2.1989 as a Company 'not for profit' under Section 25 of the Companies Act, 1956. NSFDC is now a Section - 8 Company under the new Companies Act, 2013.
4. Special Central Assistance to Scheduled Caste Sub Plan (SCSP)
5. Scheme of Assistance to Scheduled Castes Development Corporations (SCDCs)
6. Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS)
7. Venture Capital Fund for Scheduled Castes
8. Dr. Ambedkar Medical Aid Scheme

Schemes for Social Empowerment

- Protection of Civil Rights and Prevention of Atrocities

- Pradhan Mantri Adarsh Gram Yojana (PMAGY)
- Dr. Ambedkar Scheme for Social Integration through Inter-Caste Marriage
- Dr. Ambedkar National Relief to Scheduled Caste Victims of Atrocities-revised

3.5.2 Scheduled Tribes

Education

1. Top Class Education for ST Students
2. Upgradation of Merit of ST Students
3. Vocational Training Centres in Tribal Areas
4. National Overseas Scholarships for Scheduled Tribe Students
5. Rajiv Gandhi National Fellowship for ST Students
6. Post Matric Scholarship (PMS) for ST students
7. Centrally Sponsored Scheme of Hostels for ST boys and ST Girls
8. PRE-MATRIC SCHOLARSHIP
9. Establishment of Ashram Schools in Tribal Sub-Plan Areas

State Grant

1. Special Central Assistance to Tribal Sub Plan (SCA to TSP)

- Special Central Assistance to Tribal Sub-Scheme (SCA to TSS) is 100% grant from Government of India (since 1977-78). It is charged to **Consolidated Fund of India** (except grants for North Eastern States, a voted item) and is an additive to State Plan funds and efforts for Tribal Development.
- This grant is utilized for economic development of Integrated Tribal Development Agency (ITDA), Integrated Tribal Development Project (ITDP), Modified Area Development Approach (MADA) Pockets and Clusters, PVTGs, and dispersed tribal population.

2. Allocation under SCA to TSP

3. Grants under Article 275(1) of the Constitution of India

- Grants-in-aid under Proviso to Article 275(1) of the Constitution of India is a 100% annual grant from the Government of India to States. It is charged to the Consolidated Fund of India (except grants for the North Eastern States, a voted item) and is an additive to State Plan funds and efforts for Tribal Development.
- Funds are utilized for socio-economic development of the Integrated Tribal Development Agency (ITDA), Integrated Tribal Development Project (ITDP), Modified Area Development Approach (MADA) Pockets and Clusters and for PVTGs.

4. Eklavya Model Residential School

5. Development of Forest Village

6. Institutional Support for **Development and Marketing of Tribal Product/Produce through TRIFED**

- **The Tribal Cooperative Marketing Development Federation of India (TRIFED)** came into existence in 1987. It is a national-level apex organization functioning under the administrative control of Ministry of Tribal Affairs.
- TRIFED has its Head Office located in New Delhi and has a network of 13 Regional Offices located at various places in the country.
- It mainly undertakes two functions viz. **Minor Forest Produce (MFP) development** and Retail Marketing and Development.

7. **Minor Forest Produce (MFP) through Minimum Support Price (MSP) and Mechanism of marketing of Development of Value Chain for MFP**

- Minimum Support Price for Minor Forest Produce scheme (MSP for MFP Scheme), **started by the Ministry of Tribal Affairs in the year 2013-14**, was the first step in the direction of providing fair prices to tribals. Initially, the scheme included 10 MFPs in 9 States. **It was later expanded to 24 MFPs and in all states.**
- The Scheme is implemented **through State Level Agency (SLA)** appointed by the **State Government.**

- Ministry of Tribal Affairs provides a revolving fund to the SLA. Loss, if any, is shared by Centre and State in the ratio of 75:25.

3.5.3 Other Backward Classes

1. Pre-Matric Scholarship to the OBCs for studies in India
2. Post-Matric Scholarship to the OBC for studies in India
3. Construction of Hostels for OBC Boys and Girls
4. Assistance to Voluntary Organizations for Welfare of OBCs
5. **Scheme under National Backward Classes Finance and Development Corporation (NBCFDC)**
 - National Backward Classes Finance & Development Corporation (NBCFDC) is a Govt. of India Undertaking under the aegis of **Ministry of Social Justice and Empowerment**.
 - NBCFDC was incorporated on 13th January 1992 as a Company, not for profit with an objective to promote economic and developmental activities for the benefit of Backward Classes and to assist the poorer section of these classes in skill development and self-employment ventures.
 - NBCFDC provides financial assistance through State Channelising Agencies (SCAs) nominated by the State Governments/UTs. NBCFDC also provides Micro Financing through SCAs/ Self Help Groups (SHGs).

