

**Social Justice Measures Required to be Undertaken (and sincerely and thoroughly implemented) in order to achieve the Constitutionally mandated goal of Social Equality. i.e., Equality of Scheduled Castes (SCs), Scheduled Tribes (STs) and Socially and Educationally Backward Classes (SEdBCs) with Socially Advanced Castes (SACs) in all Parameters of Development, Welfare and Life**

**A ROAD-MAP**

**[formulated by Shri P. S. Krishan, IAS (Retd), former Secretary to Government of India and furnished to Different Governments and Leaders of Political Parties over past many years, updating it from time to time on the basis of subsequent developments]**

This Road-Map is based on

- (a) The Report dated 1.9.1980 of the Planning Commission's Working Group on Development of SCs in the VI Five-Year Plan, under my Chairmanship, the first ever Working Group for SCs, and the Report (1997) of the Working Group on Development of SCs in the IX Plan, also under my Chairmanship
- (b) The Report (1997) of the Planning Commission's Working Group on Development of Socially and Educationally Backward Classes (SEdBCs) in the IX Five-Year Plan, under my Chairmanship, the first ever Working Group for SEdBCs, and the Report (2001) of the Working Group on Development of Socially and Educationally Backward Classes in the Xth Plan, also under my Chairmanship
- (b) The recommendations of Working Groups set up in 1990 as part of the Birth Centenary Celebrations of Dr Babasaheb Ambedkar and for which I, as the then Secretary, Ministry of Welfare, provided guidance and inputs
- (b) Dalit Manifesto 1996 — the Rights and Entitlement of SCs, STs and SEdBCs [also included as Appendix 1 in my book, "Empowering Dalits for Empowering India: A Road-Map", Manak Publications, Delhi, 2009], formulated by me under the auspices of the National Forum for Social Justice (NAFSJ) and furnished to all Parties; adopted by the United Front as part of its Common Minimum Programme (CMP) [relevant extracts of this CMP are included as Appendix II in my book "Empowering Dalits for Empowering India: A Road-Map", op.cit.]
- (c) Himalaya Proclamation of Rights and Entitlements of SCs, STs and SEdBCs including SEdBCs of Minorities, formulated by me under the auspices of the NAFSJ and issued by the Rashtriya Dalit Chintan Shivir held on the 15th and 16th April, 2005 at Mussoorie, organized in the Dr. Babasaheb Ambedkar Birthday Week by the NAFSJ
- (d) Draft Common Minimum Programme, 2009 in respect of SCs, STs and SEdBCs, formulated by me on behalf of 9 organizations of Dalits and SEdBCs and issued to Political Parties for adoption in the run-up to the Lok Sabha Elections 2009
- (e) My country-wide first-hand in-depth knowledge and experience spanning more than seven decades, including my period as an IAS officer from 1956 to 1990.
- (f) My consultation sessions with those working for these deprived classes over the years in different parts of the country.

P. S. Krishnan

## **A. LEGISLATIONS REQUIRED FOR BRINGING ABOUT EQUALITY FOR SCHEDULED CASTES AND SCHEDULED TRIBES**

### **I. Legislations Exclusively for SCs and STs**

#### **(1) National Legislation for Special Component Plan for Scheduled Castes (SCP) and Tribal sub-Plan (TsP) and Scheduled Castes and Scheduled Tribes Development Authorities**

The legislation should, among other things, provide for

- Setting apart, as the corpus of the SCP, before the Plan/developmental outlay is allocated sector-wise and Ministry/Department-wise, a proportion of the total outlay which is not less than the proportion of the SC population in the total population of the country in the case of the Central Plan/developmental outlay and of the respective States in the case of State Plans/developmental outlays.
- Planning and allocations for programmes and schemes relevant to SCs and issue of sanctions of funds should be undertaken to the extent of these two corpus outlays solely on the basis of the needs and priorities respectively of SCs in keeping with the overarching goals of their economic liberation, educational parity at all levels with the Socially Advanced Castes (SACs), equality in all developmental and welfare parameters with the SACs, and social dignity and security, and consisting of schemes, programmes and projects, of which the beneficiaries are only SC individuals, SC families, SC groups and SC habitations and SC institutions, and which will eliminate the gap between SCs and SACs in each and every parameter of development and welfare.
- Entrustment of this corpus and the task of relevant planning and issue of sanctions and close monitoring of implementing Ministries/ Departments/other Agencies to whom funds are sanctioned from the SCP, timely remedial corrections, etc., to dedicated expert bodies, namely, the National SC Development Authority (NSCDA) for the Central Plan, the State SC Development Authorities (SSCDAs) in each State and UT for the State Plan and the District SC Development Authorities (DSCDAs) in each district for implementation, monitoring and, based on wide consultations from the village-level upwards, feedback to NSCDA and SSCDAs to facilitate Plan formulation and, where required, timely corrective measures where required; vesting functional, financial and administrative autonomy in the NSCDA and SSCDAs; and providing all functional facilities that they need and ask for. The full-time Members of the NSCDAs and SSCDAs (apart from ex-officio Members) should be persons of relevant expertise and devotion to the task of the development and progress of SCs.
- Similar steps for STs and Tribal sub-Plan (TsP), utilizing in particular the people's structure created under the Panchayats (Extension to Scheduled Areas), Act (PESA) and, on the basis of the needs and priorities of STs, in keeping with the overarching goals mentioned in the case of SCs and SCP and in addition the overarching goal of protection of their distinct cultures and cultural identities and territorial and local autonomy.
- Restoration of the original meaningful name of "Special Component Plan for Scheduled Castes (SCP)" which existed from 1978 to 2006 instead of the downgraded name of Scheduled Castes sub-Plan (SCSP) introduced in 2006 as what SCs need and are entitled to is a Plan and not a sub-Plan.

I have prepared the first draft of a Bill named "*Special Component Plan for Scheduled Castes and Scheduled Castes Development Authorities Bill, 2011*" incorporating the above points with necessary details, which after elaborate deliberations was adopted by the Planning Commission's and Ministry of Social Justice & Empowerment's 'Sub-Group-I on Perspective Planning for Empowerment of Scheduled Castes during the XII Plan' (Annexure-I of its Report dated 1 August, 2011). The final draft after further consultation was made available to the Planning Commission, the Government of India and leaders of different Parties. Later, I made a combined Bill incorporating the

Tribal sub-Plan and Tribal Development Authorities in the above Bill, and was sent to the UPA-II Government.

If the SCP and TsP are formulated on the above basis, large untied funds will be available for programmes and schemes which directly and exclusively benefit SCs and STs and thereby remove the gap between them and the SACs. For eg., from the developmental outlay of the Central Budget of 2018-19, Rs 168398.83 Crores for SCP and Rs 87242.77 Crores for TsP would have been available, and, in addition, more than these amounts from the State Budgets.

After a lot of delay the UPA-II Government (Ministry of Social Justice & Empowerment) prepared a draft Bill which contained some positive features but also suffered from dilution of certain important provisions in the draft Bill suggested by me in association with a large number of SC and ST organizations and lacunae which leave scope for distortion in the planning process in future. Finally, the UPA Government let down the SCs and STs in this vital area by the then Prime Minister directing the Minister for Social Justice not to bring the Bill to the Cabinet and to the Parliament, even though the Bill was ready with the Ministry of Social Justice & Empowerment, and dropping the then Minister for Social Justice & Empowerment from the Cabinet at that crucial stage and entrusting that important Ministry with important legislations before it to the additional charge of a Minister of another heavy Ministry who was also burdened with the Budget of that Ministry (Railways).

Meanwhile, on account of the democratic pressure created by the large mobilization of Dalit activists in Hyderabad, for which they could secure the support of all political parties without exception, the AP Government moved a Bill and the AP legislature enacted the Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilization of Resources) Act on December 2, 2012. While the Act is a pioneering one and contains positive aspects, there are some negative aspects in it, apart from dilution of certain important provisions in the Bill suggested by me in association with SC and ST organizations. After the bifurcation of Andhra Pradesh State, this Act was made applicable to both Andhra Pradesh and Telangana State. Telangana State has made certain amendments to the Act, but it remains materially the same as enacted by the pre-bifurcation Andhra Pradesh. The Karnataka State has also enacted a Bill titled "The Karnataka Scheduled Castes sub-Plan and Tribal sub-Plan (Planning, Allocations and Utilization of Financial Resources) Bill 2013" on 4 December, 2013 which is broadly similar to the Andhra Pradesh/Telangana legislation.

But, State Acts are no substitutes for a Central Act which is necessary for ensuring basic uniformity in essentials with scope for variations based on State and regional features.

Recently a National Forum for SCP and TsP was set up. This Forum organized a National Workshop at Delhi on 18.08.2016. Participants from different States including UP, Punjab, Delhi, Rajasthan, Orissa, Jharkhand, Maharashtra, Gujarat, Karnataka, Telangana, Andhra Pradesh, Tamil Nadu and Kerala took part in the Workshop. After the Workshop, a 5-Member delegation led by me called on the Union Home Minister. On behalf of the delegation and participants, I handed over to him a copy of the draft Bill prepared by me. I conveyed to him the unanimous desire of the participants in the National Workshop and also of all others working for the SCs and STs that this draft Bill be accepted by the Government and enacted in the Parliament's Winter Session 2016. I reminded him of the statement he had made in Hyderabad in 2013 that the national legislation for SCP and TsP would be enacted when his Party would come to power at the Centre. He remembered his statement and promised his full support for the enactment of the national legislation.

I discussed this further on 23.08.2016 (preceded by a preliminary discussion on 16.08.2016) with the new Minister of State for Social Justice & Empowerment. In the meeting on 23. 08. 2016, officers from the Ministry of Social Justice & Empowerment and the NITI Aayog were present. Subsequently I also discussed this with the Union Minister for Social Justice & Empowerment on 01.09.2016. I handed over the above draft Bill to both of them. But the national legislation has not yet materialized. This is a crucial key for comprehensive and holistic development of SCs and STs and books no further delay.

The State Units of the National Forum for SCP and TSP have also organized State-level Workshops in different States such as Gujarat, Rajasthan, Madhya Pradesh, Punjab, Haryana, Uttar Pradesh, Maharashtra, and requested the respective Chief Ministers and Chief Ministers of Kerala, Bihar etc to enact State legislations for SCP and TsP in their respective States. The responses of all the Chief Ministers were positive, but action is yet to be taken by them.

**(2) Urgent need for enactment of legislation to continue reservation for SCs, STs and SEEdBCs in recruitment to faculty posts in Universities/Colleges/Other Educational Institutions by taking the whole University/College/Other Educational Institution as the Unit for implementing reservation, to rectify dilution of Constitution-based policy and procedure consequent on Allahabad High Court's judgment on 7.4.2017 and other High Court judgments cited in it on account of failure of MHRD/UGC to place background and rationale of policy and procedure before the High Court**

- (a) Reservation for SCs, STs and Socially and Educationally Backward Classes (SEEdBCs) in recruitment to faculty posts in universities/colleges/other educational institutions was being implemented with the whole university/college/other educational institution as the unit for implementing reservation. But this procedure, based on the Guidelines issued by the UGC on 25. 8. 2006, was upset by the judgment of the Allahabad High Court in Vivekanand Tiwari case on 7.4.2017, which directed that each Department be taken as the unit for implementing reservation, on the ground, stated in the judgment, of the need to secure the presence of SCs, STs and SEEdBCs in all Departments.
- (b) The UGC's Guidelines of 25.8.2006 was based on the O.M. dated 2.7.1997 of DoPT, which is the nodal Ministry for reservation. The DoPT adopted this procedure, taking note of the fact that in a number of cases, there are only single posts in Government Departments/PSUs/Institutions to which application of reservation is not permissible constitutionally as it amounts to 100% reservation. Such Departments/Institutions have single posts which have the same status and pay-scale and similar prescribed qualifications. Grouping together such single posts as a cadre or unit for purposes of application of reservation quota made it possible to get over this problem. This facilitated the speeding up of fulfillment of the goal of reservation and reaching the level prescribed for SCs, STs and SEEdBCs, in accordance with the Constitutional mandate of Equality and Justice, which includes Social Equality and Social Justice. **This was adopted by the MHRD and UGC for educational institutions and all posts in a University/college/education institution with similar qualification prescribed (say Ph.D, though the subject may vary) and which have the same pay-scale and status (say Professor or Associate Professor/Reader or Assistant Professor/Lecturer) were clubbed together and reservation quota applied.**
- (c) Following the Order of the Allahabad High Court the UGC issued an Order on 5.3.2018 reverting back to the pre-2006 procedure of taking the whole University/College/Educational Institution as the unit for applying reservation. This was done with the approval of the Ministry of HRD.
- (d) As soon as I came to know that the UGC's Standing Committee was going into the matter with a view to reverting to the pre-2006 procedure of treating the Department as the unit, I wrote to the Minister for HRD on 24.10.2017 requesting him not to accept the proposal for detailed reasons which I furnished. I wrote to him again when I came to know that the UGC had sent its proposal to the Ministry's approval. I followed it up with a letter to the Minister and Secretary, Higher Education when I came to know that the MHRD had issued its approval to the proposal of the UGC's Standing Committee.
- (e) The MHRD and UGS soon realized the deleterious consequences, contrary to the Constitutional mandate of Equality and Justice, including Social Equality and Social Justice, of reverting back to the pre-2006 procedure of treating each Department as the unit for reservation from the following examples, which I pointed out to the Minister and Secretary, HRD in my letters dated 13.04.2018 and 04.05.2018.

