

**Issues of Social Justice:
Scheduled Castes, Scheduled Tribes
and Other Backward Classes
-An Unfinished National Agenda**

[being an edited extract from the consultation paper of the National Commission to Review the Working of the Constitution entitled - [Pace of Socio-economic Change under the Constitution](#) released for public debate and eliciting public response]

***Readers are requested to send their comments and responses
to the NCRWC at the following address:***

**The Secretary,
National Commission to Review the
Working of the Constitution,
Vigyan Bhavan Annexe
Maulana Azad Marg
New Delhi- 110 011
tel: 011-302 2079/302 2080
fax: 011-302 2082
email: ncrwc@nic.in**

Important !

[For any doubts or clarifications please check with the original consultation paper. Complete versions of the consultation paper and questionnaire are available on the [NCRWC website](#)]

Guidelines for Using this Document	
1.	This document summarises the ideas and questions contained in the consultation papers along with additional background information.
2.	For the sake of ensuring continuity, the order of topics and questions has been changed from the original.
3.	Every sub-section and corresponding question has an identification number in the original paper. We have used the same numbers for easy reference. Questions marked '■' against them are additional queries raised by the paper in the same context.
4.	While sending your responses to the Commission please quote the sub-section and the question numbers. This will make it easy for Commission Staff to categorise them. You need not quote the entire question.
5.	The NCRWC website has a user-friendly facility for making online submissions. Apart from 'yes/no' answers responses up to 50 words may also be submitted online. In order to log in you must have an email address as this will be used as your log-in identification. (however this facility is not available for making submissions relating to the consultation paper entitled- ' Pace of Socio-economic Change under the Constitution ').

Background to the Constitution Review

The National Commission to Review the Working of the Constitution (NCRWC) was set up in February 2000 by the National Democratic Alliance government thereby fulfilling its electoral promise to review the Constitution. The government initially wanted to find a way of amending the Constitution to ensure political stability and avoid frequent elections to the Lok Sabha. But the mandate of the NCRWC was a wide one and included development and human rights related topics and other important constitutional issues. The necessity of reviewing the Constitution was discussed several times in Parliament. The NDA and its allies favoured the review but the Opposition saw no special need and repeatedly wanted the government to spell out what needed reviewing. However, in the end it was not by a resolution of Parliament that the NCRWC was set up but by an executive order of the Ministry of Law Justice and Company Affairs. Perhaps the NDA feared that it might not be able to get parliamentary approval for reviewing the Constitution as it lacked a majority in the Rajya Sabha. The arbitrary manner of appointing the NCRWC and the lack of any effort at evolving a political consensus have resulted in the major opposition parties staying away from the review process.

The NDA government assured Parliament repeatedly that it would not touch the basic structure of the Constitution. Before accepting its Chairmanship, Justice M.N. Venkatachaliah - former Chief Justice of the Supreme Court - also insisted that reviewing the basic structure of the Constitution should not be included in the mandate of the NCRWC. As a result of these developments the idea of changing over from the parliamentary form of government to a presidential form - similar to that which exists in the USA will not be considered. This debate has come up from time to time and would have required a major overhauling of constitutional arrangements.

Since January 2001, the NCRWC has released several consultation papers on subjects such as electoral reforms; reviewing the working of the political party system; making the public audit mechanism more effective; setting up a judicial services commission to ensure independence and merit in the appointment of judges; codifying laws regarding the State's tortious liabilities so that citizens can get compensation for wrong-doing or neglect by officers acting under the state's authority; allowing for the prosecution of MLAs and MPs for corrupt activities - especially in the legislatures; enlarging the fundamental rights chapter of the Constitution to include more rights for citizens such as the right to education; reviewing centre-state relations especially with regard to imposition of President's rule under Article 356 and reviewing the institution of the Governor; setting up a mechanism for ratifying international and other treaties signed by the government which does not exist at present; effectuating fundamental duties etc.

The ideas contained in these papers are not the Commission's own views. Instead various options for reform have been put forward for public discussion. The Commission wants people to debate these ideas and give their opinion on the suggested options for reform. These suggestions will be taken into consideration when the NCRWC compiles its final report to the government.

Issues of Social Justice: Scheduled Castes, Scheduled Tribes and Other Backward Classes: An Unfinished National Agenda

Introduction

The consultation paper entitled Pace of Socio-economic Change under the Constitution released by the NCRWC takes a critical look at India's development experience since 1950 when the Constitution came into force. This paper evaluates the successes and failure of the State in fulfilling its constitutional obligation of assuring every citizen a life with dignity. The overarching concern of the paper is whether socio-economic progress made since independence has been fair, fast and equitable in everybody's experience - particularly of those belonging to the weaker sections of society like women, children, Dalits and Adivasis.

The paper notes that the Indian economy has grown considerably since independence. Introduction of new technologies, modernisation of agriculture, rapid industrialisation, and the production of a whole new range of goods and services have led to a significant expansion of the economy. The paper states that the initiation of economic reforms in 1991 such as - abolishing the licence-quota raj, privatisation of several government owned enterprises, reducing restrictions on exports and imports and reforms in the banking and finance sectors have led to further economic growth. In order to show that these results are real, statistics pertaining to the size of the economy, the monetary value of the goods and services produced and growth in per capita income¹ etc. are provided in the paper.