Having understood the various Constitutional, legal, and schemes rolled out by the government for improving the Socio-economic status of the SC, ST, and OBC, let's now understand the people with disability and welfare measures taken for them.

3.6 Welfare of Persons with Disability

3.6.1 Differently-abled Population Statistics in India

1. As per the **Census 2011**, the differently-abled population in India is **26.8 million**. In percentage terms, this stands at **2.21 %**.
2. **Change in population:** There has been a **marginal increase in the differently abled population in India**, with the figure rising from 21.9 million in 2001 to 26.8 million in 10 years.
3. **Population of Men and Women:** There are 14.9 million men with disabilities as compared to 11.8 million women in the country. The percentage of men with disabilities is 2.41 as against 2.01 in women.
4. **Population in Urban and Rural areas:** The total number of differently abled people are over 18 million in the rural areas and just 8.1 million enumerated in the urban settings.
5. **Social Group wise disabled population:** Social groups wise analysis shows, 2.45 percent of the total disabled population belongs to the Scheduled Castes, 2.05 to the Scheduled Tribes, and 2.18 per cent to other than SC/ST. Even among these two social groups, **the proportion of men with disabilities is higher as compared to women**.
6. State-wise data shows, **Andhra Pradesh, Maharashtra, Orissa, and Jammu and Kashmir have more than 2.51 percent disabled population** whereas in Tamil Nadu, Assam, Meghalaya, Assam, and Nagaland, the percentage is less than 1.75.
7. Over 5.4 million people have some kind of physical disability, followed by hearing impairment affecting 5.07 million and 5.03 million who have problems with their vision. Just about 2 million have speech disability, and 2 million are affected by mental retardation and other mental illnesses.

3.6.2 Provision of Welfare of Persons with Disabilities

1. The Constitution in the schedule of subjects lays **direct responsibility of empowerment of disabled persons on the State governments**. Therefore, the primary responsibility to empower the disabled rests with the State governments.
2. **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** has been enacted to ensure equal opportunities for persons with disabilities and their full participation in nation-building (more about this is covered in the Schemes/Acts document).

- The Act **extends to the whole of India, except the State of Jammu and Kashmir**. The Government of Jammu and Kashmir has separately enacted 'The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1998'.
- 3. A **multi-sectoral collaborative approach**, involving all the appropriate governments, i.e., ministries of the Central Government, the State Governments/UTs, Central/State undertakings, local authorities and other appropriate authorities is being followed in the implementation of various provisions of the Act.
- 4. **At the International level:** India is a signatory to the '**Declaration on the Full Participation and Equality of People**' with Disabilities in the Asia-Pacific Region.
 - India is also a signatory to the **Biwako Millennium Framework** working towards an inclusive, barrier free and rights-based society.
 - India signed the **UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities** on 30th March, 2007, the day it opened for signature. India ratifies the UN Convention on 1st October, 2008.
- 5. **Creation of Department within Ministry- Dedicated efforts:** In order to give focused attention to Policy issues and meaningful thrust to the activities aimed at welfare and empowerment of the Persons with Disabilities, a **separate Department of Disability Affairs** was carved out in the **Ministry of Social Justice and Empowerment on May 12, 2012**.
 - **The Department was renamed as Department of Empowerment of Persons with Disabilities (Divyangjan) on 08.12.2014.**
 - The Department acts as a Nodal Agency for matters pertaining to disability and Persons with Disabilities including effecting closer coordination among different stakeholders: related Central Ministries, State/UT Governments, NGOs etc. in matters pertaining to disability.

4 Contemporary Issues Related to Social Justice

4.1 Supreme Court's Judgment on EWS Reservation

Introduction

A 5-Judge Bench of the Supreme Court has upheld **the validity of the 103rd Constitutional Amendment Act (Janhit Abhiyan v. Union of India)**. The Act has introduced 10% reservation for the Economically Weaker Sections (EWS) in education and public employment.

- The Act was challenged before the Supreme Court as violative of the Constitution of India in August 2020. The Supreme Court, through a 3:2 verdict, has upheld its validity.
- There have been widely differing reactions to the SC's Judgment. The Judgment has both been praised and labelled as discriminatory by various legal and policy experts.