- Post-UGC order of 5.3.2018, the Indira Gandhi Tribal University, Amarkantak, Madhya Pradesh issued an advertisement for 52 posts of Professors, Associate Professors and Assistant Professors. If the whole university had been taken as the unit, at least 20 posts would have been reserved for SCs, STs and SEEdBCs. But the advertisement issued after the UGC's order provided only for one post of reservation. Even that one post is not for tribals, though this is the only tribal university in the country and it is the only Central university which has the country's only Vice-Chancellor belonging to STs.
  - Another instance is the BHU's projection of reserved quotas if the Department as the unit is taken, which shows that reserved posts will be reduced by half in the case of SCs, by about 80% in the case of STs and by 30% in the case of SEEdBCs. The advertisements issued by the Harcourt Butler Technical University, Kanpur and North Orissa University also show such severe damage to reservation for SCs, STs and SEEdBCs, contrary to the Constitutional mandate.
- (f) After my letters to Minister for HRD and Secretary, HRD with copies to the Minister for Social Justice & Empowerment, and also after the UGC's order evoked wide legitimate resentment among SCs, STs and SEEdBCs, the Minister for Social Justice and Empowerment also wrote to the HRD Minister to withdraw the UGC's order of 5.3.2018.
- (g) As a result within a few days, the MHRD, understanding the grave import of the reversion to the pre-2006 system, retraced its step and filed an SLP in the Supreme Court against the judgment of the Allahabad High Court in Vivekanand Tiwari and Anr vs Union of India and 5 Ors dated 07.04.2017, which is the genesis of the UGC's ill-conceived order of 5.3.2018.

**(h) The MHRD's SLP is still pending in the Supreme Court.**

The judgment of the Allahabad High Court in Vivekanand Tiwari dated 07.04.2017 was the outcome of the apparent failure of the counsels of the MHRD and the UGC to present before the Court the Constitution-based rationale for the impugned procedure of treating the University/college/educational institution as the unit. They seem to have only mechanically placed the communications of the Ministry of Personnel and consequential orders of the MHRD and UGC. They did not explain the

- (i) very poor presence of SCs and STs in teaching posts at different levels in the universities and poor presence of SEEdBCs
- (ii) reason why the policy of bunching together similar posts was introduced,
- (iii) real reason why the SCs and STs are not present in every department,
- (iv) the consequence, that could not have been the intention of the Hon'ble High Court, of treating the Department as the unit, which, contrary to the stated intention of spreading the presence of SCs, STs and SEEdBCs in all Departments, will be elimination of even their very limited presence in the faculty position in Universities/Colleges/Educational Institutions.

(i) Realizing the danger of drastic reduction of reserved posts available for SCs, STs and SEEdBCs, which really defeats the Constitutional goal of bringing about Equality for SCs, STs and SEEdBCs through Reservation, as seen from the example of the advertisement of the Indira Gandhi Indira Gandhi Tribal University, Amarkantak, Madhya Pradesh and other examples including the BHU's projection of reduction by half in the case of SCs, by about 80% in the case of STs and 30% in the case of SEEdBCs in reserved quotas if the Department is taken as the unit for reservation, which the Government cited in its SLP filed in the Supreme Court against the Allahabad High Court's order in Vivekanand Tiwari, the **Ministry of HRD issued instructions to the UGC** and thereupon **the UGC on 9.7.2018 issued a communication to all Universities/Colleges and other Educational Institutions to put on hold their faculty recruitments on the basis of Department as the unit for reservation until the SLP filed by the UGC in the Supreme Court is decided.**

(j) Now the pitch has been queered by the Allahabad High Court's order of 30. 11. 2018 quashing the UGC's above communication of 9.7.2018 to all universities/colleges/other educational institutions, on which the MHRD has sought AG's legal advice.

The order of Allahabad High Court of 30.11.2018 will cause the damage that the Ministry of HRD, though belatedly, tried to prevent. The SLP filed by the MHRD in the Supreme Court, which has already been pending since long, is not likely to reach finality in the foreseeable future. Realizing this, I understand that, the MHRD moved for an Ordinance, but that seems to have got stuck in the Law Ministry. There is no alternative, but to undo the damage through the enactment of a legislation in the current Winter Session of Parliament, rectifying the dilution of the Constitution-based policy and procedure and restoring the procedure of treating the whole university/college/educational institution as the unit for the purpose of reservation.

**(3) Legislation for Reservation for SCs, STs and BCs in Professional, Technological and other Higher Education Institutions in the Private sector, so as to give effect to the real purpose of the Constitution (Ninety-third Amendment) Act 2005 inserting new Clause (5) in Article 15 which was unanimously passed by the Parliament**

The *Inamdar* judgment of the Supreme Court in 2005 held that under the existing Constitutional provisions, the Government has no power to require private educational institutions to provide Reservations. There was uproar in the Parliament and consequently the Constitution (Ninety Third Amendment) Act, 2005, inserting new clause (5) in Article 15, was passed with virtual unanimity. This Amendment and the new Clause empowered the State to provide for Reservation by law in all educational institutions, whether Government and Government-Aided or Private (except Minority educational institutions). Pursuant to it, the Government of India enacted the Central Educational Institutions (Reservation in Admissions) Act, 2006 to provide reservation for SCs, STs and Socially and Educationally Backward Classes in professional, technological and other higher educational institutions; this was limited only to the Government and Aided educational institutions and did not cover the un-Aided private educational institutions. Reservation in Government and Aided institutions could have been taken care of under the old Clause (4) of Article 15 and in fact many States and Centre too have provided reservation for SCs and STs, and in some cases also for BCs, in Government and Aided educational institutions by virtue of their powers under Clause (4). The real purpose of Clause(5) was to demolish the walls which excluded SCs, STs and BCs from private educational institutions by enacting legislation for reservation for SCs, STs and SEEdBCs in them.

The recommendation to enact law for Reservation in the professional and other higher educational institutions of the private sector has been made by the Group on Perspective Planning for Empowerment of Scheduled Castes during the XII Plan period (Report 2011), of which I was the Chairman, and by the Ministry of HRD's Task Force on Educational Development of Scheduled Castes (Report 2012), of which I was a Member. I have also raised this issue at the successive meetings of the National Monitoring Committee for Education of Scheduled Castes, Scheduled Tribes and Persons-with-Disabilities, presided over by successive the HRD Ministers Shri Kapil Sibal, Shri Pallam Raju and Smt. Smriti Irani and taken it up with Shri Javadekar. Everything is ready except a policy decision. It should not be evaded further in view of the Constitution (Ninety-third) Amendment.

Without this legislation and its effective implementation, the field of higher education will continue to remain as a "Special Educational Zone" which is barred to the SCs and STs and also to the SEEdBCs except for a small upper crust of landowning BCs.

#### **(4) Legislation for Reservation for Scheduled Castes and Scheduled Tribes in Posts and Services under the State**

Reservation can be provided by legislation or by executive order. The legislative route is always better. The executive order route is less transparent and there is less possibility of accountability. Pressure has been exerted by those working for SCs and STs including myself to provide a statutory base for reservation in posts and services under the central government.

After detailed discussions of pros and cons at a meeting, in which, I as the then Secretary, Ministry of Welfare, moved for legislation, Shri V. P. Singh, the then Prime Minister, decided that legislation should be moved for this purpose, as proposed by me. I prepared a draft Bill, which was approved by the then Minister Shri Ram Vilas Paswan, but it was intercepted on the way and prevented from reaching the Prime Minister, Shri V.P. Singh.

This legislation was committed in the CMP of the UPA 2004, on my advice, and solemnly committed in the President's Address to the Joint Session of both Houses in 2004. Yet, certain subterfuges were resorted to which facilitated delay till 2008. Then with only one year left for the 14<sup>th</sup> Lok Sabha to be dissolved at the end of its five year tenure, a Bill was introduced in the Rajya Sabha and passed without time and scope for scrutiny and discussion. When the Bill was due to go to the Lok Sabha, it was noticed that there were so many exceptions, exemptions and exclusions in the Bill that it was a de-reservation Bill rather than a reservation Bill. SC Ministers and other leaders requested me to suggest the amendments required in the Bill. I prepared a comprehensive list of amendments which were discussed and accepted at a meeting of SC and ST Ministers and MPs in February 2009. They approached Shri Pranab Mukherjee, the then Finance Minister, who, I understand, promised that at least important amendments suggested would be incorporated in the Bill to be introduced in the Lok Sabha. This did not happen, apparently on account of the reasons known to the then Prime Minister, Dr. Manmohan Singh, and the then Minister of State in charge of the subject Shri Prithviraj Chauhan, and the Bill lapsed.

I have prepared a draft Bill incorporating the provisions in the amendments prepared by me and approved by the meeting of SC and ST Ministers and MPs, thereby removing the dangerous provisions in the earlier Government Bill and providing some teeth like the establishment of Tribunals for Justice in Reservation (Arakshan Nyay Adalats) and penal provisions. This has been furnished to the Ministers of Social Justice & Empowerment of the past and present Governments.

#### **(5) Constitutional amendments to effectively and tightly protect the rights of SCs and STs to reservation in promotion**

When the Supreme Court in its judgment dated April 27, 2012, invalidated Section 3(7) of the Uttar Pradesh Public Servants (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 and Rule 8A of the U.P. Government Servants Seniority Rules, 1991, that was inserted by the U.P. Government Servants Seniority (3rd Amendment) Rules, 2007, there was a lot of confusion and misunderstanding that reservation for promotion for SCs and STs has been struck down by the Supreme Court. In fact the Supreme Court in this case has not struck down Reservation in promotion for SCs and STs as such. It has only struck down the UP Act and Rule for failure to fulfill certain conditions which it, based on certain observations in the Nagaraj case judgment of 2006, felt ought to have been furnished, but not complied with by the UP Government. There were also similar judgments by different High Courts and the Supreme Court, invalidating, for the same reason, legislations/executive orders of different State Governments, which provided reservation in promotion for SCs and STs.

Reservation in promotion was introduced in 1955 and was upheld by the Supreme Court in the *Rangachari* (1962) and *Akhil Bharatiya Soshit Karmachari Sangh* (1986) cases. But what was considered to be a settled matter was unsettled in the Supreme Court's *Mandal* case (*Indra Sawhney vs Union of India*) judgment (1992) which, in the portion in which it dealt with reservation in

promotion, held that Article 16(4) does not empower the State to provide reservation in promotion – this happened even though that case did not pertain to SCs and STs, but to the Socially and Educationally Backward Classes; though in the impugned order there was no provision of reservation in promotion for BCs; though reservation in promotion existed only for SCs and STs; and SCs and STs were not parties before the Supreme Court in that case.

The Mandal judgment provided a five-year interval for the Government to make necessary arrangements to comply with the Court's decision, during which reservations already provided in the matter of promotion would continue to operate. It created great anxiety among SCs and STs, their representatives and those who were working for them and there were numerous Conferences and consultations on how to protect reservation in promotions for SCs and STs in some of which I also participated as an invitee and guide. This was also taken up with the Government. After three years, the Executive moved a Constitution Amendment Bill which the Parliament enacted as the Constitution (Seventy-Seventh Amendment Act), 1995 inserting a new Clause (4A) in Article 16 providing for Reservation in promotion for SCs and STs, thus restoring the position that obtained from Rangachari onwards till *Mandal*. Subsequently, after the Supreme Court judgments in *Virpal Singh Chauhan* case, *R.K. Sabharwal* case, *Ajit Singh Januja* case, *Ajit Singh (II)* case etc, the Constitution (Eighty-Fifth Amendment) Act, 2001 was enacted to provide for consequential seniority in favour of SCs and STs promoted through Reservation. In between there was the Eight-First Amendment Act, 2000 inserting Clause (4B) to exclude backlog posts being filled up in a year from the ceiling of 50% reservation (ceiling according to the Supreme Court's interpretation of Constitutional provisions in its *Mandal* case judgment). About the same period, the Constitution (Eighty-Second Amendment) Act, 2000 was enacted inserting a new proviso to Article 335 enabling the State to relax qualifying marks in any examination or lowering the standards of evaluation for reservation in promotion for SCs and STs. All these amendments were challenged and were together considered by the Supreme Court in *M. Nagaraj and Ors vs Union of India and Ors*. It is the judgment dated October 19, 2006 by a Constitution Bench in *Nagaraj* case (2006) 8 SCC 212 : AIR 2007 SC 71) that was the basis for the Supreme Court's judgment dated April 27, 2012 regarding the Uttar Pradesh Public Servants (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994, and also the basis for similar judgments of different High Court and the Supreme Court invalidating similar provisions of some other States which provided reservation in promotion for SCs and STs.

The *Nagaraj* judgment while upholding the constitutional validity of the Constitution (Seventy-Seventh Amendment Act), 1995 inserting Clause (4A) in Article 16 inter alia held that

(i) The courts have held that the Right to Equality under Article 16(1) is the fundamental right of every citizen; but clauses (4) and (4A) of Article 16 do not confer a fundamental right on the classes for whom reservation is provided or is sought to be provided.

(ii) Clause (4) of Article 16 is discretionary. SCs and STs, and also BCs, cannot claim reservation as a fundamental right. It is a matter of the State's discretion to provide or not to provide reservation. Similarly clause (4A) of Article 16 is also discretionary and SCs and STs cannot claim reservation in promotion as a fundamental right as it is a matter of State's discretion.

(iii) If the State considers it necessary to provide reservation, including reservation in promotion, it must show by data that the following conditions for exercising the discretion exist:

- (a) Compelling reasons
- (b) Backwardness
- (c) Inadequate representation in the services

The judgment has laid down that the following should also be ensured:

- (d) Exclusion of "Creamy layer"
- (e) Efficiency of administration required by Article 335 should not be compromised
- (f) 50% limit should not be breached
- (g) Reservation should not be extended indefinitely



These conditions have been laid down in *Nagaraj* which pertain to constitutional amendments for protecting reservation in promotion for SCs and STs existing since 1955 and upheld in *Rangachari* in 1962 and in the subsequent judgments till the Mandal judgment in 1992. While upholding the Constitutional validity of these amendments notably the 77<sup>th</sup> amendment and the Eighty-Fifth, Eighty-First and Eighty-Second amendments, the *Nagaraj* judgment laid down these six conditions.

The Supreme Court in the UP case and various High Courts and the Supreme Court in other State cases, have not struck down Reservation in promotion for SCs and STs as such. They have struck down the UP Act and Rule and other similar provisions of different States, as some conditions laid down in *Nagaraj* were not met. Article 16 (4A), which permits reservation in promotion for SCs and STs, remains in the Constitution and has not been struck down.