However the paper refuses to consider development merely in terms of increasing per capita income and economic growth. Inspired by the ideas of the Nobel Prize winning Indian economist Amartya Sen, the paper notes that the level of human development achieved should be the criterion for evaluating progress. Human development means expanding the freedoms of and assuring human rights to all people so that they have the capability to lead the kind of life they value. Human development therefore means attaining freedom from fear, repression, discrimination and exploitation, freedom to lead a life of dignity, freedom from hunger and ignorance and freedom to participate in decision-making in an informed and intelligent manner. The paper looks at whether Scheduled Castes (SCs) and Scheduled Tribes (STs) who are nearly a quarter of the Indian population have attained this level of human development during the last five decades. As the condition of SCs and STs has not improved as much as it should have - despite the existence of several constitutional guarantees and welfare schemes - the paper examines the causes for this failure. Several options for accelerating improvement in the socio-economic conditions of these people's lives have been put forward in the paper.

¹ In order to determine per capita income, the rupee value of all goods and services produced in any financial year (say April 2000 to March 2001) is calculated. This figure is divided by the total number of people in the country. The result is an artificial figure and tells us nothing about the actual differences of income between the rich and the poor. For example, the per capita personal disposable income for the year 1996-97 works out to Rs. 11,289/- according to one estimate (<http://www.indiaonestop.com/gnp2.htm>). Whereas more than 30% of the population (between 300 to 350 million) were found living below the poverty line i.e., earning less than Rs. 3,500 during the same year.

An Overview of the Problems Faced by SCs and STs

The paper notes that despite abolishing untouchability, prejudice against SCs and STs persists in some form or the other - be it overt, covert or subtle in expression. "Whatever has been done in this regard has been done hesitatingly half-heartedly and as a measure of concession forgetting that this relates to their Constitutional rights and not concession to (them)..." (page XVII) Atrocities against SCs and STs continue to occur frequently. More and more Dalits and Adivasis are becoming landless and are joining the ranks of agricultural labourers. The paper notes that loss of land is caused by atrocities against Dalits and Adivasis. This state of landlessness makes them vulnerable and fuels and promotes further perpetration of atrocities against them.

Since the 1980s there has been a steady decline in the allocation of government funds for SC and ST development and welfare projects. The paper states, "there has in general been an inherent lack of interest and seriousness on the part of the planning and implementing machinery to achieve the objectives of the Constitution...benefits secured by the SCs and STs do not appear commensurate with the funds spent so far" (page 93). Despite providing reservation quotas in jobs, the representation of SCs and STs in the higher levels of all public services remains poor. The paper notes that the amendments to departmental orders concerning recruitment and promotion of SCs and STs have adversely affected their interests. The paper quotes extensively from the Dalit Manifesto to highlight the feelings of SC/STs and backward classes (BCs) regarding the extent of deprivation and humiliation faced by them.

In order to identify a combination of measures for fulfilling the constitutional mandate of securing the welfare of SCs and STs, the paper seeks the opinion of the public on several reform options. The following is a summary of the questions raised by the paper on various topics.

11.6.5 Ensuring Human Dignity - Eliminating Untouchability and Prevention of Atrocities

Question # 35: Do you agree with the view that untouchability continues to occur in many different open, covert and subtle ways today despite the Constitution abolishing it under Article 17?

Question # 35a: What do you think should be done to stop the practice of untouchability and stop atrocities against SCs and STs?

■ Do you think human rights education would help in eradicating untouchability? If you agree with this view, what methods and means do you suggest for carrying out a campaign against untouchability?

Question # 35b: What, according to you, needs to be done for building up a powerful democratic mass movement to eradicate untouchability and similar forms of discrimination practiced at the village and mohalla levels?

Question # 35c: Do you think that the police and the administration are taking effective steps to curb untouchability and atrocities as required by the Protection of Civil Rights, 1955 (PCR) and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA)? If not-

■ Do you think providing a separate cell in every police station for investigation and prosecution of offences under the PCR Act and POA Act will be helpful in preventing atrocities? Should these separate cells be set up in areas with significant SC/ST population to begin with?

■ Untouchability is practiced in public places like wells, temples, hotels etc. though it is a crime to do so. Yet many times the concerned police officers do not take any action even after complaints have been made. Do you think such police officers should be punished as abettors² of untouchability?

² In legal jargon an abettor is a person who promotes, instigates, advises, or encourages another to commit a crime.

Question # 35d: What measures do you suggest for strengthening the PCR Act and the POA Act to make them more effective?

■ It is widely alleged that false criminal cases are filed against SCs and STs when they lodge complaints about atrocities committed against them. This defeats the very purpose of the POA Act. What measures do you suggest to prevent sufferers of atrocities from being victims for a second time?

■ Should practices like social and economic boycott and social and economic blackmail imposed upon SCs and STs by the upper castes be listed as crimes of atrocities under Section 3(2) of the POA Act by amending it?

■ What deterrent measures and punishment do you suggest in order to stop people from committing multiple murders, mass rapes, gang rapes etc. upon SCs and STs?

■ Sometimes atrocities may be engineered or promoted by non-SCs and non-STs but not actually committed by them. In some other cases not all, but most of those who commit atrocities may be non-SCs and non-STs. Do you think the POA ACT should be amended to cover such cases also?

■ Under the present law if a person is held likely to commit an atrocity against a tribal he can be removed from that place for up to 2 years. This possibility of removing a person from a place is only available in areas that are named as Scheduled or Tribal areas.³ Should this idea of removing a person likely to commit an atrocity be made applicable all across the country wherever SCs live?

■ In order to ensure speedy trial and punishment of those who have committed atrocities do you think it is a good idea to set up exclusive Special Courts that have an exclusive special public prosecution machinery and a special investigating agency in every district?⁴ Do you think this will act as a discouraging factor for people who are likely to commit atrocities?