What are the provisions of Reservation for EWS?

- The **103rd Amendment Act provides for reservation of jobs in the Central Government jobs** as well as Government educational institutions. It is also applicable on admissions to private higher educational institutions.
- It applies to **citizens belonging to the Economically Weaker Sections (EWS)**. This reservation is "in addition to the existing reservations and subject to a maximum of 10% of the total seats in each category". It mandates **Article 46 of the Constitution (Directive Principle)** that urges the Government to protect the educational and economic interests of the weaker sections of society.
- The Act has amended Articles 15 and 16 of the Constitution.

- **Article 15 (6)** has been added to provide reservations to economically weaker sections for admission to educational institutions including private educational institutions, (whether aided or unaided by the State). The minority educational institutions referred to in **clause (1) of Article 30** have been excluded. The amendment aims to provide reservation to those who do not fall in 15 (5) and 15(4) (effectively, SCs, STs and OBCs).
- **Article 16 (6)** has been added to provide reservations to people from economically weaker sections in government posts. An explanation states that “economic weakness” shall be decided on the basis of “**family income**” and other “**indicators of economic disadvantage**”.

Challenges to the 103rd Constitutional Amendment Act

The 103rd Constitution Amendment Act was challenged on the following grounds:

- It violates the **basic structure of the Constitution**. The special protections guaranteed to socially disadvantaged groups are part of the basic structure. But the Act departs from this by promising special protections on the **sole basis of economic status**.
- It violates the Supreme Court’s ruling in **Indra Sawhney & Ors v Union of India (1992)**, which capped reservations at 50%. The SC held that **economic backwardness cannot be the sole criterion** for identifying a backward class.
- Private, unaided educational institutions have argued that their **fundamental right to practise a trade/ profession is violated** when the State compels them to implement its reservation policy and admit students on any criteria other than merit.

What has been the decision of the SC regarding the Reservation for EWS?

The 5-Judge Bench of the Supreme Court has upheld the validity of the 103rd Constitutional Amendment Act. The Bench, by a 3:2 majority, held that the Act is not violative of the basic structure of the Constitution.

- 3 Judges (Justices Dinesh Maheshwari, Bela Trivedi, and JB Pardiwala) decided in the favor of the Act, while 2 Judges (Justice S Ravindra Bhat and U U Lalit (now retired)) dissented.

What were the questions considered by the SC in the EWS Judgment?

During the hearing, the Attorney General, representing the Government of India, had drafted 4 issues for the consideration of the Bench. These were whether the 103rd Constitution Amendment Act breaches the basic structure of the Constitution by:

A. Permitting the State to make special provisions, including reservation, based on economic criteria

- The majority of the Judges held that poverty is an adequate marker of deprivation that the State can address through reservations. The SC in its earlier Judgments had held that “economic criteria cannot be the sole basis for determination of backwardness “. The Judgment in this case held that this is somewhat restricted to the reservation provided to Social and Economically Backward Classes (SEBC), and EWS is deemed a separate and distinct category.
- The majority opinion held that while economically weaker sections (EWS) of the citizens are not declared as socially and economically backward classes (SEBCs) for the purpose of Article 15(4) of the Constitution, separate reservations are not barred by the Constitution (like provisions under free and compulsory primary education).
- Hence, it is not violative of the basic structure.

B. Excluding the SEBCs/OBCs/SCs/STs from the scope of EWS Reservation

- The SC held that there cannot be competition of claims for affirmative action based on disadvantages. Reservation cannot be denied to one section (the EWS) because that segment is otherwise not suffering from other disadvantages.
- Article 16(4) is exhaustive for reservation in favour of backward classes but the section is not exhaustive of the concept of reservation. The provisions of the Amendment Act have introduced another affirmative action that is separate and distinct.

- Hence, it is not violative of the basic structure.

C. Breach of 50% ceiling for reservations

Background: In the Indra Sawhney Case (1992), a 9-judge Bench of the SC had upheld 27% quota for OBCs but had struck down the 10% quota based on economic criteria. The SC had further held that reservation cannot cross 50%, unless a special case was made out in “extraordinary situations and peculiar conditions”.

- In the present Judgment, the SC held that the 50% ceiling is for backward classes and it “overstretched to the reservation provided for entirely different class, consisting of the economically weaker sections”.

D. Permitting the State to make special provisions for admission to private unaided institutions

Under Article 15(5) of the Constitution, the State has power to make reservations in private educational institutions. Reservations in private institutions is not per se violative of the basic structure. Reservations as a concept cannot be ruled out in private institutions where education is imparted. The view concurred with the earlier Judgment in the Pramati & Society for Unaided Private Schools (2014).