But, there was a general misunderstanding that the Supreme Court in the UP case struck down reservation in promotion. The situation, misunderstood to be arising from the Supreme Court judgment, was raised in the Parliament on 3<sup>rd</sup> May, 2012 and engaged the serious attention of the Rajya Sabha. MPs of SCs and STs and also other MPs, cutting across Party-lines, expressed deep disappointment with the judgment, anxiety about its possible cascading effect completely destroying reservation in promotion for SCs and STs and their desire that necessary Constitutional Amendment should be enacted to fully protect the purpose of the 77<sup>th</sup> Amendment, inserting Clause (4A) in Article 16.

Consequently, the UPA-II Government drafted a Constitution amendment Bill titled “The Constitution (One Hundred Seventeenth Amendment) Bill, 2012. It was passed by the Rajya Sabha on 4 September 2012. But that Bill was not introduced in the Lok Sabha. The Government Bill as passed by the Rajya Sabha is inadequate to effectively protect the right of SCs and STs for reservation in promotion. I had prepared a better draft of amendments required and sent to the Government along with justification for amendments proposed by me.

The observations of the Supreme Court at (i) and (ii) above have to be contested. In my view Clause (4) and (4A) of Article 16 and other similar clauses of Article 15 etc. are also fundamental rights arising from the Constitutional right to Equality. The conditions prescribed by *Nagaraj* at (iii) above are also inappropriate. Some of them arise from confusion between SCs and STs, on the one hand, and SEEDBCs, on the other. For example, exclusion of “Creamy Layer” cannot arise in the case of SCs and STs as the application of that concept to the SCs and STs has been expressly precluded by the Supreme Court in its 9-Member Bench judgment in the Mandal case in which the Supreme Court laid down the principle of exclusion of Socially Advanced Persons/Sections (SAP/S) [“Creamy Layer (CL)”] from castes identified as socially and educationally backward. The criterion “backwardness” does not arise in the case of SCs and STs who have been identified on account of criteria arising from severer and harsher oppression – “Untouchability” in the case of the former and isolation under vulnerable conditions in the case of the latter. “Compelling reason” is a concept arising from American jurisprudence in view of lacunae in it, which do not exist in the Constitution of India. All these irrelevant and inappropriate conditions laid down by *Nagaraj* in the context of SCs and STs have been countered in my draft sent to the Government. If that is passed, it will provide an opportunity to get the irrelevant and inappropriate conditions laid down by *Nagaraj* overruled by a Constitutional Bench or a larger Bench because this Constitution Amendment like any other action taken for promoting justice for SCs and STs will automatically and almost invariably be challenged.

The Government recently in 2018 filed an appeal in the Supreme Court against the *Nagaraj* conditionalities. The Supreme Court in its judgment dated 26. 09. 2018 in *Jarnail Singh & Others vs Lachhmi Narain Gupta & Others* struck down the *Nagaraj* conditionality that quantifiable data of continuing backwardness should be shown in case reservation in promotion is to be given to SCs and STs, which is irrelevant to the SCs and STs, but the Supreme Court judgment has reiterated the “Creamy Layer” conditionality, which and other conditionalities makes it virtually impossible to continue reservation in promotion for SCs and STs. At this stage, the only way out is a Constitution amendment. I have sent a draft of this Constitution Amendment to the Government.

The Bill of 2012 has since lapsed with the end of the term of the 15<sup>th</sup> Lok Sabha. Now, the comprehensive draft Amendments enclosed at Annexure-1 needs to be enacted.

**(6) Legislation for prohibiting purchase or occupation in any form of SC lands by non-SCs**

SCs emerged in history as a social class of landless agricultural and related labourers. However, various circumstances enabled them to acquire some limited land – much less than their proportion in the rural population. The little they possess should not be allowed to be grabbed by others which is happening on a substantial scale. This was a problem underlying the recent Dangawas atrocity in Rajasthan in which four SCs were killed by being run over by tractor and partly underlying the long-standing atrocity against SCs in Bhagana, Haryana.

Therefore, a tight legislation is necessary to protect SC ownership of their lands and safeguard the actual possession of their lands.

**(7) Scheduled Tribes Land Transfer Regulations (STLTRs) / Legislations in States where such regulations / legislations do not exist and strengthening of existing STLTRs/Legislations and / or National Legislation prohibiting purchase or occupation of ST lands by non-STs.**

Unlike the SCs, the STs are not a landless class. They have traditionally been owners / collective owners of lands in their territorial homeland. But, after the commodification of land during the colonial rule, their lands are being grabbed by non-tribals. The pace of this dispossession has increased after Independence. On account of tribal revolts like the Santhal rebellion in Bihar (now Jharkhand) and Rampa Futuris in the tribal tracts of coastal Andhra, certain protective regulations prohibiting transfer of ST lands in tribal areas to non-tribals were enacted. Subsequently in some States legislation to the same effect were enacted. These regulations and legislations now cover 12 States. Such regulations and legislations have to be enacted where they do not exist. Where they exist and where they will be enacted in future, the provisions have to be tightened.

**(8) Amendment to the Constitution by inserting in the Concurrent List (List 3) of the Seventh Schedule, the following items:**

*“Protection, Welfare, Development and Empowerment of Scheduled Castes”*

*“Protection, Welfare, Development and Empowerment of Scheduled Tribes”*

It is an anomaly that the Lists in the Seventh Schedule contain items like “bankruptcy and insolvency” (entry no. 9 of List 3), “lunacy and mental deficiency” (entry no. 16 of List 3), “prevention of cruelty to animals” (entry no. 17 of List 3), “protection of wild animals and birds” (entry no. 17B of List 3), “betting and gambling” (entry no. 34 in List 2), e.t.c., but there is no explicit entry pertaining to SCs and STs, though it is implicit in entry no. 97 of List I of the Seventh Schedule read with Article 46 that the protection, welfare and empowerment of SCs and STs is a Concurrent subject. It is better and appropriate that what is implicit is made explicit by amending the Constitution inserting in the Concurrent list (List 3) of the Seventh Schedule the above items.

**(9) Amendments to the PCR Act, to make the optional provision in Section 15A(2) mandatory**

The implementation of the PCR Act is farcical. Its serious and effective implementation must be started.

**(10) Amendments to the existing Bonded Labour System (Abolition) Act 1976**

by introducing provisions like transfer to bonded labourers of the assets such as agricultural land, rice mills, quarries etc. in which or in relation to which the bonded labourers are put to work.

Loss of property used for exploitation by bondage will be a severe deterrent in addition to the other punishments prescribed.

The implementation of the Act is casual. Effective implementation must be undertaken.

**(11) Amendments to the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 in order to remove the deficiencies and gaps in the Act of 2013**

The 2013 Act is a good step forward and an advancement over the Employment of Manual Scavengers & Construction of Dry Latrines (Prohibition) Act 1993, but certain provisions which are necessary and which I had drafted and furnished to the Government have not found place in the Act. While getting the Act, as passed, thoroughly implemented, these deficiencies and gaps have to be removed through amendments.

The amendments should specify tight stipulations to ensure release and rehabilitation of existing manual scavengers and their families and preventive rehabilitation for other members of communities from which manual scavengers are drawn so that there is no danger of the place of released manual scavengers being taken by fresh entrants from the same communities.

The amendments should also specify structures and systems for rapid application of modern technology, so that there is no need for manual scavenging, including human beings being required to descend into sewers and human beings being required to manually clean septic tanks, drains etc.

The amendments should also specify and mandate responsibility of specific Governmental organizations like Railways and institutions like Municipalities in the rehabilitation of existing manual-scavengers and providing livelihoods for all members of communities from which manual-scavengers are drawn, so that they do not need to enter into the occupation of manual-scavenging, to replace the liberated existing manual-scavengers, and so that the supply of manual-scavengers ceases to be available.

All these were in the Bill which I had drafted as Member of the Committee of the Labour Ministry (copy enclosed at Encloure-2) and which was sent by the Labour Ministry to the Ministry of SJ&E and was the basis of the Government's Bill which was enacted in 1993. But, the Government's Bill omitted these vital aspects which should now be brought back through a comprehensive amendment, on the basis of the Bill which I had drafted and sent by the Labour Ministry to the Ministry of SJ&E.

The implementation of the Act has to be tightened so that all manual-scavengers including cleaners of sewers, septic tanks, drains etc are fully liberated and all of them and other members of the castes from which manual-scavengers are drawn are provided other dignified means of livelihood, and all those who directly or indirectly cause anyone to work as a manual-scavenger or to go down into sewers or to manual clean septic tanks are punished with deterrent swiftness.

**(12) Restoration of earlier Statutory status of the National Commission for Safai Karmacharis**

The Government has taken a welcome step in getting enacted by the Parliament the Constitution (One Hundred and Twenty-third) Amendment Act to establish a Constitutional National Commission for Socially and Educationally Backward Classes. The fate of the National Commission for Safai Karmacharis (NCSK) has been reversed. It had statutory status and was later deprived of that status. It is now functioning only on the basis of an executive order. In the same spirit, as evinced in the case of the Constitution (One Hundred and Twenty-third) Amendment Act, the NCSK should also be made a Constitutional Commission through a Constitution Amendment.

### **(13) Amendments to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to close the gaps still left**

The POA Act is an important legislation to guarantee, for the SCs and STs, Right to Life and Dignity and Protection from “Untouchability” and Atrocities. In order to strengthen the SC and ST (POA) Act, 1989 and its implementation, a comprehensive set of amendments to the Act and related amendments in the Representation of Peoples Act and CrPC, were formulated by a National Coalition of 70 (the number has swollen to about 500) Dalit and Human Rights Organizations with me as its Chief Advisor on the occasion of the completion of 20 years of the Act. I have communicated this on behalf of the Coalition to the GOI on 19.11. 2009.

These amendments pertained to the following:

- For speedy trials, **establishment of exclusive Special Sessions Courts in every district to try only cases of atrocities with exclusive Special Judges, Special Investigators and Prosecutors** all handpicked on the basis of their proven sensitivity to Social Justice; the present provision of designation an existing Sessions Court as the Special Sessions Court, contrary to my urging at the time of the drafting of the Act is a transparent eye-wash;
- **Adding crimes like murder and massacre; rape, mass-rape and gang-rape; social boycott and economic boycott**, etc., which were omitted, contrary to my urgings at the drafting stage, to the list of crimes of atrocities in Section 3;
- **Protection of victims, survivors and witnesses;**
- **Total rehabilitation of all SC and ST families** in villages where atrocities occur by admitting all SC and ST children there in high quality residential schools and in residential colleges and looking after their entire education at the cost of Government, providing land with irrigation to all SC and ST families and other means of independent livelihood and provision of relief immediately on occurrence of atrocities.

After lot of delay the Government of India (Ministry of Social Justice & Empowerment) under UPA-II prepared a Bill which contained positive features based on the suggested draft amendments mentioned above, but suffered from some dilution and omissions. That Bill was introduced by the then Minister for SJ&E on 12 December 2013 in the Fifteenth Lok Sabha in the first leg of its last session. But, that Government let down the SCs and STs by not moving for the Bill for consideration and passing and dropping the Minister from the Cabinet. All our efforts in which a number of Dalit organizations actively participated could secure only an Ordinance promulgated on 4.3. 2014, just before the announcement of election to the Lok Sabha and the election of code of conduct kicked in. The present NDA Government brought a Bill along the same lines as the Ordinance to replace the Ordinance on 17. 7. 2014 but disappointingly this was referred to the Standing Committee. The Standing Committee gave its report on 19.12.2014 approving the Bill without any substantive change. At last, the Bill was passed by the Lok Sabha on 4.8.2015. The Bill was passed later by the Rajya Sabha.

The Act as passed in 2015 has left certain gaps by omitting certain provisions which were in the draft sent to the Government by me on behalf of the National Coalition. These have to be added by an Amendment Bill to further amend the Act. The following are the important omissions now to be brought into the Act:-

**(i) Inclusion of following atrocities in the Act**

- (a) Murders, Mass Murders, Massacres
- (b) Rape, Mass-Rape, Gang-Rape

(ii) Inclusion of a new Chapter titled “National Monitoring and Enforcement Authority” for creating a non-official body of experienced non-political persons devoted to Social Justice for SCs and STs, for monitoring and enforcement of full implementation of Act, complementary to Governmental systems.

**(14) Legislation to Protect non-SC, non-ST partners in marriages who marry across “Untouchability-barrier” and/or caste-barrier**

An separate Act is necessary to protect the non-SC partner in a marriage across “Untouchability”-barrier or a non-ST partner in marriage across tribe-barrier and to protect couples, neither of whom is an SC or ST, who marry across caste-barrier.

**II. Amendments in Legislations not exclusively for SCs and STs, but which need to spell out provisions for SCs and STs to make them more and specifically beneficial for SCs and STs in view of their special vulnerabilities**

**(1) Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**

Amendments are required in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill 2015, in order to afford protection for the meager lands of SCs and of STs outside Scheduled and Tribal areas as provided in the Act for Scheduled and Tribal areas.

**(2) Amendments in the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)**

Section 12 of the Act makes it compulsory for every private unaided school to admit at least 25%, at the entry level class, of children belonging to “weaker sections” and “disadvantaged groups”. But even after 6 years of the implementation of the Act, no progress has been made in significantly improving the enrollment of SC and ST children in schools, as has been brought out recently by a report of a survey of out of school children commissioned by the Ministry of HRD, Government of India. The “over-comprehensive” wording of clauses under Section 12 of the Act, read with the loose and non-specific definition of the terms “weaker sections” and “disadvantaged groups” in Section 2(ii) (d) and Section 2(ii) (e), have proved to be detrimental to the interests of SC and ST children who are the most deprived of education and who are the most needy of the benefit intended under RTE Act. “Child belonging to the disadvantaged group” has been defined to include not only child belonging to SC, ST and the BC, but also “such other groups having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government by notification”. “Child belonging to weaker section” has been defined as “a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government by notification”. These over-comprehensive and loose definitions enable the private unaided school managements to evade admitting SC, ST and BC children. To remedy this situation, as recommended by the Report, of 1<sup>st</sup> August 2011, of the Sub-Group-I on Perspective Planning for Empowerment of Scheduled Castes during XII Five Plan (2012-2017), of which I was the Chairman, and the Report, of 21 September 2012, of the Task Force on Educational Development of Scheduled Castes, set up by the Ministry of Human Resources Development, Government of India, of which I was a Member, it is necessary to apportion the 25% reservation specified in Section 12 of the RTE Act as follows:-

8% for SC children,

4% for ST children

10% for BC children

3% for the children of other disadvantaged and weaker sections/groups.