■ Do you think it is a good idea to set up special mobile courts in every district which would go to those places where untouchability is practised openly and deal out punishment on the spot? Will this measure help to prevent atrocities?

11.6.13 Strengthening Constitutional Provisions

The paper notes that the NCRWC has received several suggestions to amend the Constitution to better protect and promote the interests of the SCs and STs. The paper seeks views on the 'need', 'appropriateness' and 'desirability' of making these amendments.

Question # 61a: Article 46 of the Constitution directs the State to promote the educational and economic interests of the SCs, STs and other weaker sections of society and protect them from social injustice and all forms of exploitation.⁵ Should the Constitution be amended to convert this provision into a fundamental right with the following sentence being added to it:

"And it shall be the right of the weaker sections of the people and in particular of the SC and ST that the State and all institutions of or created/promoted/assisted by the State shall at all times function fully and totally in accordance with this right, shall take every measure required to fulfill this right and shall not take any measure the effect of which will be contrary to it."?

³ For a discussion of the significance of Scheduled and Tribal Areas please see the section 11.6.10 - 'Fifth and Sixth Schedules of the Constitution' below on page 13.

⁴ For a list of districts where Special Courts have been set up please see the Annexure on pages 23-24.

⁵ As this constitutional provision exists only in the form of a directive principle that should guide policy and law making and the administrative decisions of the State, citizens cannot move a court of law claiming that the State is not doing enough to promote the well being of SCs and STs. If it were to become a fundamental right then SCs and STs could approach the High Court or the Supreme Court and challenge the State for not doing its duty.

11.6.3 Right to Livelihood

Article 21 of the Constitution states that no person may be deprived of his life and liberty except according to the procedure established by law. This implies that generally every citizen has a right to life and the State has a duty to protect it. The Supreme Court expanded the scope of this right to include the right to livelihood.⁶ The Court held that no person can live without a means of livelihood and depriving him of livelihood would amount to depriving him of his life.

Question # 32: The Supreme Court has declared that the right to life guaranteed by Article 21 of the Constitution includes the right to livelihood. Article 39 (a) directs the State to frame policies that will secure the right to an adequate means of livelihood for men and women equally. Similarly Article 46 directs the State to promote the economic and educational interests of the SCs and STs and protect them from social injustice and exploitation. What legal framework do you suggest for making the right to livelihood effectively available for SCs and STs?

Question # 61d: Clause 4 or Article 16 is just an enabling provision which allows the government to create reservations for other backward classes if the government is of the opinion that they are not adequately represented in public services. Do you think that it should be compulsory for government to reserve seats for backward classes where they are not adequately represented?⁷

Question # 61e: At present there is no explicit mention of SC/ST welfare and development in the responsibilities of either the central government or the state governments. Should 'Development, welfare and protection of SCs and STs be made part of the subject matter of the Concurrent List (List III)⁸ of the Constitution?

11.6.6 & 11.6.7 Representation in Public Services and the Higher Judiciary

The paper notes that despite several constitutional provisions, the representation of SCs and STs in government services has not improved substantially during the last five decades. In order to promote their socio-economic interests, the Government of India has provided reservation in jobs to the extent of 15% for SCs and 7.5% for STs.⁹ These figures roughly correspond to their population percentage. However there is no law made by Parliament governing job quotas for SCs and STs. Apart from constitutional guarantees the sole basis for reservations is the executive orders and departmental instructions issued from time to time by the Department of Personnel and Training (DPT).

During the last five decades the proportion of SCs and STs has gone up to some extent only in Group C and Group D services and not in the higher bureaucracy. The following table is indicative of the slow improvement made since independence (Table 9.2, page 90)

⁶ Olga Tellis v Bombay Municipal Corporation 1985 SC 545

⁷ There seems to be a misunderstanding in the original question as clause 4 of Article 16 does not contain the word 'permissibly'. The entire clause reads as follows- "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State."

⁸ Both Parliament and State legislatures can make laws on the subjects enumerated in the Concurrent List. According to Article 254 if there is a contradiction between the State and Central laws on a subject belonging to the Concurrent List then the law passed by Parliament will prevail. However the contradictory provision in the State law may become valid only if the Bill receives the assent of the President.

⁹ There is no constitutional provision for reservation based on numerical quotas in public services. Articles 330 and 332 require that seats should be reserved for SCs and STs in the Lok Sabha and the Legislative Assemblies in the states in proportion to their population percentage. As SCs and STs roughly constituted 22.5% of the population about 120 seats have been reserved for them in the Lok Sabha. Similarly the figures for legislative assemblies correspond to the SC/ST population percentage in the states. Though the constitution did not mention a numerical criterion for job reservations, the government has followed the same principle as that of the electoral arrangements. The judiciary and the armed forces are excluded from the purview of this policy.

Group (Excluding Sweepers)	% age of Scheduled Castes		% age of Scheduled Tribes	
	1961	1998	1961	1998
Group A	1.44	10.38	0.21	3.21
Group B	2.45	11.73	0.67	2.68
Group C	7.49	15.99	0.92	5.95
Group D	17.19	21.45	3.13	6.85

The paper notes that the representation of the SCs, STs and BCs in the higher judiciary - High Courts and the Supreme Court is inadequate. There are only 20 judges belonging to SC and ST communities among a total of 610 High Court judges.