- Hence the provisions of the 103rd Constitution Amendment Act do not breach the basic structure of the Constitution.

What is the minority view of the SC Bench?

The minority view has come from Justice S Ravindra Bhat and Chief Justice of India U U Lalit (now retired).

1. **On Economic Criteria:** Laws that give benefits based on “only economic criteria” don’t violate the right to equality on their own. However, the **Constitution says that reservations can only be about the community and not about the individual**. So, while access “to public goods” such as tax breaks, subsidies can be allowed, reservation in public employment would not be permissible.
2. **On Exclusion of SCs/STs/OBCs/SEBCs:** Their exclusion is unconstitutional.
 - a) Those subjected to socially questionable and outlawed practices have been excluded. They are amongst the poorest sections of society. **Excluding them goes against the idea of fraternity.**
 - b) The exclusion virtually confines SC/ST/OBC within their allocated reservation quotas (15% for SCs, 7.5% for STs, 27% for OBCs).
 - c) It denies the chance of “mobility from the reserved quota (based on past discrimination) to a reservation benefit based only on economic deprivation”.
 - It would be arbitrary to exclude socially backward classes on the ground that they already enjoy quota benefits.
3. **On Breach of 50% Limit:** The breach of 50% rule could “eat up the rule of equality” and become “a gateway of further infractions” which in fact would result in compartmentalisation. The rule of equality would then be reduced to the right of reservation. The minority Judges noted that in this regard the observations of Ambedkar have to be kept in mind that reservations are to be seen as temporary and exceptional or they could eat up the rule of equality.
 - The view of the bench regarding private institutions was concurrent.

What should be the approach going ahead?

- **Equal opportunity in education:** The Union and State Governments should take a long-term view and work to improve the education infrastructure (at all levels primary, secondary, higher education) and the quality of education. Equal opportunities to quality and affordable education will reduce the struggle among more and more communities to get classified as ‘backward’.
- **Caste-based discrimination:** Justice Bhat in his dissenting Judgment noted the remark of the Dr. Ambedkar that “reservations are to be seen as temporary and exceptional”. Unless, the caste-based

discrimination is eliminated completely from the society, the grounds for caste-based reservation will exist and remain valid.

Conclusion

The opinion of experts on the Judgment seems to be divided. **Reservation remains an emotive and politically sensitive issue in India.** The long-term solution lies in sensitization and eliminating discrimination of all kinds through social and political mobilization. Unless that happens, status quo (on reservations) or demands for even further expansion of reservations will continue.

4.2 Constitutional (127th) Amendment Bill, 2021

In News

Recently, the Parliament passed the Constitution 127th Amendment Bill, 2021 restoring **State's rights to specify OBC groups.**

4.2.1 Background

- According to the Constitution of India, **Articles 15(4), 15(5) and 16(4) confer power** on a **state** to identify and declare the list of socially and educationally backward classes.
- As a matter of practice, **separate OBC lists** are drawn up by the Centre and each state concerned.
- **The 127th Amendment Bill** is designed **to clarify** that the states can maintain the **"state list" of OBCs** as was the system prior to the Supreme Court judgment. Article 366 (26c) defines socially and educationally backward classes.
- The "state list" will be completely taken out of the ambit of the president and will be notified by the state Assembly as per the proposed Bill.

4.2.2 Need of 127th Constitution Amendment Bill

- The amendment was thought necessary because the SC in its order on Maratha reservations upheld the 102nd Constitutional Amendment Act that inserted Articles 338B and 342 A (with two clauses) after Article 342.
- Earlier it was said that **the President of India, in consultation with Governors**, would specify **socially and economically backward classes**, taking away the powers of state governments to do so

4.2.3 Main Provisions of the Bill

1. List of socially and educationally backward classes

- The National Commission for Backward Classes (NCBC) was established under **the National Commission for Backward Classes Act, 1993.**
- **The Constitution (One Hundred and Second Amendment) Act, 2018** gave **constitutional status to the NCBC**, (National Commission for Backward Classes) and **empowered the President to notify the list of socially and educationally backward classes** for any state or union territory for all purposes.
- The 2021 Bill amends this to provide that the President may notify the list of socially and educationally backward classes **only for purposes of the central government.** This central list will be prepared and maintained by the central government.
- Further, **the Bill enables states and union territories to prepare their own list of socially and educationally backward classes.** This list must be made by law and may differ from the central list.