Without such specific quotas for SC, ST and BC children, it would be possible for the schools to fill up the 25% quota for “weaker sections” and “disadvantaged” without admitting a single child belonging to SCs, STs and BCs. The 10% quota of BCs should be apportioned among different categories of BCs so that the More, Most and Extremely Backward category of BCs would get their due share out of the 4% BC quota.

There are private institutions which are even now not implementing Section 12 of the Act or not implementing it properly. This should be monitored with continuing vigilance and proper implementation by all private institutions enforced and ensured.

## **B. SCHEMES AND PROGRAMMES REQUIRED TO BRING ABOUT EQUALITY FOR SCHEDULED CASTES AND SCHEDULED TRIBES**

### **I. Schemes for Economic Development and Empowerment of SCs and STs**

#### **(1) (a) Land for All Rural Landless SC Families – and along with them, also for all rural landless agricultural labour ST families and all other rural landless and poor agricultural labour families**

##### **This will**

- fulfill the promise of “Land to the Tiller” of the pre-Independence nationalist movement for Independence,
- Initiate and complete action on the decade-old Governors’ Committee Report which has been put on the backburner. The Governors’ Committee, under the Chairmanship of the late Dr. P. C. Alexander, has shown that there is enough agricultural land with the Government to provide a viable extent of agricultural land to all rural SC families. The Report (dated 1-8-2011) of the Sub-Group-I, with me as Chairman, of the Planning Commission and Ministry of Social Justice & Empowerment’s Working Group on Empowerment of Scheduled Castes during XII Plan (hereafter “Sub-Group-I”), has taken into account the Bhoodan lands and shown that it is enough for all non-SC rural landless agricultural labour families also.
- Initiate and complete action on the Report of the Group of Ministers on Dalit Affairs (2008) set up in 2005 under the Chairmanship of the then Finance Minister Shri Pranab Mukherjee (hereafter Group of Ministers on Dalit Affairs), which made a recommendation in this regard, and which has also been consigned to the backburner.

To complete this long neglected and long-delayed task, essential for striking at the helplessness of SC families, the Task Force method suggested and detailed in the Report of the “Sub-Group-I” should be adopted.

Briefly the Task Force method involves setting up in each Tehsil/Taluk of a small group of empowered officers, namely, a special Tahsildar, a Surveyor and, where necessary, a police officer, with all functional facilities like a jeep, who will go to each village and provide land for every landless SC family by

(i) Giving *patta* to those SC families which are in occupation of Government land for cultivation; and along with them also to landless ST and non-SC-non-ST landless agricultural labour families.

(ii) Evicting ineligible occupants of Government land and giving *patta* with possession to landless SC families; and after providing for SC families, to all landless ST and non-SC-non-ST agricultural labour families.

(iii) Taking stock of all Government lands which can be straightaway assigned / allotted to landless SC families (locally called by names like Assessed Wastes, Gair-mazaruva-Aam), Bhoodan lands etc, and after providing for SC families, to all landless ST and non-SC-non-ST agricultural labour families.

(iv) Where publicly owned lands are not adequate, by purchase of private land and land acquisition (for latter, a small amendment in the definition of “public purpose” in Land Acquisition, Rehabilitation and Resettlement Act, 2013 will be required.

This is extremely important for SCs as they have historically emerged as a collectivity of castes prohibited from owning land and, therefore, even now are the largest component of rural landless labour families.

Along with SCs, all rural ST agricultural labour families should also be provided.

**(b) Irrigation for all Unirrigated but Irrigable Lands of SCs, and along with them also of STs**

These two measures along with legislative and other measures for prevention of grabbing of SC lands by others will, at one stroke, enable rural SC families to

- become economically self-sufficient;
- liberate themselves from humiliating wage-labour,
- prevent exposure of their women to labour in others' fields and compulsion to fall back on child labour to supplement the meagre family income;
- improve nutrition, especially that of pregnant and lactating mothers and children, reduce birth underweight and child malnutrition, sharply reduce neonatal, infant and child mortality and release all their children to go to schools where they should be – in all these parameters the figures for the SCs and STs are worse than those for many sub-Saharan African countries and, therefore, the overall figures for India are shameful.

This will also

- enable them to resist “Untouchability” without fear for the next meal (at present if they cross the line of “Untouchability” or complain against illegal discrimination, they have to face social and economic boycott and sometimes even atrocities including massacres as in Kilvenmani, Tamil Nadu, Bathani Tola and Laxmanpur Bathe, both in Bihar, in all of which all the accused were acquitted, and numerous other instances in different States) and
- the additional production from their lands will remove all doubts and anxieties about adequacy of supplies of subsidized food under the recently enacted National Food Security Act, 2013.

There is sufficient number of successful examples of this transformation in parts of the country, but what is required is a nation-wide comprehensive programme which can be completed in a short period if the political and administrative heads of the Central and State Governments are determined and goal-oriented.

The programmes at (a) and (b) above were included in the UPA's CMP of 2004 and were also solemn commitments of the President of India in his Address to the Joint Session of the Parliament in 2004, but no attempt has been made to undertake them and accomplish them till now, despite my periodic reminders.

**(c) Stopping of the loss of tribal lands and restoration of lost tribal lands**

Unlike the SCs, the STs are not a landless class. They have traditionally been owners/collective owners of lands in their territorial homeland. But, after the commodification of land during the colonial rule, their lands are being grabbed by non-tribals. The pace of this dispossession has increased after Independence. On account of tribal revolts like the Santhal rebellion in Bihar (now Jharkhand) and Rampa Futuris in the tribal tracts of coastal Andhra, certain protective regulations prohibiting transfer of ST lands in tribal areas to non-tribals were enacted. Subsequently in some States legislation to the same effect were enacted. These regulations and legislations now cover 12 States. Such regulations and legislations have to be enacted where they do not exist. Where they exist and where they will be enacted in future, the provisions have to be tightened.

Restoration of these lands has to be completed in one or two years. It will be possible if the Task-Force method is adopted, with a Special Tehsildar and Surveyor for every Tehsil/Taluk in the country which are in the tribal areas or in which there are tribal areas.

**(d) Land Banks for SCs and STs**

Once education at all levels is made really accessible and affordable for SCs and STs, and once health and medical care is made universally available, accessible and affordable for all SCs and

STs, and once economic measures are fully in position to give them adequate economic competence, there would normally be no reason for SC and ST families to sell their lands under distress conditions. However, even after this, and in spite of the legislation proposed for prohibiting purchase or occupation of SC lands by non-SCs and the Scheduled Tribes Land Transfer Regulations / Legislations, existing and proposed [see items (6) and (7) in the List of Legislations at Enclosure-1], there may be situations in which some SCs, and STs, may have inevitably to sell their lands. To provide for such contingencies, a land bank should be established by the Govt. of India in each State for buying such lands from them at the market rate and making such lands available to other SCs and STs so that the total pool of lands with SCs and STs is not depleted.

**(2) Provision of Viable Assets for SCs in Urban Areas**

Most SCs in urban areas being casual labourers and in the unorganized sector, they should all be made owners of viable assets (in many cases, they are hired operators of other people's assets like rickshaws, auto-rickshaws, etc.)

E.g.: All hired pullers/drivers of rickshaws / auto-rickshaws can at one stroke be made their owners. There are many other instances of such possibilities.

Along with SCs, this can and should be done also for STs who are causal labourers in the unorganized sector in the urban areas though not to the same extent as SCs.

**(3) Massive skill development programme along with all necessary resource-related, finance-related, management-related and market-related linkages**

Government has undertaken a skill development programme and also created a new Ministry, namely, Ministry of Skill Development and Entrepreneurship. The coverage that SCs may get under this programme will not be adequate to eliminate their present relegation to the level of wage-labourers and, therefore, a specific skill development programme on a massive scale is required to reach that objective on priority. By this programme, large numbers of SCs can move into modern market-oriented occupations for which there is large demand and need, like plumbing, electrical repairs etc. This should be undertaken to cover all SCs who cannot be provided viable irrigated land or other independent viable assets despite all efforts as at 1 and 2 above.

Along with SCs, STs can and should be provided for by this programme.

**(4) A massive, systematic and pragmatic programme of housing for all SC families and provision of all essential facilities for all SC localities/habitations, rural as well as urban, like safe drinking water supply, electricity, sanitary toilets which does not require to be serviced by "manual scavengers", drains, sanitation, all-weather internal roads, and all-weather link roads to all places they have to go to, including schools, market places, funeral places (in many villages they do not even have funeral ground where they can bury / cremate their dead in peace), etc. should be undertaken and completed (SCs are typically confined to humanly uninhabitable separate localities, devoid of many essential facilities and amenities, which are often in fact available in the rest of the village).**

House construction programmes have been undertaken by some State Governments and successive Central Governments. But this has to be undertaken and implemented comprehensively covering all SC families. In view of the sub-human conditions of SC residences and residential areas, focus should be on SCs and they should be taken upon priority.

**(5) Special Programmes for Specially Vulnerable Groups (SVGs) among SCs and Particularly Vulnerable Tribal Groups (PTGs) among STs**

The conditions of SVGs among SCs and PTGs among STs are even worse. It is one of the lacunae of Indian statistics including Census that adequate disaggregated information is not available for them like data for neo-natal, infant and child mortality though some data are available from the census which bring out certain facts about them like their appalling level of literacy within the extremely low SC and ST levels. Special programmes have to be designed for them to remove their special vulnerabilities in addition to the programmes that they need along with all other SCs / STs. SVGs among SCs include "manual scavengers" and other sanitation workers and their children (there



is a lot of child labour, especially girl child labour, in scavenging); Nomadic, Semi-Nomadic and Denotified communities (which had been notified as “Criminal Castes/Tribes” by the pre-independence colonial legislation); communities whose women are customarily subjected to sexual-exploitation, i.e., prostitution (like Devadasis, a euphemistic name meaning maid-servant of God; Jogins, which is another euphemistic name, and means a “female saint”; Basavis, and communities like Banchdas – most such women belong to the SCs and a smaller proportion belong to Most/Extremely Backward castes of BCs); and women and children in general.

PTGs among STS are pre-agricultural/non-agricultural. Some of them are Nomadic / Semi-Nomadic and some others are Denotified Tribes. The Government has issued a list of PTGs among STs.

**(6) Total Rehabilitation and Resettlement of Manual Scavengers and their Families, and of Members of Communities from which Manual Scavengers are Drawn so that No Fresh Supply of Scavengers is Available to Replace Rehabilitated Manual Scavengers**

A comprehensive scheme has to be devised to rehabilitate and resettle manual scavengers and all members of the communities from which manual scavengers are traditionally drawn in occupations unconnected with “scavenging” and sweeping. The passing of the Prohibition of Employment as Manual Scavengers and their Rehabilitation, 2013 is not enough and the Act, though an improvement over the 1993 Act, is still having many serious gaps and deficits.

Under such a scheme liberated manual scavengers and other members of their communities need to be given training for non-sanitary works like dignified works in plumbing, electrical repair, driving vehicles, etc. by Municipalities and others who employ manual scavengers. Railways have to set aside a certain proportion of contracts for catering to liberated manual scavengers/ members of their communities and/or their associations, allocate vending outlets in railway stations. In towns and cities, a good proportion of milk-booths should be entrusted to them. These are only some examples. A devoted governance and administrative machinery can identify other similar avenues of viable and sustainable rehabilitation and ensure their implementation.

[This may be read in conjunction with item no. (10) under A. I above].

**(7) Strengthening the Working of National Scheduled Castes Finance and Development Corporation (NSCFDC) and National Scheduled Tribes Finance Development Corporation (NSTFDC) and Promotion of Modern Entrepreneurship among SCs and STs, taking full advantage of the 4% Reservation provided by Ministry of MSME**

The programme of assistance and portfolio of NSCFDC/NSTFDC should be expanded – one new part to look after SC and ST entrepreneurs of small and medium industries and business unhampered by family income ceiling limit and the other part to continue to remain geared towards very small entrepreneurs as at present. The quantum of assistance for small and medium entrepreneurs should not be less than that provided under the dispensation of the Ministry of Micro, Small and Enterprises (MSME). This Corporation and other Corporations for SCs and STs at the Central and State levels should gear themselves to be able to support SC and ST entrepreneurs to fully avail themselves of the recently introduced 4% reservation provided for them by the Ministry of MSME in procurements without giving scope for *benami* enterprises. A tripartite arrangement, as recommended by the Sub-Group-I with details, needs to be implemented in order to ensure smooth flow of working capital. Recent studies show that it is only a small fraction of 4% that is actually going to SC and ST entrepreneurs, on account of various systemic problems they have to face, and that the Government and PSUs have not taken the task of fulfilling the 4% reservation seriously. There has to be tighter monitoring and continuous concurrent evaluation and prompt corrective measures in order to ensure that 4% reservation for SC and ST entrepreneurs is actually fulfilled.

For the effective working of the NSCFDC and NSTFDC, and the State Channelizing Agencies/State SC Development Corporations, it is necessary to bring together the NSCFDC, NSTFDC, the State Channelizing Agencies/ the Ministry of Finance, representatives of Banks, RBI, expert institutions like the NIRD and the IIPA, experts and successful and unsuccessful SC

entrepreneurs assisted in different States, and organizations of SC and ST entrepreneurs and organizations supporting them, in order to clearly identify their practical difficulties and find effective remedial measures. The NIRD has conducted a study on “Viability and Sustainability of the Scheduled Castes Development Corporations”. This should be utilised. The Forum for SC and ST Legislators and Parliamentarians and Dr Ambedkar Chamber of Commerce have identified some of the problems of SC and ST entrepreneurs and their findings also should be utilized.