Since 1996 several obstacles have cropped up with regard to filling up of posts reserved for SCs and STs.¹⁰ In a series of judgements, the Supreme Court has stated that-

- According to Article 335, SC/ST and BC claims to public service posts may be considered only if they are consistent with maintaining efficiency in the administration; but lowering of marks or reducing evaluation criteria for their promotion were not permissible.¹¹
- If due to reservation an SC/ST candidate is promoted and later a person from the general category is promoted into the same grade, the SC/ST candidate loses his edge and is treated on par with the general candidate who now has the same seniority.¹² But where there are two non SC/ST candidates seniority between them is based on -among other things - the date of their promotion;
- Where there is only one post available in a grade or category then that post cannot be reserved at all for an SC/ST but automatically falls into the general quota.¹³

Subsequently the DPT issued several memos to implement the orders of the Supreme Court. The paper notes that there is a complaint that the government has gone beyond the mandate of the Supreme Court while amending promotion rules - to the disadvantage of SC/STs.

Backlog Vacancies

Until 1997, jobs reserved for SCs and STs could not be filled up by recruiting general candidates if suitable SCs and STs were not available. These vacancies were termed 'backlog' and treated as a separate class of vacancies which were to be filled up through special recruitment drives. In 1992, the Supreme Court fixed a cap of 50% on all and any reservations, including reservations for OBCs, or disabled or women. Taken together they cannot exceed 50%.¹⁴ This ceiling included the backlog of vacancies that existed at the time. Following the Court's orders the DPT issued an office memorandum in 1997 putting an end to special recruitment drives.

Several organisations and MPs brought pressure upon the central government to find ways and means of restoring the job reservation policy to the pre-1997 position. As a result the Constitution was amended to enable the government to treat backlog vacancies as a separate class and fill them up

¹⁰ This has happened despite the 1995 amendment of the Constitution (77th Amendment) to nullify the effect of the Supreme Court judgement in the Indira Sawhney v Union of India case which held that the benefit of reservation could be given only once at the time of recruitment and the same principle did not apply to promotions. The amendment introduced clause 4(a) to Article 16 which mentions affirmative action for SCs and STs.

¹¹ S.Vinod Kumar v Union of India 1996 SC 3639.

¹² VirPal Singh Chauhan v Union of India 1996 SC 2894; R.K. Sabharwal and others v. State of Punjab and others, 1995(2) SC 646 etc.

¹³ PGIMER Chandigarh v Faculty Association 1998(2) SC 794.

¹⁴ This ceiling on reservation was fixed by the Supreme Court in the wake of the implementation of the Mandal Commission's recommendations for reserving jobs for Other Backward Classes. Indira Sawhney v Union of India 1992 SC 217.

through special recruitment drives.¹⁵ But this amendment does not undo all changes brought about by the DPT memos. The paper says there is a widespread demand for restoring reservation policy to its pre-1996 position.

Question # 36: Do you agree that the reservation policy for SCs and STs in public services should be restored to the pre-1996 position?

Question # 37: What further measures do you suggest to ensure that SCs and STs are adequately represented in the higher levels of public service?

Question # 38: Do you think quotas for SCs and STs should be brought under the purview of a single law called 'Scheduled Castes and Scheduled Tribes (Reservation of Appointments to Posts and of Seats in Educational Institutions)' which will cover all aspects of reservation? Do you think it is necessary to set up Arakshan Nyay Adalats or Tribunals under such a law for providing justice in reservation (its main bench could be in Delhi and other benches wherever the Central Administrative Tribunal is situated)? (Such Adalats may be given the status of a High Court with appeals lying to the Supreme Court.)

Question # 61b from para 11.6.13: In order to overcome the difficulties arising from the Court's interpretation of Article 335 should the clause - "...consistently with the maintenance of efficiency of administration" found in that Article be deleted?

Question # 61c from para 11.6.13: In order to ensure that reservation for the SCs and STs becomes mandatory should Article 335 be transferred to Article 16 in the fundamental rights chapter after making suitable changes?¹⁶ Should this provision also give the State enabling powers to make laws covering all aspects of reservation for the SCs and STs?

Question # 39: What measures would you suggest to ensure that reservation for BCs is fully implemented every year and there is no shortfall in filling vacancies reserved for them?

Question # 40: Do you think it will help to bring quotas for BCs under the purview of a single law to be called "Backward Classes (Reservation in Appointments to Posts and of Seats in Educational Institutions)" ? Should Arakshan Nyay Adalats be set up for BCs along the lines suggested for SCs and STs above?

Quotas in the Privatised Public Sector Units

Question # 41: The ongoing process of privatisation of and disinvestments in Public Sector Undertakings (i.e., enterprises owned or controlled by the government) and similar bodies is likely to adversely affect the existing reservation for SCs, STs and BCs in those bodies. (This is because the reservation policy does not apply to the private sector.) What measures would you suggest to ensure continued representation of SCs, STs and BCs in these bodies even after privatisation?

¹⁵ The Eighty-first Constitution (Amendment) Act inserts clause 4(b) into Article 16 of the Constitution. The new clause reads- "Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

¹⁶ Article 16 of the Constitution guarantees equality of opportunity to all citizens in matters relating to employment in public services. The State shall not discriminate between citizens on the basis of religion, race, caste, sex, descent, place of birth, residence etc. But this provision shall not prevent the State from reserving jobs for SCs, STs and backward class citizens if they are not adequately represented in a public service. Similarly the State may put in place reservation quotas for SCs and STs in promotions to higher positions also. But Article 335 of the Constitution requires that such claims of SCs and STs to public services or in matters of promotion be considered only if they are consistent with the maintenance of efficiency in the administration.

■ Do you think that in order to protect the interests of ST/SCs and BCs the new Memorandum of Understanding - signed at the time of privatisation - should include mandatory clauses that ensure continuation of reservations policies?