2. Consultation with the NCBC

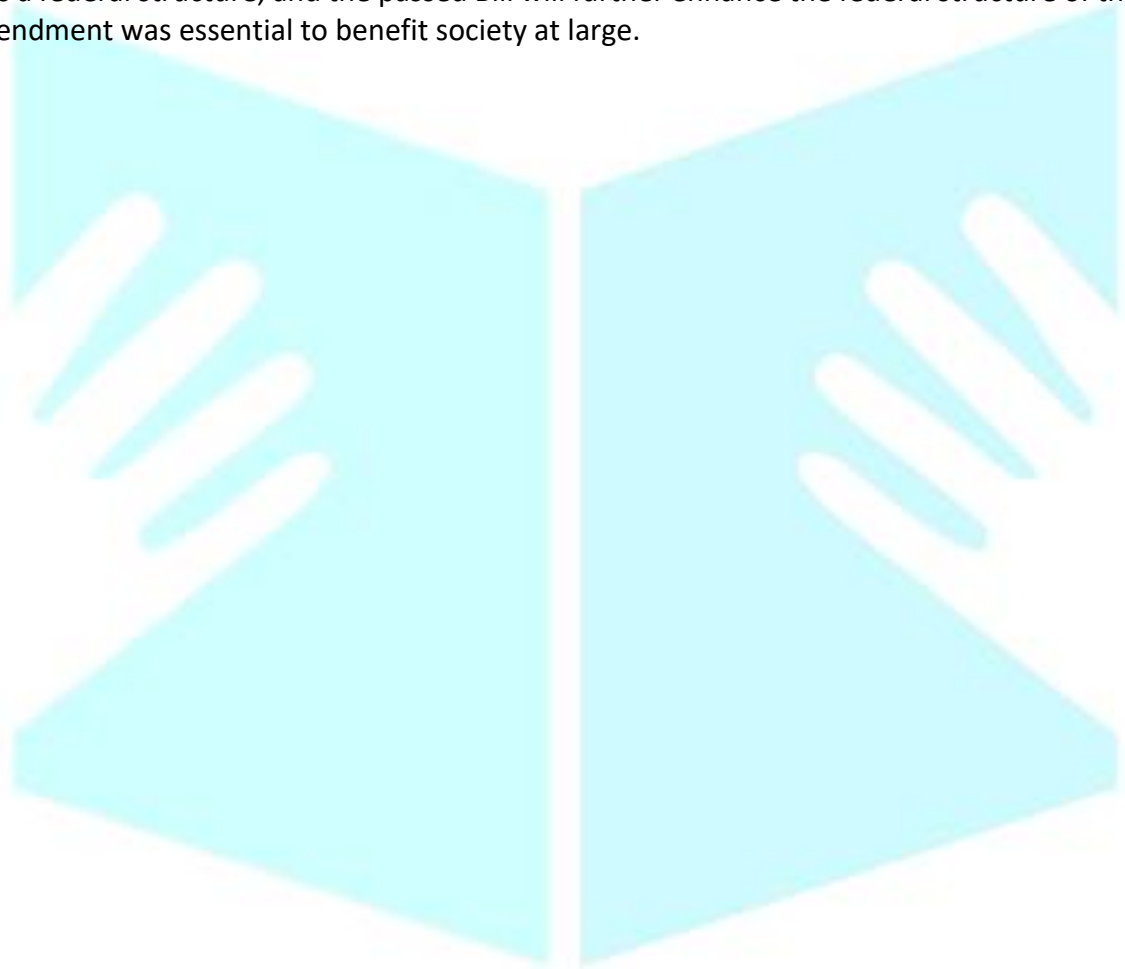
- **Article 338B of the Constitution** mandates the central and state governments to consult the NCBC on all **major policy matters affecting the socially and educationally backward classes.**
- The Bill exempts states and union territories from this requirement for matters related to the preparation of their list of socially and educationally backward classes

4.2.4 Significance

- The current Constitutional Amendment Bill is a historic legislation as 671 castes in the country would benefit from it. Therefore, benefitting nearly one-fifth of the total OBC communities.
- It will restore the States' rights to maintain a state list of OBCs which was taken away by a Supreme Court interpretation.
- It will allow states to respond quickly to socio-economic requirements which are specific to a state or region.

4.2.5 Conclusion

India has a federal structure, and the passed Bill will further enhance the federal structure of the country. This amendment was essential to benefit society at large.



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