#### **(8) National Safai Karmachari Finance and Development Corporation (NSKFDC)**

This Corporation too requires changes in its methodology in order to provide substantive, viable and sustainable support for economic activities by Safai Karmacharis and members of their families and families of communities from which “manual scavengers” have been traditionally drawn and are still being drawn, in areas unconnected with their caste-bound occupations.

## **II. Schemes for Educational Development and Empowerment of SCs and STs**

The educational schemes for SCs and STs should cover the entire educational chain at all levels. At present support is available above post-Matric, i.e., Plus-Two level onwards. Below that there is a vacuum except for children of those engaged in so-called “unclean occupations”. There is no support for SC children for pre-school education from Class I to X. Whatever support is provided for SCs does not secure for them high quality education. To fill the gaps, the following measures are necessary:

#### **(1) Provision of pre-school education of high quality for SC and ST children, utilizing the large network of Anganwadi Centres (AWCs) in the country, at present numbering about 14 lakhs**

Gaps should be reduced by providing an Anganwadi Centre (AWC) in every habitation of SCs and STs, which do not have such AWCs at present. Every AWC in SC and ST habitations should be provided with a qualified teacher, trained in Montessori and other such methods. For this purpose, training institutions will have to be opened in large numbers for preparing a few lakhs of pre-school-education-trained teachers. They should be paid remuneration at rates prevalent in good pre-school institutions so that competent teachers are attracted to the AWC-based institutions. Teachers and trainers for the AWCs in the habitations of SCs and STs should be selected from among the SCs and STs in the same village or vicinity. This is not a matter of reservation, but a psychology-based intervention to get the best results. Teachers belonging to the same communities as the ones which are educationally most deprived will psychologically be able to connect better with those children and provide them the required type and quality of pre-school education. Young SC and ST people with academic level of education adequate for imparting pre-school education are now available everywhere.

This should be accompanied with a massive programme to train and prepare an adequate number of teachers for pre-school/early child education in AWCs, substantially admitting teachers from the SCs and STs, the children of which two classes are educationally the most deprived.

These measures will help lay a sound pre-school foundation for the advancement of SC and ST children and also provide an avenue for socially productive and useful employment as pre-school teachers for lakhs of young people belonging to SCs and STs.

#### **(2) Pre-Matric Scholarships**

An open-ended pre-Matric Scholarship Scheme should be provided for the SC and ST Children from Class I to X.

### (3) High-quality Residential Schools

For the level of education from Class VI to XII, High Quality Residential Schools, one each for SC girls and SC boys and one each for ST girls and ST boys should be started in each of the Blocks of the country – 75% of the seats should be for SC students in SC residential schools and 75% of the seats for ST children in ST residential schools, and the remaining 25% for children of other social classes. The number of residential schools should be such as to cover all SC and ST children at this stage of education. This is the recommendation of the Group of Ministers on Dalit Affairs (2008) and the Sub-Group-I (2011), and of the Ministry of HRD's Task Forces on Educational Development of SCs and STs (2012). Earlier this was recommended by the *Dalit Manifesto* (1996) and other documents which I formulated or I was closely associated with. This was also recommended by the National Commission for the Review of the Working of the Constitution of India in its Report of 31.3.2002.

A successful model exists since about 3½ decades in Andhra Pradesh, and in Telangana and Karnataka. There are 288 residential schools for SCs and a similar number for ST children in the pre-bifurcation Andhra Pradesh State. Their results at Class XII are considerably higher than the State average.

The existing scheme of Navodaya Schools has set up quality residential schools for rural areas, at present more than 600 in number. This is a good scheme, but Navodaya schools are not adequate for the purpose of security educational equality for the SCs and STs for the following reasons:-

(i) SCs and STs are to be admitted in the Navodaya schools only in proportion to their population. This will at best help to prevent further widening of the gap between SCs and STs, on the one side, and SACs/NSCTBCs, on the other. The gap can be reduced and eliminated only if there are schools in which the SCs or the STs will have the bulk of the seats and are thereby admitted in much larger numbers to make up for the leeway inherited from the past.

(ii) The caste-system-with-“Untouchability” is so pernicious and persistent that the rigid and fossilized attitudes widely prevalent even now in our society automatically gets transferred to the schools and other educational institutions. This is poignantly indicated by the fact that 50% of student suicides Navodaya schools during the period 2013-2017 are of the SC and ST children, as reported in the Indian Express dated 24.12.2018. In a residential school set-up, where the SCs and STs are respectively in a majority of 75%, the ambience will be favourable to their life and educational performance. This is corroborated by the experience of the Howard University of the US.

In December 1996, on my advice and with sincere efforts of the then Minister for Welfare Shri B. S. Ramoowalia, the then Prime Minister Shri H. D. Deve Gowda of the United Front Government provided Rs. 250 Crores in the Budget of the then Ministry of Welfare for a scheme, under the name of Kasturba Gandhi Swatantrata Vidyalaya, for setting up high quality residential schools from class VI to class XII for SC, for ST and for BC girl-children in every low literacy district of the country. This scheme was not operationalised then and in the subsequent years. The minutes of the first meeting of a Committee set up under my chairmanship for operationalisation of this scheme was sabotaged in its way and was not allowed to return. Not a single high-quality residential school has been set up. Finally when the amount had grown to Rs 400 crores through budgetary allocations from year to year, the whole amount was claimed by the Ministry of HRD, Department of Education, while it had been oblivious to the special educational needs of SCs and STs, but was attracted by the amount, and it was transferred to that Ministry by the Planning Commission with the willing connivance of the then Ministry of Welfare in 2003, but that Ministry too has not set up a single residential school of the type for which this outlay was made, but was instead diverted to a diluted and downgraded scheme, named as Kasturba Gandhi Balika Vidyalaya. This remissness has to be corrected now by setting up high-quality residential schools for SCs and STs from Class VI to Class XII, as proposed above.

This scheme requires increased intake in existing Teachers Training Institutions with due proportion of SC and ST teachers and setting up of new Teachers Training Institutions to train SC and ST teachers. The total numbers should be adequate to serve all the residential schools. The syllabus and the training content have to be upgraded. In the AP model, the teachers are Post-Graduates. This should be the pattern in all residential schools. Therefore, Post-Graduate intake of SCs and STs should also be commensurately stepped up.

These measures will quantitatively and qualitatively strengthen the education of SC and ST children at school level and also provide an avenue for socially productive and useful employment as teachers for many thousands of SC and ST youth.

#### **(4) Strengthening and Removing Road-Blocks in the Post-Matric Scholarship (PMS) Scheme for SCs and STs**

One of the road-blocks in the way of this scheme securing better results is the family income-ceiling for eligibility for non-charging of fees and for scholarship. The ceiling was recently raised to Rs. 2 Lakhs per annum. Before that it was Rs. 1 Lakh per annum.

It has to be remembered that enrolment in higher education in India is below the international level and it is the stated policy of the Government of India to step this up to the international level. The Percentage of enrolment of SCs and STs is much less than the Indian standard and the standard of Socially Advanced Castes (SACs), ie., non-SC, non-ST, non-BC castes (NSCTBCs). According to comparative statistics available for 2008, when the All India enrolment rate in higher education was 17%, the ST rate was 7% and SC rate 11% while the OBC rate was 28% and the rate for the SACs/NSCTBCs was 47%. The simplest way of reaching the national levels is to raise the SC and ST levels to the SAC level. Quickly and sharply stepping up the percentage of enrolment of SCs and STs in higher education is absolutely essential to achieve the national goal. This is not only necessary from the point of view of the SCs and STs, but also from the point of view of the nation as a whole. India has got a demographic advantage over other countries except sub-Saharan African countries. The proportion of young people of productive age is higher in India than in western and other advanced countries and even China. This demographic advantage can give us a demographic dividend provided we can step up the quantity and quality of education and skills and the status of health from pre-natal stage onwards of the deprived social classes who are the lowest in these respects and bring them to the level of SACs/NSCTBCs and after such equalisation of SCs and STs with the SACs, take them all forward together and bring all of them to the level of the most advanced countries. If this is done, India's economy will zoom. But the short-sighted elite of India, in their caste-based anxiety to keep the SCs and STs down, are depriving India of this potential demographic dividend. What I have said here is true in respect of all educational and skill development schemes. This is relevant also to economic development schemes and schemes directly connected with neo-natal, infant, child and maternal mortality, malnutrition, stunting etc., because it is a package of all these that can secure optimal demographic dividend for India's economy and for the optimal and sustained growth of our economy.

Therefore, as recommended by the Sub-Group-I,

- (i) No fees of any type should be charged from SC and ST students, irrespective of family income, from primary to post graduate level, by any
  - (a) Government and aided schools
  - (b) Unaided private schools
  - (c) Colleges / Universities / other Institutions of higher and professional education (both Government and aided as well as private unaided)
- (ii) The fee charged by private institutions should be paid by the Government directly to the Schools/Institutions in time, thus eliminating the need for payment of fee by the student and its reimbursement subsequently and to avoid giving a handle to those institutions to avoid this social responsibility of theirs to SC and ST students.

(iii) The fee structure that may be charged by private institutions from students in general and from SC and ST students should be fixed at a fair level and regulated by an Expert Committee and compliance should be monitored. The maximum fee so fixed may not be uniform for all private institutions as the facilities / infrastructure may vary from Institution to Institution and, therefore, there may be different reasonable maxima for different qualitative categories/types of institutions. Such fees payable by SC and ST students, subject to the maximum fixed, should be fully reimbursed by Government to such private institutions; and private institutions should not collect any fees from the SC and ST students. Any additional fees or charges, by whatever name called, that is imposed by any private management, should be prevented in the case of SC and ST students and penalised.

(iv) All SC and ST students of the following categories should be eligible for scholarships at all levels, irrespective of their annual family income.

(a) SC and ST girl students

(b) SC and ST disabled students [*disability as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*]

(c) SC and ST students who are victims or dependent children of SC and ST victims of heinous atrocities like (a) murder (b) rape (c) arson (d) grievous hurt causing loss/ impairment of limb/ organ

(d) Students who are dependents of SCs and STs deceased in natural disasters/ accidents

(e) SC and ST students who are children of SC and ST widows or of SC and ST single mothers (example, divorcees)

(v) In the case of other SC and ST students, the annual family income ceiling for eligibility for scholarships should be raised to Rs. 10.5 lakhs (as in 2011, the date of the Sub-Group Report) and thereafter periodically and automatically stepped-up by linking it with inflation.

(vi) The scholarships should be revised periodically (at least every two years) by linking it with inflation, as is done with regard to DA of Government employees. This revision should be automatic and should not require approval by Finance Ministry.

(vii) Scholarships should be disbursed at the beginning of each month / quarter / year by payment into a bank account in the joint name of each student and the educational institution. To facilitate this, the Central Government should release funds in advance. The State Governments should also similarly release funds for the non-Plan part/for their share of scholarships in advance of each month / quarter / year.

These recommendations have also been made by the Ministry of HRD's Task Force on Educational Development of SCs (2012), of which I was a Member, and Task Force on Educational Development of STs (2012).

The PMS scheme that was introduced by Dr Babasaheb Ambedkar as a Member of the Viceroy's Executive Council and which has been an "open-ended" scheme always is now in disarray. The problem started in 2012 and worsened in subsequent years. Arrears have mounted and, on account of non-receipt of scholarships, thousands of SC and ST students have been forced to drop out. This interrupts at its root of the incomplete process of building up an educated middle class among SCs and STs, in proportion not less than among SCAs/NSCTBCs. The reverse gear of recent years will have serious negative effect on the future of SC and ST youth. I took up the matter many times with the Government, especially the Minister for Finance and Minister for Social Justice & Empowerment. I understand that the Minister for Social Justice & Empowerment has also taken up this matter with the Finance Minister. A few months back, the Cabinet approved the release of funds to meet the accumulated arrears, which is a good belated step, but not adequate to undo the harm already done to the large numbers of SC and ST students who were forced to drop out and inadequate for the future.

For the future, the Government has recently worked out a pattern of sharing of PMS funds between the Centre and States, which is not acceptable to many States. The dispute between the Centre and States continue to threaten the future of SC and ST youth. The basic feature of the PMS scheme of being an “open-ended” scheme should not be forgotten and in keeping with that the Centre should release all funds required and subsequently enter into a mutually acceptable pattern of sharing with State Governments. The State Governments also should be cognisant of their responsibility for the education of SC and ST youth. An urgent Conference of Prime Minister, Chief Ministers, Central and State Finance Ministers and Central and State Ministers in charge of SC and ST Development is necessary to take quick and firm decisions to iron out all differences for the future. Meanwhile, without waiting for this, the Central Government must provide full funds in time necessary to ensure uninterrupted education of SCs and STs.

**(5) Making New Institutions Relevant to SCs and STs, and also SEBCs**

**(i) Reversing and stopping of the process of creation of Institutes of Eminence (IoE) and World Class Universities from which SCs and STs, and also SEBCs, are in effect excluded**

In the process of creation of Institutes of Eminence (IoE), the criterion of contribution to the progress of education of SC and ST students, quantitatively and qualitatively, should be included as a prime factor for recognition of any institution as an IOE. In the new experiment of world class universities, the Constitutional principles of reservation etc. should be retained and the scholarship scheme should be adjusted to the cost of education in such institutions. I have written about this matter in detail to the Minister and Secretary, HRD. This needs to be taken seriously so that special educational zones are not created from which the SC, ST, and also SEBC students, are virtually excluded.

**(ii) Proposed Draft New Education Policy (NEP)**

The Kasturi Rangan Committee has furnished its Report. I had sent to that Committee my views regarding what needs to be done specifically and specially for SCs and STs, and also SEBCs, to secure Equality for them in the education sector, for inclusion in the NEP. It is not known whether this has been taken into consideration by the Committee. The Government should take into account the measures I have proposed and include them in the proposed NEP.