11.6.9 Social Responsibilities of the Private Sector

The paper believes that the private sector in India is likely to grow more rapidly in the future as a result of the government's economic reform policies. Due to the withdrawal of the government from several areas of economic activity (because of privatisation of government owned industrial, mining, service and infrastructure facilities) there is a growing worry that employment opportunities for SCs and STs would also reduce drastically. Unlike the State, the private sector has no constitutional obligation to implement job quotas for the weaker sections of society. Nor has it responded in an understanding manner to create employment opportunities for these sections of society. The paper takes note of a widespread opinion that the number of SCs, STs and BCs working in the private sector is insignificant except at the lowest levels. But the paper does not provide any statistics to support this view. A major concern of the paper is identifying policies and mechanisms to protect the interests of the weaker sections of society in the post-liberalisation era.

The paper notes that the private sector depends upon banks and other government owned institutions for financing its activities. A large portion of the investment in the private sector comes from public funds acquired from these banks or through sale of shares to the public. "Therefore" notes the paper, "the private sector has social responsibilities to perform." (page 142). As economic activity can hope to flourish only in a conflict free and caring society, the private sector must help in improving the socio-economic conditions of the weaker sections. The paper suggests that the private sector should contribute towards improving education and health facilities in society. Similarly it should help in advancing employment opportunities for SCs, STs and BCs. The paper calls for a meaningful and result-oriented debate with leaders of Indian industry, trade and commerce for evolving a policy framework for the active participation of the private sector in socio-economic development.

Question # 49: What areas of social obligation would you like to identify for the private sector?

Question # 50: What policy framework do you suggest so that the private sector may make meaningful contributions in these areas of social obligation?

Question # 51: Some sources have suggested that reservation of jobs for SCs, STs and BCs in the private sector is the only alternative. Do you agree? What measures do you suggest for ensuring that large scale firms in the private sector actually employ SCs, STs and BCs in adequate numbers at supervisory, technological and managerial levels?

11.6.12 Protection of Land Ownership and Land Tenures

The paper notes that land reform programmes during the last five decades have not substantially altered the conditions of SCs and STs in rural areas. In fact landlessness is increasing at a faster rate among SCs and STs than others, as more and more small and marginal cultivators are becoming landless labourers. Land reforms have been held up in several states due to long running litigation. Sometimes courts' judgements have run contrary to the spirit of the land reform laws. Cultivable government land and Bhoodan land are available but have not been distributed properly among the SCs and STs. In many cases where SCs and STs have been allotted land they have been forcefully evicted and persecuted. The paper feels that proper implementation of land reforms legislation still has the potential to improve the lot of these landless labourers.

Question # 58: What measures do you suggest for distributing available government land (which is not required for public purposes), Bhoodan land and ceiling surplus land among SCs, STs and other weaker sections without much delay?

■ If SCs, STs and other weaker sections are to take possession of these lands promptly what measures should be put in place?

■ What measures do you suggest for recovering these lands from people who are occupying them even though they are not eligible for allotment and distributing them among SCs, STs and other weaker sections of society?

■ What measures do you suggest for developing these lands occupied by SCs, STs and other weaker sections through irrigation and otherwise?¹⁷

Question # 59: What measures do you suggest for avoiding forcible eviction of SCs and STs from land allotted to them under various schemes? What measures do you suggest for restoring lands which have been taken away from them forcibly?

Question # 60: What measures do you suggest for implementing and enforcing land reforms laws effectively?

11.6.10 Tribal Land - Fifth and Sixth Schedules of the Constitution

The Constitution provides special mechanisms for the administration of areas occupied by tribal communities and ethnic communities in order to protect them from exploitation at the hand of unscrupulous elements and preserve their identity.

In independent India such areas are notified by the President of India in accordance with Article 244 and the Fifth and Sixth Schedules of the Constitution. The Sixth Schedule deals with notifying and administering the states of Assam, Meghalaya, Tripura and Mizoram. The Fifth Schedule contains the procedure for notifying and administering Scheduled Areas and Tribal Areas in the remaining parts of the country. So far Scheduled and Tribal Areas under the Fifth Schedule have been notified in the states of Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Orissa and Rajasthan. The state-wise list of areas covered by the Fifth Schedule are as follows:

State	Areas under the Fifth Schedule
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East & West), Gumla, Simdega, Lohardaga, Palamu, Garwa (some districts are only partly tribal blocks)
Chhattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (Khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (parts of these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these three districts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Source: [National Campaign Against the Fifth Schedule Amendment](#)

¹⁷ This question is similar to another raised in the context of equitably sharing water resources elsewhere in the paper- **Question # 70 from para 11.7.4:** What steps should be taken in order to ensure that farmers from SC, ST and other weaker sections of society are able to secure the benefit of the country's water resources?

The Fifth Schedule empowers the Governor of the concerned State to modify, annul or limit the application of any law made by Parliament or the State legislature to these Tribal areas. The Governor is empowered to make regulations for the good governance of these areas. He may also make regulations-

- a) Prohibiting or restricting transfer of land by or among members of STs;
- b) Regulate allotment of land to members of the STs and
- c) Regulate business such as money lending in such areas.

To do this he can repeal or amend Central or State laws and make regulations along the guidelines mentioned above.

The Sixth Schedule lays down details of the mechanism and institutions necessary for governing the 'autonomous districts' in Assam, Meghalaya Tripura and Mizoram. They are called autonomous districts as they are directly under the control of the Governor who is responsible for their administration. The constitution, powers and functions of District Councils and Regional Councils in these autonomous districts are spelt out.