**(6) Banishing “Untouchability” from Schools**

“Untouchability” continues to be widespread in a variety of forms. A number of officers, teachers and other professionals themselves harbour negative attitudes towards SCs and STs, based on the caste-system-with-“Untouchability”. Many of those who are not actively hostile to the legitimate rights of SCs and STs are casual and indifferent. No serious and systematic efforts have been undertaken by any Government to cure this negative, casual and indifferent attitude and make all officers and professionals active agents of elimination of “Untouchability” and securing equal dignity for SCs and STs. Some of the following steps need to be taken by the Central and State Governments:-

(i) The Government should take pro-active steps to ensure that SC and ST children are intermixed with other children in class-room seating and mid-day meal seating. In the mid-day meal scheme either the cook or the server should be an SC woman as an effective measure against “untouchability”. Resistance should be firmly repelled.

(ii) **Human rights education** with emphasis on the anti-human, anti-national and anti-Constitutional nature of the caste system, caste loyalties, caste biases and caste antagonisms, and particularly of “Untouchability” and “Untouchability”-based discriminations, and with emphasis on Equality as enshrined in the Constitution should be introduced in every educational institution, at all levels. The dosage may be adjusted as appropriate for each stage and level of education.

(iii) Such human rights education also needs to be introduced in teacher-training institutions, IAS, IPS and other Central as well as State service training institutions.

(iv) The experience of Institute of Human Rights Education should be utilized and the efforts of such institutions strengthened by active government participation, in financial and other terms.

(v) The panchayats which show anti-discrimination-cum-gender sensitivity and good performance in enrolment and retention rates, especially of SC girls and total elimination of discrimination against SCs in their areas, should be recognised and rewarded.

(vi) There should be a comprehensive campaign to sensitise the entire community of teachers so that they become a bulwark against “Untouchability”-based discriminations in all its forms in educational institutions.

(vii) The Union Minister and State Ministers in charge of pre-school education, school education and higher education should take pro-active initiatives in making such human rights education a reality and convey to the entire educational machinery the seriousness of the Central and State Governments about this task. To facilitate and ensure this, the Prime Minister and Chief Ministers need to take this as their personal responsibility and devote adequate time for supervision and monitoring of these measures.

#### **(7) Overseas Scholarship Scheme**

Higher education in universities in advanced countries enables students to secure better careers. Indian students are among the most numerous among students from all developing countries to resort to higher education in foreign universities. But, SCs and ST students are too few among them.

The main reason for this is the exorbitant expenditure involved in such education and the weak financial condition of SCs and STs. As the weak financial conditions of the SCs and STs are owing to reasons beyond their control and caused by the working of the centuries-old Caste System-with-“Untouchability”, which has not been fully or even substantially reversed after Independence, it is the duty of the State to step in and enable the SCs and STs to acquire education in foreign institutions in commensurate numbers compared with the number of candidates of SACs/NSCTBCs who are able to go to foreign institutions. This is essential because of the obvious career advantage that candidates passing out from foreign institutions have in this country. Making this advantage available to the SCs and STs in due measure is an important aspect of empowerment of SCs and STs of the educated category in the present and future contexts.

As usual this catalytic scheme is hamstrung by various restrictions. At present the number of scholarships is struck at a meagre number every year. In order to remove road-blocks, the following measures are necessary as recommended by the Sub-Group-I and keeping in view the recommendations of the Working Group on Empowerment of Scheduled Tribes.

- (a) There should be no restriction with regard to the field of study for which the scholarship is given
- (b) There should be no condition of annual family income ceiling – at present there is a very low and unrealistic ceiling of Rs. 300,000
- (c) The minimum marks of eligibility should be reduced from the present 60% to 50%
- (d) The amount of scholarships should be revised to cover the entire cost including all fees, costs and expenses.
- (e) The number of scholarships should be increased initially to 500 for SCs and 250 for STs and subsequently raised to the level commensurate with the total number of Indian students getting education from abroad as recommended by the Dalit Manifesto.

### **(8) Hostels for SC and ST Girls and Boys**

The Central scheme for hostels renamed in 2008 as Babu Jagjivan Ram Chhatravas Yojana (i.e., Babu Jagjivan Ram Hostel scheme) provides financial assistance from the Centre to the States for construction of hostels. Earlier, it was only for girls hostels. Later boys hostels were also provided for. Central funding is 100% for girls hostels and 50% for boys hostels. Central assistance is only for construction and there is no contribution from the Centre for post-Construction efficient management and supervision.

I have recommended long back that a small proportion of Central grants should be provided for supervision, security and administrative support. The Planning Commission could not agree to this. The Sub-Group-I has recommended 1% of the total Central grants for this purpose. The condition of hostels is very deplorable. They need to be upgraded to satisfactory and acceptable levels. There is need to provide funds for upgradation of hostels to the required standards, supervision, security and administrative support for all hostels, but to a greater extent for girls hostels, in the formula for sharing of non-Plan resources and earmark this so that it cannot be diverted. The share of SCs and STs in the non-Plan budget is next to nil at present. Making provision for such schemes which cannot come from the Plan is a constructive measure to build up the non-Plan budget share of the SCs and STs and at the same time to meet their essential needs which cannot be provided from Plan resources – this should also be taken up with the current Finance Commission.

On the Plan side the outlay provided for hostels has to be stepped up so that a net-work of hostels with wide coverage can be started. The hostels should be designed in such a manner that they may in future become the nucleus for the High Quality Residential Schools for SCs and STs from Class VI to Class XI mentioned earlier. Roadblocks that exist in this scheme also should be removed such as restrictions on distance, and rural and urban, etc. In the course of the process of conversion of hostels into High Quality Residential Schools, other neighbouring hostels which are yet to be so converted have to be continued, pending their upgradation also into High Quality Residential Schools. Certain State Governments have taken the retrograde step of closing down hostels when one of the neighbourhood hostels is upgraded into a High Quality Residential School. This retrograde step should be stopped and reversed.

With the recent abolition of the concepts of “Plan” Budget and “Non-Plan” Budget, the outlays required must be provided from the developmental outlays of the Budget. In the post-“Plan” Central Budget, the Central Schemes and Centrally-Sponsored Schemes obviously fall in the category of developmental outlays in the Budget.

### **(9) Coaching & Allied Scheme**

Under the Central scheme of Assistance for Coaching for SCs and STs, coaching is provided for them through State Governments, universities, NGOs, private bodies for competitive examinations of the Central and State Governments, the PSUs, Banks etc. and soft skill development programmes for employment in private sector.

This good scheme is also bedevilled by restrictions like a family income eligibility ceiling of Rs. 2 Lakhs per annum and unrealistically low remuneration for teachers which keep off the best teachers. As a result, this scheme is not able to produce the results that private coaching institutions are able to secure. There is no goal-orientation in the Government scheme and it proceeds in a casual manner.

The institutions run now, the remuneration for the teachers and other facilities should be brought to the level of the best and most successful private coaching institutions. Simultaneously coaching should also be provided through reputed and successful private coaching institutions.

Coaching for SCs and STs should start from Class XI onwards or even earlier. The goal of coaching provided should be both to equip them to become capable of filling up all reserved seats and qualify in increasing numbers for general seats both in professional and other higher educational institutions and in employment in the public sector and also secure employment in the private sector.



There is a tendency in Government to restrict coaching schemes only for competitive examinations and selections for higher level posts. There is no reason why coaching cannot be provided for selection to “humbler” posts. Everyone does not have the minimum educational qualifications required for higher posts. We should find solutions for people with lesser education too. For e.g., in 1980-81, when I was Joint Secretary, I sanctioned a scheme of training of SCs to make them fit for recruitments to the armed forces. Defence personnel/retired defence personnel were appropriately made training-providers. Almost all who were trained were selected in recruitment to the defence forces, in which there is no reservation. Those who were not selected in defence recruitments were grabbed by the State uniformed services like the police and forest departments. Later, when I was not in the Centre, the support of defence/ex-defence personnel was abolished for reasons known to the then Defence Secretary. This scheme and every coaching/training scheme, which can enable SCs and STs to get recruited for employment, whether by reservation or, where there is no reservation, on merit, or for viable and sustainable self-employment tailored to candidates of different levels of education and different aptitudes, must be provided.

#### **(10) Upgradation of Merit**

Under this scheme funds are provided to educational institutions for conducting remedial and special coaching for SC students from Class IX to XII to upgrade their merit.

This was started as part of Coaching & Allied Scheme. The lacunae mentioned for Coaching & Allied scheme are also applicable here mutatis mutandis and these lacunae need to be removed.

#### **(11) Rajiv Gandhi National Fellowship (RGNF)**

This scheme provides assistance to SC and ST scholars for pursuing MPhil and PhD courses and is implemented through the UGC. The number of fellowships is 2000 per year, but this good scheme is also hampered by the condition of family income-ceiling which at present is Rs. 3 Lakhs per annum. This condition sharply reduces the number of eligible candidates. There should be no family income ceiling for this scheme. The number of fellowships should be increased to Rs 5000 per year and subsequently to such numbers as are necessary to fill all unfilled reserved posts for which M.Phil, Ph.D qualifications are prescribed.

#### **(12) Top Class education**

Under this scheme assistance is provided to meritorious SC and ST students for pursuing professional and specialised courses in 185 identified institutions of excellence. The number of scholarships per year is 1250 but this scheme is also hampered by the eligibility condition of family income ceiling of Rs. 2 Lakh per annum. The income ceiling needs to be removed and the limit of number of scholarships should also be removed.

#### **(13) Educational Loans for SC and ST students for full time professional and technical courses provided by the National Scheduled Castes Finance and Development Corporation**

Family income-ceiling eligibility for these loans is fixed at a ridiculous low level of Rs 40,000 in rural areas and Rs. 55000 in urban areas.

At this level of education, the family income-ceiling condition should be removed. Such measures as family income ceiling – but not at the present ridiculously low level – can be considered only after the proportion of SC and ST students in relevant age groups rises to the same level as that of the SAC / NSCTBC students.

### **III. Strict and Effective Implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [POA Act] 1989 and the POA Amendment Act 2015**

Apart from taking up legislation for further amendments to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, as amended by POA Amendment Act 2015, to close the gaps

still left, as mentioned at S.No. 12 under A-I above, the following steps need to be taken for the strict and effective implementation of the Act:-

Tighten and activate the implementation machinery from top to bottom (PM/CMs down to District Collectors and SPs, Special Public Prosecutors, etc.), and separately also the special judicial set up.

In particular, ensure that Exclusive Special Courts are set up in every district in adequate numbers to dispose of the cases in the statutorily prescribed time-limit of two months and that Exclusive Special Public Prosecutors for each of the Exclusive Special Courts are appointed.

Tight and vigilant monitoring of implementation at all stages, in particular ensuring that (a) the State-level Vigilance and Monitoring Committees (SCMCs), with Chief Minister as the Chairperson, are set up in every State;

(b) SVMCs meet twice every year in January and July as prescribed by the Act and Rules;

(c) each meeting of every SVMC reviews the status of atrocities in the State and reviews each major case in detail and reviews the work of exclusive special public prosecutors, and also make sure that every provision of the Act is implemented.

Efficacy of such close monitoring at the level of the Chief Minister was seen in Madhya Pradesh in recent months of 2018 in respect of child-rape cases.

Securing adequate financial provision for establishing Exclusive Special Courts etc. — there is already a Centrally Sponsored Scheme in the Ministry of Social Justice & Empowerment for strengthening machinery for implementation of PCR Act and POA Act – this will have to be got adequately augmented.

Wide publicity through all means to make Dalits and Adivasis aware of their rights under the amended Act and inform others also for their support and as cautioning / warning to those who belong to social categories which are prone to violence against Dalits and Adivasis.

Countering with specific data the canard being spread that there is rampant misuse of the Act and show the upper castes that the problem with the Act is not misuse but non-use and inadequate use

All these and the serious implementation of the Act will be possible only if the Prime Minister and Chief Ministers take this as a major concern and personally monitor the status of atrocities and implementation of the Act at Headquarters as well as during their tours.

One major form of atrocities is murder of and violence against young people who marry breaching the “Untouchability”-barriers. Protection of such couples and support through providing employment for them and honouring them in public functions presided over by the Prime Minister, Chief Ministers, District Collectors and SPs, are necessary to deal with these recent menace of atrocities.

#### **IV. Measures Required to Improve the Health Status of SCs and STs**

(1) Health and medical personnel and mobile units should be required to cover all inhabitants of SC, ST (and isolated BC habitations) in situ first before moving to the rest of the village and similarly slums and other habitations of SC and ST, BC and BC minorities before moving to the rest of the town.

(2) Mandatorily provide safe drinking water source within the SC habitations / localities and ST habitations / localities and isolated BC habitations / localities.

(3) Wherever health centres or units are established locally, they should be located in or adjacent to SC bastis, ST hamlets and isolated BC habitations.

(4) In view of higher infant mortality (IMR) and under-5 mortality rate (U5MR), severe malnutrition, and greater vulnerability of SC and ST children in all parameters, and reality of their being left out on account of persistent attitudes based on “untouchability” on the part of a number of health-providers, priority should be given to SC and ST children in schemes for children, particularly girl-children.

## **V. Specific measures required for Scheduled Tribes (STs)**

Many of the schemes mentioned for SCs are also applicable, mutatis mutandis, to STs as indicated above.

In addition, **STs have characteristic cultural traits and identities including, in many cases, their own languages. These need to be protected.**

**Implementation of the** Panchayats (Extension to Scheduled Areas) Act (PESA) 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) 2006 is very slow. They should be strictly and specifically implemented and other laws applicable to tribal areas should be aligned in harmony with the PESA without further delay. No room should be given to tendencies in certain departments of the Government in certain States to curb these tribal rights earned after tremendous effort over a long period.

The Government of India has not tabled in the Parliament the Report of the Second (Bhuria) Commission on Scheduled Areas and the Welfare of the Scheduled Tribes set up in 2002 under Article 339 (1) of the Constitution which submitted its Report in 2004. Action has to be taken on its recommendations.

## **VI. Schemes not only for SCs and STs, but which are/can be of substantive benefit to SCs and STs**

There are a number of Central and Centrally Sponsored Schemes which are not specifically for SCs and STs, but which can be useful for them, through application of the principle of SCP and TsP and certain other principles.