The paper notes that there are some tribal areas in the country that do not fall within either category. More over several anomalies are said to have occurred in the administration and control over areas covered by the Fifth Schedule. The paper does not mention which areas these are or explain what these 'anomalies' might be. Instead the paper remarks that the mechanisms laid down by the Sixth Schedule have worked better in the North-eastern states.

Question # 52: Do you agree that the Scheme under the Sixth Schedule has worked better?

■ If yes do you think it is a good idea to bring areas covered by the Fifth Schedule and the left over tribal areas under the same arrangements as are in the Sixth Schedule of the Constitution?¹⁸

11.6.11 Transfer of Tribal Land

Under the provisions of the Fifth and the Sixth Schedules, laws may be passed to prohibit transfer of tribal land to non-Adivasis in Scheduled and Tribal Areas even though they may have lived there for several generations. Such laws are in place in states like Andhra Pradesh, Bihar and Orissa. But these laws have not been effective in preventing land alienation problems faced by Adivasis. Transfer of land to non-Adivasis occurs through clandestine means and this has been documented extensively not only by academicians but also by bureaucrats working in the field. The Supreme Court has recently held in a majority judgement that tribal lands cannot be transferred to non-Adivasis under any pretext.¹⁹ Ramaswamy and Sagir Ahmad JJ, noted that even government land could not be transferred, licensed or leased to non-Adivasis in a Scheduled area.

Ramaswamy, J, in his judgement observed-"the purpose of the Fifth and Sixth Schedules to the Constitution is to prevent exploitation of truthful, inarticulate and innocent Adivasis and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognisant to the problem of the exploitation of the Adivasis. They were anxious to preserve the tribal culture and their holdings. "...the Constitution intends that the land always should remain with the Adivasis. Even the government land should increasingly get allotted to them individually and collectively through registered Cooperative

¹⁸ One of the immediate implications of transferring all tribal and Schedule areas to the Sixth Schedule will be the removal of these areas from the purview of the 73rd and 74th Amendments. These constitutional amendments introduced Panchayati Raj system for the whole of India with the exception of areas covered by the Sixth Schedule. If all tribal areas in the country are shifted to the Sixth Schedule, separate regional and district councils will have to be set up. Sufficient powers for collecting taxes, administering criminal and civil justice etc. will have to be devolved to these councils.

¹⁹ Samatha vs. State of Andhra Pradesh, AIR 1997 SC 3297.

Societies or agricultural/farming Cooperative Societies composed solely of the Adivasis and would be managed by them alone with the facilities and opportunities provided to them by the Union of India through their annual budgetary allocation spent through the appropriate State Government as its instrumentalities or local body in a planned development so as to make them fit for self-governance." The Government of India failed in a petition seeking to review the judgement.

Tribal lands are rich in minerals and forest wealth. The Supreme Court's judgement makes extraction and exploitation by non-tribals, large industrial interests and multinationals, difficult. It is widely believed that in order to overturn the effect of the judgement the Fifth Schedule might be amended. The Fifth Schedule can be amended by a simple majority in Parliament.

Question # 53: What measures do you suggest for protecting tribal ownership and control over all land in tribal areas - whether owned individually or communally or controlled by the government? What measures do you suggest in order to ensure that land and other resources in these areas are utilised in the best interests of not only the Adivasis but also the nation at large with the consent and participation of the Adivasis?

■ As Adivasis are emotionally attached to their land what measures should be taken to respect their feelings and help them to organise themselves to protect their land and other cultural interests? Do you think it is a good idea to set up cooperative societies or companies wholly owned and managed by Adivasis?

Question # 54: What measures do you suggest for restoring lands to STs which were illegally transferred to non-Adivasis? What measures do you suggest for ensuring that land transfer laws are not violated in tribal areas?

Question # 55: Do you think it is necessary to have a constitutional or statutory framework for a scheme to rehabilitate people affected by developmental works and projects? If you agree, what do you think should be contained in such a policy broadly speaking?

■ How best can dislocation of people due to developmental projects be minimised?

■ Do you think the costs of resettling displaced people should be built into the project plans with the mandate that rehabilitation work must be completed before or simultaneously with the project construction?

Question # 56: The symbiotic relationship that has traditionally existed between Adivasis and forests is often disturbed by commercial interests. What measures do you suggest for restoring this relationship so that protection and growth of both forests as well as Adivasis and the protection of their traditional rights are brought about together?

Question # 57: Many Adivasi communities are dependent on minor forest produce (MFP) for their livelihood. What measures do you suggest for ensuring that Adivasis receive proper value for the MFP which they collect and sell? What steps do you suggest for replenishing and regenerating the shrinking stock of MFP on a regular basis?

11.6.8 Allocation and Management of Funds- Revitalising the SCP and TSP

Since 1970s the government has earmarked plan funds specifically for the socio-economic empowerment of SCs and STs. The Special component Plan (SCP) for SCs and the Tribal Sub-Plan for the STs were intended to ensure adequate allocation of resources for schemes to improve their all round development.²⁰ According to the government guidelines, the proportion of funds allocated under each plan should be equal to the proportion of SC and ST population in each State. Without providing any statistical data the paper notes that in reality this proportionality is hardly maintained. The paper

²⁰ The Tribal Sub-Plan was introduced in the Fifth Five Year Plan (1974-79) and the Special Component Plan was initiated during the Sixth Five Year Plan (1980-85).

remarks that budgetary allocations on SC, ST welfare schemes has declined in the recent years.²¹ In many cases the unspent money lapses back to the government because departments which have the responsibility of spending the funds are unable to promptly finalise the welfare schemes.

Question # 43: In your opinion what is the best way to determine budgetary allocations for the empowerment of the weaker sections of society? What do you think needs to be done to ensure that appropriate budgetary allocations for SCs and STs are made every year?

Question # 44: What constitutional, statutory or non-statutory mechanism would you suggest to ensure that funds allotted for SC and ST schemes are used exclusively for their welfare?

Question # 45: What measures do you suggest to make bank loans and advances easily available to SCs and STs in the emerging economic scenario?

Question # 46: Every year funds are allotted for carrying on developmental work in the constituencies of MPs and MLAs under the Local Area Development Scheme (MPLADS and MLALADS). Do you think that funds equal to the amount allotted to SC/ST MPs and MLAs should be spent exclusively on development schemes for SCs and STs?²²

Question # 47: Do you think it is a good idea to allot a certain percentage of funds released to Panchayati Raj institutions exclusively for building up the assets of SC and ST communities?

Question # 48: In order to achieve the objectives of these plans and schemes, do you think it is advisable to set up a National SC and ST Development Authority both at the Central and the State levels for-

a) formulating and approving Five Year/Annual/State and Perspective Plans based on the priorities and developmental needs of SCs and STs and

b) directing, supervising and monitoring the implementation of developmental schemes under the SCP and TSP at Central and State levels-

■ Do you support the view that a corpus of funds equal to the proportion of SC and ST population in the country should be put at the disposal of the National SC and ST Development Authority to be used for allocation under SCP and TSP? Do you think this body should be given the authority to make sector-wise and scheme-wise allocation of funds under these special plans at the level of the Centre, the States and the Union Territories?

■ Do you think it is a good idea to have SC and ST Development Authorities in each district with officials, representatives of people, Panchayati Raj and other local bodies and NGO representatives as members for implementing, monitoring and reporting the progress of SCP and TS-P?

■ Do you think these bodies should be given constitutional status by amending the Constitution suitably?

²¹ While this is true of the Special Component Plan, the state-wise allocations for Tribal Sub-Plans have matched the percentage-wise population of STs. During 1996-97 the outlay for TSP was a little over 8% while STs comprised 7.5% of the total population. But allocation for SCP during the same year was a little over 11% though SCs constitute 16.48% of the population. (See National Commission for Scheduled Castes and Scheduled Tribes- Fourth Report; 1996-97 & 1997-98, pp. 86ff)

²² There are 79 SC and 41 ST MPs (elected from reserved constituencies) in the Lok Sabha. There is no provision for reservation of seats for these communities in the Rajya Sabha. Each MP gets Rs. 2,00,00,000/- under the MPLADS scheme every year.

11.6.4 Monitoring Nutritional Status of SC and ST Families

The paper points out that amongst the poor, SCs and STs are worst affected by the problem of malnutrition. Maternal anaemia, children with low birth weight related deficiencies are other problems that affect SC/ST communities. As a combined result of social neglect and denial of opportunities, these communities have not been able to realise their potential.

The paper suggests a mechanism for monitoring the nutritional status of SCs and STs. The proposal requires the district administration to do the monitoring on their own or with the help of voluntary organisations. The paper suggests that a beginning can be made with 200 families from each district. The outline of the suggested mechanism is as follows.²³

- Prepare a draft survey format;
- Determine the size of the sample and methodology for conducting the survey;
- Include a procedure for rotation so that every year there will be at least 10% new persons being surveyed. Similarly 10% may be dropped after the third year;
- Monitoring must be done by District Magistrates;
- Each district or group of districts will be covered by an accredited NGO who will have the responsibility to over see the collection, compilation and analysis of data;
- Professional institutions like the National Council of Applied Economic Research, the Institute of Economic Growth or the Centre for Policy Research (all based in New Delhi) may be asked to prepare national level analytical reports annually.

Question # 33: Do you think such a monitoring mechanism will help in formulating appropriate policies for improving the nutritional status of the SCs and STs?

Question # 34: Do you think the monitoring mechanism outlined above is adequate? If not what additional information or changes would you suggest?

11.6.1 Protection of the Educational Interests of the SCs and STs

The paper states that the likelihood of talented children achieving their potential depends on their socio-economic background. Talented children from well to do families have much better chances of doing well in life than those from poor families. The talents of children from weaker sections of society waste or wither away due to lack of opportunity. The High Court of Andhra Pradesh had declared the right to education to be a fundamental right of SCs and STs.²⁴ Therefore the State had a mandatory duty to provide opportunities and facilities for education at all levels to the weaker sections of society, particularly to SCs and STs. The paper feels that it is necessary to identify and groom talent amongst boys and girls belonging to SC,ST and other BCs and train them in special talent schools. This will enable them to compete with the rest of society in an equal manner.

Question # 28: Do you agree with the view that there is a need for establishing talent schools for the SCs, STs and BCs?

- a) If your answer is yes do you think boys and girls from these communities must be selected for admission to these schools by rating their potential talent?
- b) Should such schools be residential in nature i.e., with hostel facilities? Should these schools be devoted to grooming these children for high educational excellence- for becoming administrators, scientists and other professionals- without losing touch with reality and remaining sensitive to the plight of the poor in the country?
- c) Should these children be trained in talent schools till the age of 14 years and then be trained for leadership and to take part in competitive exams for various public services?

²³ See Appendix XVII on page 193 in the main consultation paper.

²⁴ See D. Murali Krishna Public School Vs. Regional Joint Director of School Education (AIR, 1986 AP 204).