An example is MGNREGA. This is the culmination of the programmes of the past known as the Food for Work Programme, Integrated Rural Development Project (IRDP), Employment Guarantee / Assurance Scheme (of Maharashtra). Since the scheme provides manual labour, naturally the proportion of SCs and STs among labourers is high. The Government calculates benefits for the SCs and STs by computing the share of the wages that go to SCs and STs and displays it as expenditure under the SCP and TsP. I have been pointing out from 1978 onwards (in connection with the precursors of the MGNREGA and later in connection MGNREGA itself) that calculation of SCP and TsP on the basis of wages paid to SCs and STs is conceptually wrong. Giving manual wage employment to SCs is not development. Manual labour has been their fate all through. Providing them such labour for a guaranteed number of days at an assured rate of wages is welcome relief, but not development and empowerment of SCs and STs and cannot be counted as part of SCP and TsP.

What can legitimately be counted in the MGNREGA as part of SCP and TsP is the value of assets, directly and exclusively beneficial respectively to SCs and STs, created through their labour under the MGNREGA. Such works can be group irrigation through bore-wells and channels; improvement of the conditions of their habitations with all facilities and connectivities; construction of houses of SCs and STs; reclamation of usar/ choudu / uppu / saline / alkaline lands and other waste lands for distribution to landless rural SC and ST families, etc. It is ethical that SC and ST labourers are engaged in the construction of assets of direct and exclusive benefit to themselves. It is not ethical to make them undertake labour for the creation of assets which benefit others – it is totally improper to treat the wages paid to the SC and ST labourers for creation of assets and benefits to others as part of SCP or TsP. Works of permanent benefit to the SCs and STs illustrated above should be undertaken under the MNREGA. This can legitimately be shown under SCP and TsP.

In recent years, Central Budgetary provisions of the MNREGA has suffered reduction. Number of days of employment available has also substantially come down. These have been compounded by delays in payment of wages. This has increased the difficulties of agricultural labourers consisting mainly of SCs and Most and Extremely Backward castes of SEBCs. This is one aspect of rural distress which has not been noticed. These recent difficulties must be removed and the number of days of employment envisaged to be provided under MNREGA must in fact be provided.

## **VII. Prevention of Transfer of or Tampering with Central and Centrally Sponsored Schemes (CSSs) for SCs and STs**

Periodically the erstwhile Planning Commission used to undertake a move to transfer some of the Centrally sponsored schemes to the States and provide the corresponding outlays untied to the States. It is then left to the States to continue the transferred schemes with or without modification or discontinue them and use the resources for any other Plan purpose. This is in response to the feeling of States that there are too many CSSs and too much of Plan outlay is tied up with them reducing the discretion of State Governments in planning. There is a case for transferring CSSs and the corresponding amounts untied to the States. But this should not be done for the CSSs pertaining to SCs and STs and also CSSs pertaining to women, children, artisans and the poor. These classes, particularly SCs and STs, will not receive the required attention in all States. Further, there are other strong claimants in States competing for resources of State Governments. Schemes for SCs and STs and also for other deprived classes and categories, if transferred to the States, will suffer from this competition.

CSSs pertaining to SCs, STs and also to women, children, artisan and the poor should not even be considered for transfer. There are some disturbing indications in the Budgets for 2014-15 and 2015-16. These should also be eliminated and the mode of their presentation in the Budgets prior to 2014-15 should be restored.

## **VIII. Potential Think Tanks – Dr. Ambedkar Foundation and Babu Jagjivan Ram National Foundation**

As recommended by the Sub-Group-I, the Dr. Ambedkar Foundation and Babu Jagjivan Ram National Foundation should be reconstituted into autonomous research organisations of eminence, along lines similar to the Nehru Memorial Museum and Library and Rajiv Gandhi Foundation.

## **IX. Presence in Higher Judiciary**

Article 312 should be implemented in respect of judiciary including creation of an All India Judicial Service with built in reservation for SCs, STs and SEEdBCs as exists in other All India and Central services. Other measures suggested in the Report (2002) of the National Commission for Review of the Working of the Constitution (Justice Venkatachaliah Commission) should be immediately implemented.

The presence of SCs and STs on the Benches of the Supreme Court and High Courts is Nil or virtually Nil and of SEEdBCs very poor with rare exceptions like the High Court of Madras. I have been writing to successive Ministers of Law, of the past and present Governments, to remove this social imbalance, even though there is no formal reservation, following the method recommended by Justice Venkatachaliah Commission. I have also pointed out the President of India's dissatisfaction about this imbalance expressed in his Inaugural Address **on 25.11.2017** at the National Law Day conference jointly organised by the Law Commission and NITI Aayog. Despite all these, no concrete steps have been taken by the Government. The removal of imbalance and inclusion of this aspect in the revised Memorandum of Procedure (MOP), which is under consideration, should be implemented without delay, along the practical lines I have advised.

## **X. Women of SC and ST**

They need to be given greater focus by

- (a) Setting apart 50% of the outlays under SCP and TsP for schemes of development and advancement and empowerment of SC and ST women.
- (b) Reservation in Lok Sabha and State Vidhan Sabhas by providing them a sub-quota under the Women's Reservation Bill.

(c) Special Protection for SC and ST women through some of the schemes (mentioned above)

## **C. SPECIFIC MEASURES REQUIRED TO SUBSTANTIVELY CHANGE THE SITUATION IN RESPECT OF SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES (SEdBCs), ALSO KNOWN AS OTHER BACKWARD CLASSES (OBCs) OR BACKWARD CLASSES (BCs) AND ACHIEVE THE CONSTITUTIONAL GOAL OF EQUALITY**

### **I. Adoption of Comprehensive Model of Development of BCs**

An appropriate comprehensive model for development of Backward Classes based on the recommendations of and the principles enunciated in the Report of the Planning Commission's Working Group for Empowerment of BCs in the Tenth Plan (2001), of which Shri P. S. Krishnan was the Chairman, should be devised and undertaken. These recommendations and principles focussed on the four sub-categories of BCs appropriately. An example of its recommendations in respect of primary non-agricultural producer castes like fisher-people is that the Plan-budgetary/administrative sector of fisheries should be renamed as fisher-peoples' sector so that the whole planning starts with the fisher-people and provides for the technology, the training, the infrastructure, the supporting services they require at every stage of their work. Some of the elements of such a model of development are mentioned below.

The model of development should be formulated on the basis of the goal of enabling the BCs as a whole, each sub-category of BCs, each caste of BCs, are enabled to become equal to the Socially Advanced Castes (SACs) or Non-SC, Non-ST, Non-BC castes (NSCTBCs) in all parameters of development and welfare, and are enabled to become capable for equal competition and cease to be backward within a reasonable and measurable time-span.

The recently enacted the Constitution (One Hundred and Twenty-third) Amendment Act to set up the National Commission for Backward Classes (NCBC) as a Constitutional body for SEdBCs in place of the NCBC set up in 1993 under an Act is a welcome long-overdue step. It is also welcome that for the first time, this Constitution Amendment Act recognized the socio-economic development of SEdBCs as a task and has been entrusted to the Constitutional NCBC as one of its functions. This gives new opportunity to introduce a comprehensive model of development of SEdBCs and should be utilized by Central and State Governments and by SEdBCs and those working for them.

The Supreme Court's directions to Governments in the Mandal case (Indra Sawhney vs Government of India) that any Requests for inclusion of any caste/community in the list of SEdBCs and Complaints against any past inclusion should first be considered by an expert body or Commission, whose Advice shall be ordinarily binding on the Governments, has not found place in the 123<sup>rd</sup> Amendment Act, despite my advice, supported by SEdBC organizations, to the Government and to the Rajya Sabha's Standing Committee. The provisions in this regard, recommended by me, should first be introduced as Rules in order to make the Constitution Amendment and the Rules compliant with the Supreme Court's directions, and subsequently brought into the Constitutional provisions by a further amendment. If this is not done, there is the danger of the Act being held to be unconstitutional for reason of non-compliance with the Supreme Court's directions,

### **II. Planning for Development of Traditional Artisans and Artisanal Workers – Vesting Control over Natural Resources, Protection from Unequal Competition – Restoration of Viability and Strengthening of their Economy**

(1) Natural resources pertaining to traditional artisans and artisanal workers, who predominantly belong to the BCs and partly to SCs, should be placed at their disposal, intrusion of others should be prevented, and protection should be given to traditional artisans and artisanal workers from the effect of globalization undertaken without preparation and without consideration for their interests.

For example, all the stone-quarries in the country should be made available only to traditional stone-cutters (known as Wodder/Woddera in Andhra Pradesh and other names in other States) or their

Cooperatives/Associations and there is no need to bring in a contractor-investor class into this simple but hard and hazardous occupation. The external contractor-investor class gets the same work done by the same stone-cutting traditional artisans paying them a pittance without modern conditions of work and another pittance as royalty to the Government. Stone-cutting artisans are numerically one of the largest communities of BCs in the Deccan and adjoining parts of North India. Along with total control over quarries, they should be jointly provided crushers, lorries and crèches (because their women also have to do this work and take their infants with them). By making them exclusive lessees of quarries, their income will at least treble. If the other common facilities are given, it will multiply even more. This is based on instances which Shri P. S. Krishnan personally promoted. This is only an example and the economy and life of the entire traditional artisan and artisanal castes of the BCs can be radically altered by this approach.

(2) Relevant planning for strengthening the economy of traditional artisans, through technology, marketing, finance etc. and diversification should be formulated and commenced at the earliest and the viability of their traditional occupations should be restored. Regarding this an instance is to provide refrigerated storage at the point of catch of fish, refrigerated vans for transport of fish to the market and refrigerated storage again at the sale outlets. All these modern facilities should be in the control of the members of fishing community itself who should be suitably trained. Similar planning from production to marketing, all in the control of the producing classes of BCs can be and should be planned and implemented.

(3) Priority should be given in contracts, in construction activities to BCs traditionally engaged in construction and related occupations including such BCs of Religious Minorities.

### **III. Massive Scheme of Modern Marketable Skill Development**

Measures at II above are for those who want to continue in their traditional occupations and have no other alternative. For those who want to diversify, esp. the younger generation, a massive scheme of **skill-development in various market-oriented modern occupations** can and **should be undertaken** such as plumbing, electrical repair, repair of electronic goods and agricultural equipments, etc. so that they can be employed by Municipalities and other local bodies or provided necessary assistance to set up as self-employed providers of services which are badly required by urban as well as rural populations.

### **IV. Planning for Nomadic, Semi-Nomadic and Vimukta Jati Communities, Safai Karmacharis, Fisher-people etc.**

- (1) Appropriate planning for Nomadic, Semi-Nomadic and Vimukta Jati communities of BCs should be commenced including provisions for open-ended Post-Matric Scholarships.
- (2) Appropriate planning for Safai Karmacharis of BC (who belong to religious minorities) should be commenced including provisions for open-ended Post-Matric Scholarships.
- (3) Sectors related to BCs should be re-oriented as sectors for the people concerned, e.g., Fisheries sector should be renamed and re-oriented as Fisher-people's Sector.

### **V. Four-fold Categorization of SEEdBCs with sub-Quotas of Reservation and Legislation for Reservation and Speeding up of the Report of the Commission for Categorization of Socially and Educationally Backward Classes (SEEdBCs) (Rohini Commission).**

Categorization of SEEdBCs into "Extremely Backward", "Most Backward", "More Backward" and "Backward" Castes should be made and sub-quotas of Reservation fixed separately for each within the total Reservation percentage for SEEdBCs (27% in the Centre and varying percentages in States). This procedure will enable the weaker and weakest castes of SEEdBCs to get some share in the

benefits of Reservation in employment as well as education. This practice has been in existence in peninsular States since even before Independence though some fine-tuning is required there also.

SEdBCs are at different levels of backwardness, namely,

**(a) Extremely Backward Castes of SEdBCs** – They have no assets, no skills and often no address. Nomadic, Semi-Nomadic and Vimukta Jati communities are of this category.

Also in this category are Muslim castes and Christian castes which too are victims of “Untouchability” (“Untouchability” is the prime marker for inclusion in list of SCs), but are not included in the lists of SCs only because of Clause (3) of the Presidential Orders. Among Muslim castes of this type, are castes subjected manual scavenging like Halalkhor, Muslim Mehtar, Muslim Lalbegi (Hindu Mehtar and Hindu Lalbegi are included in the SC List).

**(b) Most Backward Castes of SEdBCs**

These are castes without assets but which have skills, though the skills have become outdated. These include artisan castes, artisanal castes, pastoral castes, fishing castes, service-providing castes, etc. Their sudden and unprepared exposure to global competition has deepened their economic distress, damaged their traditional occupations, without opening to new opportunities, and reduced large numbers of them to wage-labourers.

This is the largest category of BCs and includes most of the Muslim backward castes other than those which are in (a).

**(c) Tenant Peasants and other Very Weak Peasants like those on Batai tenure in Bihar, Palu tenure in Andhra Pradesh.**

**(d) Peasant castes with landed assets**

The castes in the category of (a) to (c) are not able to compete with the castes in (d). Recognizing this, the States of Kerala, Karnataka and Andhra Pradesh have instituted *ab initio* schemes of categorization of SEdBCs with sub-quotas for each. Tamil Nadu, Bihar and Maharashtra also have categorization though not as thorough as the first three States. The Centre, as in all matters pertaining to SEdBCs, is the slowest laggard with some North and East Indian States for company.

There is a strong movement for categorization of SEdBCs all over India. But, this should be done on a purely objective basis without allowing short-term electoral considerations to intrude. If an expert body with members of impeccable credentials and without political affiliation (no salaries, but only functional facilities and high status) is immediately constituted for this purpose, it will have a good impact on the vast majority of BC castes and will meet a genuine need. The existing schemes of categorization in some States also need to be fine-tuned. A properly constituted expert body can and should be required to give its report in six months at the most and if possible in three months and the Government should take its decision within three months thereafter and break from its past practice of giving endless extensions to Committees and Commissions and consigning the reports to oblivion as in the case of the Governors’ Committee Report, the Group of Ministers on Dalit Affairs Report, the Bhuria Commission Report, the Ranke Commission Report, etc.

Recommendations for categorization have been made by a dissenting Member of the Mandal Commission, repeatedly by the NCBC, by me personally *ab initio* on a number of occasions and as Member-Secretary of the NCBC, by the Planning Commission’s XII Plan Working Group on BCs and again by me at the Planning Commission’s XII Plan Steering Committee meeting and subsequently in writing.

Muslim SEdBCs who are getting much less than their due share can find their due place in this pattern, Government of India announced a sub-quota for already identified SEdBCs of Minorities

(the bulk of whom are SEEdBCs of Muslims) in the Central List of SEEdBCs – a justifiable decision, vitiated by wrong timing as it was promulgated just before the announcement of UP State Assembly elections and left without serious defence in the High Court when it was challenged and was therefore struck down. Government appeal pending in the Supreme Court. No serious and purposeful follow-up effort.

Recently the Commission for Categorization of Socially and Educationally Backward Classes (SEEdBCs) (Rohini Commission) has been set up for recommending categorization of SEEdBCs. I have given my advice to the Commission along the above lines. It appears that the Commission is now considering a new All-India Survey in order to find out the population of each caste. This will result in indefinite delay. Categorization with sub-quotas is possible without such a survey as a number of States in South India have done many decades back with reasonably good results. Similar methodology can be adopted for classification of SEEdBCs in the Central List. It can be fine-tuned after SEEdBC data from the Census of 2021 become available, following the recent long-overdue, frequently recommended inclusion of canvassing of SEEdBC data as part of the decennial census, starting with the census of 2021. Further delay will cause continuing deprivation for the More, Most and Extremely Backward castes of SEEdBCs and will result in greater frustration and legitimate resentment among them.

The Uttar Pradesh State has also recently instituted the process of categorization. A Committee set up by the State Government, under the Chairmanship of Justice (Retd) Raghvendra Kumar, has given its recommendations to the State Government. But, no action has been taken on its basis. This too should be completed without further delay and hesitation in this crucial State of India.

## **VI. Filling up of Backlog Vacancies**

Backlog of vacancies of BCs should be cleared by identifying posts reserved for them in each cadre, in each group, in each year, from the time of commencement of reservation in services for them in 1993 September and filling up of such vacancies with BC candidates. The number of posts not filled up in each year by BCs as above should be aggregated and filled up with BC candidates at one stroke. If in any cadre, adequate numbers of qualified candidates are not available, then a drive should be undertaken to prepare candidates with the required qualification through the educational institutions. Absence of qualified candidates cannot first be created by the system and then used in perpetuity as an argument against fulfilling reservations in certain cadres. By this course of action the Central and State Governments should prevent the accumulation of thousands of posts of shortfalls over time as has happened in the case of SCs and STs. If this is done properly and sincerely by the time those who were recruited prior to 1993 retire, it should be possible to find not less than 27% of BCs in every cadre. This approach has to be followed also in States of North India and East India which introduced reservation for BCs about the same time as or later than the Central Government.

In the case of States like the South Indian States where reservation for SEEdBCs started even before Independence and has continued thereafter (except for the post-Balaji interruption of a few years in Karnataka and Andhra Pradesh) and in North India States like Bihar and Punjab where reservation for SEEdBCs started much earlier than in the Centre and other North Indian State, the approach should be to identify the gap or shortfall between the number of posts in each cadre which should be occupied by SEEdBCs and the number of posts actually occupied by them and this difference should be filled at one stroke.

## **VII. Legislation for Reservation and Strict Implementation of Reservation**

- (1) A leakage-proof legislation for reservation in services under the State for BCs should be enacted without further delay.
- (2) Reservation provided by the Centre and the States are not being properly and sincerely filled in a number of cases. This has to be ensured. The recommendations made from time to time by the



Parliamentary Committee on the Welfare of BCs in this regard should be promptly implemented.

- (3) The National Commission for Backward Classes (NCBC) should also be statutorily empowered to monitor and report on cases of dereliction of duty in implementing reservation for BCs.

### **VIII. Education — Legislation for Reservation in Private Professional and other Institutions – Amendment of RTE Act to provide Quota for BC along with SC and ST in 25% reservation for Disadvantaged Classes and Weaker Sections, High Quality Residential Schools, Trained Teachers for Pre-school education in Anganwadis**

- (1) Legislation for BCs (along with SCs and STs) for reservation in private higher educational institutions including professional institutions should be enacted, fulfilling the real purpose of the 93<sup>rd</sup> Constitution Amendment Act, 2005 inserting new Clause (5) in Article 15.
- (2) As mentioned in the case of implementation of reservation for BCs in employment in the services of the State at VI (ii) above, implementation of reservation in admission to seats in educational institutions is also being evaded in a number of universities and educational institutions. Among the evaders are central universities like the Delhi University. Scope for evasion should be systemically eliminated and full implementation of reservation should be enforced. The Parliamentary Committee and the NCBC should be involved in this as mentioned at (xii) above.
- (3) High Quality Residential Schools up to Class XII for BC boys and girls should be set up, initially one each in every district and subsequently in every Block. 75% of children in these schools should be from BCs to secure focus on BCs and also social integration. Among the BCs due share should be given to the children of More, Most and Extremely Backward castes. Some of these residential schools should be located in areas of substantial Muslim population so that children of BCs of Muslims can have due access to these institutions. There was a move and financial provision for these residential schools for BCs as well as SCs and STs was made in 1996-97 in Govt. India, on Shri P. S. Krishnan's recommendations, but later it was scuttled.
- (4) Anganwadis have to be located in isolated BC habitations like habitations of fisher-people and Banjara thandas (in States where Banjaras are in the list of S EdBCs). A qualified teacher should be appointed in all such Anganwadis to provide pre-school education to children. Though pre-school education is within the charter of Anganwadis, the absence of a qualified teacher in each Anganwadi make this part of its charter ineffective.
- (5) Self-defeating and counter-productive restrictions in the rules of eligibility for scholarships, fees-concessions, etc. for BCs such as unrealistically low family income ceiling should be removed.

After categorization the four-fold categorization suggested at V above, for the Extremely Backward Castes of BCs, there should be no family income ceiling as there are very few candidates from among them, as also recommended by the Expert Committee on Backward Classes, set up by the Government of India, in its Report of 1993. In the case of the Most Backward Castes, there should no family income ceiling for girl students and students from women headed families and for children with physical disabilities. In the case of the other two categories of BCs, the family ceiling should be higher and graduated.

### **IX. Provision of Good Housing, all Facilities in and Connectivities for isolated BC habitations**

There are certain isolated habitations of BCs like habitations of fisher-people close to the seashore and Banjara thandas where Banjaras are classified as BCs (Banjaras are classified as BCs, STs or SCs in different States depending on their status in the society in each State) and habitations of Nomadic / Vimukta Jati communities (like Yerukulas, Pardhis, etc). These habitations should be improved and brought to acceptable standards, provided good houses, drinking water, electricity,

drainage, paved internal roads, a hall with computers and 24x7 hours electrical supply to serve as off-school study centre, and local all-weather roads for connectivity.

#### **X. Provision of Viable Assets for BCs in the Unorganised Labour Sector in Urban Areas.**

A good number of members of BCs including BCs of religious minorities in urban areas, including migrants from rural areas, are working as casual labourers in the unorganised sector. They should all be made owners of viable assets (in many cases, they are hired operators of other people's assets like rickshaws, auto-rickshaws, etc.) Eg. All hired pullers / drivers of rickshaws / autorickshaws can at one stroke be made their owners. There are many other instances of such possibilities.

#### **XI. Rehabilitation and Resettlement of Manual Scavengers belonging to BCs of Minorities, especially Muslims**

While the vast majority of manual scavengers belong to the SCs, there are also certain communities of BCs who are traditionally required to provide scavenging services. Examples are Muslim "scavenger" castes like Halalkhor, Muslim Mehtar, Muslim Lalbegi in different States and Hela in Madhya Pradesh. A comprehensive scheme has to be devised to rehabilitate and resettle manual scavengers and their communities including BC communities in occupations unconnected with "scavenging" and sweeping. The passing of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 is not enough and the Act, though still an improvement over the 1993 Act, is still having many serious gaps and deficits.

Under such scheme liberated manual scavengers and other members of their communities need to be given training for non-sanitary works like dignified works in plumbing, electrical repair, driving vehicles, etc. by Municipalities and others who employ manual scavengers. Railways have to set aside a certain proportion of contracts for catering to liberated manual scavengers/members of the communities and/or their associations, allocating running of milk-booths and other vending outlets in railway stations. While these measures are mainly for SCs, manual scavengers and "manual scavenger" communities of BCs should not be ignored and measures for them should be taken as for manual scavengers of SCs.

#### **XII. Strengthening of the Working of the National Backward Classes Finance and Development Corporation (NBCFDC) and Promotion of Modern Entrepreneurship among BCs**

The programme of assistance and portfolio of NBCFDC should be expanded – one new part to look after young BC entrepreneurs, belonging to families not hitherto engaged in industry, business or entrepreneurship, of small and medium industries and business unhampered by family income ceiling limit or facilitated by reasonably high family income ceiling limit and the other part to continue to remain geared towards very small entrepreneurs as at present. The quantum of assistance for small and medium entrepreneurs should not be less than that provided under the dispensation of the Ministry of MSME. It is welcome that the Ministry of MSME has provided 4% reservation for SC and ST entrepreneurs. A suitable percentage of reservation for young BCs from families not hitherto engaged in industry, business or entrepreneurship is also necessary to promote modern entrepreneurship among young BCs of the new generation. The NBCFDC at the Central and State levels should gear themselves to be able to support such BC entrepreneurs to fully avail themselves of opportunities of modern entrepreneurship.

For the effective working of the NBCFDC and the State Channelising Agencies and State BC Development Corporations, it is necessary to bring together NBCFDC and successful and unsuccessful BC entrepreneurs and State channelizing agencies and Ministry of Finance, representatives of Banks, RBI, expert institutions like the NIRD and the IIPA, and experts in order to clearly identify their practical difficulties and find effective remedial measures.

### **XIII. MGNREGA, JNURM, etc – Assets Created Under these should be such as to benefit BCs along with SCs and STs who are the principal providers of Labour**

The works undertaken under MGNREGA through the labour of BC labourers should be such as to create assets of direct and exclusive benefits to them.

### **XIV. Addition to Concurrent List of Constitution**

In the Concurrent List of the Seventh Schedule of the Constitution, the following entry should be inserted:

*“Welfare, Development and Empowerment of Socially and Educationally Backward Classes”*

### **XV. Tenancy Reforms**

Vesting occupancy right on insecure tenants-at-will. An example is that of Bataidars or share-croppers in Bihar who generally belong to the More, Most and Extremely Backward castes.

### **XVI. Census and BCs**

In order to facilitate better developmental planning of BCs, Census lacuna in respect of BCs should be removed by undertaking Census of BCs from 2021 onwards, since recommendations to this effect before the Census of 1991, 2001 and 2011 were ignored.

Recently, the Government has taken the long-delayed decision to undertake census of SEdBCs in the Census of 2021. This should be continued in every census thereafter. I have written to the Home Ministry giving my suggestions about the procedure that may be adopted to make the census most useful for the purpose of development of SEdBCs. These suggestions need to be taken into account.

### **XVII. Prevention of Inclusion in the Central List of BCs of Castes and Communities who are not Socially and Educationally Backward and Rescinding of Illegal Rule Empowering the NCBC to Review Their Earlier Advices of Rejection of Castes and Communities Which are Not Socially and Educationally Backward**

A number of castes and communities which were not in the first-phase Central List of SEdBCs made Requests to the NCBC for their inclusion in the Central List of SEdBCs in terms of the NCBC Act. In the past years, the NCBC advised the Central Government to include those castes which they found to be genuinely socially and educationally backward and the Central Government so included them.

The NCBC also advised the Government of India to reject the Requests of castes and communities which are definitely not Socially and Educationally Backward such as Jats in Uttar Pradesh, Haryana, Punjab, Madhya Pradesh and Delhi; Marathas in Maharashtra; Khandayats in Orissa; Nair in Kerala, etc.

Some of these communities have resorted to non-legal and non-statutory measures to muscle their way into the list of SEdBCs to which they really do not belong. Under their pressure, the Central Government took a wrong and illegal step of introducing a rule empowering the NCBC to review its earlier Advices of rejection. This is illegal because a power not vested in a statutory Commission by the statute cannot be vested through the backdoor by means of a rule. This rule should be rescinded. The statute does not give any power to the NCBC to review any of its earlier Advices. The Central Government should resist the temptation to include, in the Central List of SEdBCs, castes and communities which are not socially and educationally backward and which are

resorting to agitational methods. Short-term electoral considerations are unconstitutional and illegal and will defeat the purpose for which the category of SEBCs was created by Article 340 of the Constitution and will cripple the genuine SEBCs. There is a warning available of how certain wrong inclusions of non-tribal communities in the list of STs have deprived genuine STs (such as Gond, Koya, Santhal, Munda, Oraon, Bhil, etc.) of any share / any meaningful share in reservation. This is one of the reasons which has contributed to their attraction to Maoist insurgency in many of the tribal areas.

It is the duty of the Central Government to resist short-term electoral temptation and desist from creating a major existential problem for genuine SEBCs by inclusion, in the Central list of BCs, of castes and communities which are not socially and educationally backward.

Certain State Governments are succumbing and the Central Government in 2013 also succumbed to the temptation of including certain Socially Advanced castes in the list of SEBCs. This is a contradiction in terms. High Courts and Supreme Court have till now blocked these efforts. The Central Government and all State Governments should resist short-term electoral temptations.

### **(XVIII) Women of BCs**

They need to be given greater focus by

- (a) Undertaking specific schemes for BC women and girls.
- (b) Reservation in Lok Sabha and State Vidhan Sabhas by providing them a sub-quota under the Women's Reservation Bill. This sub-quota may be for women of those castes and communities of BCs including BCs of religious minorities which have not been able to get any seats or have got only disproportionately low number of seats hitherto in the Lok Sabha and Vidhan Sabhas. Restricting the BC women's sub-quota to women of such castes and communities will have the double benefit of helping the BC women and also helping the unrepresented and poorly represented castes and communities of BCs.

– *P. S. Krishnan, IAS (Retd)*