- d) What mission or vision statement do you suggest for this project? Is it a good idea to call it 'Preparing future professionals and administrators of the highest calibre'?
- e) What other features would you suggest to include in such a scheme?
- f) Do you think talent schools should be established first in those districts which make up for more than 50% SC and ST population?²⁵

OR

Should each State establish talent schools in districts having the highest percentage of SC and ST population such that at least 50% of them are covered by this project in that State?

g)-How best do you think civil society - particularly self-help groups - reputable and experienced educational societies and voluntary organisations - may contribute to and cooperate with this project?

h)-How do you think these projects should be funded and managed?

11.6.2 Prohibition of Occupations Offensive and Degrading to Human Dignity

The paper states that manual scavenging performed under inhuman conditions by members of certain SC communities is an 'unfortunate blemish on India's urban sanitation system'. Parliament passed the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act in 1993 in order to put an end to the practice of manual scavenging. This Act relates to the subject- 'Public health and sanitation; hospital and dispensaries' included under the State List in the Seventh Schedule of the Constitution. It was passed by Parliament at the request of the legislatures of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal.²⁶ It has become applicable to these States as well as to the Union Territories (UTs) with effect from 26 January 1997. The Assemblies of Orissa, Punjab, Assam, Haryana, Bihar and Gujarat have adopted this Act. Many States are yet to adopt this law. Even in those States where this law is applicable, the paper states that the governments have failed to abolish the employment of manual scavengers (safai karamcharis) completely.

In order to make this law applicable to all States, the paper suggests that the law become related to the subject - 'Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits' included in the Concurrent List of the Constitution.²⁷ This can be achieved by changing the Preamble and the applicability clause of The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act.

Question # 29: Do you agree that The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act should be amended to relate it to the Concurrent List so that it becomes applicable to all States?

Question # 30: Do you think this Act needs to be amended further in order to completely prohibit employing any person as safai karamchari in scavenging, directly or indirectly?

²⁵ Appendices V and X of the consultation paper list 100 districts for SCs and 40 districts for STs which account for more than 50% of their total population. In reality only Cooch Behar district in West Bengal has more than 50% SCs in its population. Sonbhadra district in Uttar Pradesh comes a distant second with 42.5%. In all other districts SCs constitute around one third of the total population or less. STs constitute more than 50% of the population in 14 districts spread over the country.

²⁶ According to Article 252 of the Constitution, Parliament may make a law on a subject mentioned in the State List if the legislatures of two or more States pass resolutions requesting it to do so. Such a law will be applicable to all the States that made such a request. This law will apply to other States only if their legislatures have adopted it by a resolution. However such laws may be amended or repealed only by a resolution of Parliament. State legislatures do not have the power to tamper with them.

²⁷ According to Article 246 of the Constitution both Parliament and the State legislatures have the power to make laws on subjects included within the Concurrent List. According to Article 251 if there is a contradiction between the Central and the State laws then the law passed by Parliament shall prevail.

Question # 31: What further measures do you suggest for liberating safai karamcharis from manual scavenging without causing loss of employment and income to them? What measures do you suggest for ensuring education and training for their children so that they make take up other kinds of jobs?

11.1.3 Sensitisation of Public Servants

The paper states that there is a strong opinion (without saying who holds such an opinion) that members of the public services in general are reluctant to working in fields relating to SCs and STs. It is also felt by some that many public servants are guided by their own biases and prejudices instead of the Constitution's objectives and aspirations. This results in denial of the rights of the SCs and STs.

Question # 6: Do you think that public servants in general are not sufficiently sensitive and responsive to the special needs of SCs, STs and the backward classes?

Question # 7: If yes how can public servants be made more sensitive to the special needs of these sections of society? Would you like to suggest any changes in personnel policies for this purpose?

Annexure: List of Districts where Special Courts have been set up in accordance with SC/ST (POA) Act 1989.			
State/UT	Type of Court	State/UT	Type of Court
Andaman and Nicobar Islands	The District and Sessions Court is designated Special Court for the islands.	Kerala	Designated Special Courts in all 14 districts
Andhra Pradesh	Special Sessions Courts sanctioned in Chittoor, Guntur and Mahboobnagar in 1993. Special mobile courts (under the authority of a Judicial First Class Magistrate) are to be set up in a phased manner.	Madhya Pradesh	Exclusive Special Courts in Dhar, Shajapur, Morena, Shahdol Damoh, Raisen and Mandla. Sessions Court in other districts designated Special Courts.
Assam	All Sessions Courts in plains districts and all Courts of Deputy Commissioners in Hill districts are notified as Special Courts.	Maharashtra	Session courts of all districts notified as Special Courts along with Bombay civil Court and court of Sessions for Greater Bombay.
Bihar	Designated Special Courts have been set up in all districts.	Manipur	District and Sessions Judge Courts in East and West Manipur districts designated Special courts.
Chandigarh	The Sessions Court has been designated Special Court.	Meghalaya	Special courts notified in all districts.
Chhattisgarh	Exclusive Special Courts in the districts of Raipur, Bilaspur and Bastar	Orissa	Courts of Sessions Judges and Additional Sessions Judges in all 13 districts have been designated Special Courts.
Daman and Diu	Sessions Court designated Special Court	Pondicherry	Chief Judicial Magistrate, Pondicherry, Sub-Division Judicial Magistrate, Karaikal and First Class Judicial Magistrate, Yanam have been designated Special Courts.

Delhi	One Court of the Additional Sessions Judge has been designated Special Court.	Punjab	Courts of senior-most Additional Sessions Judges designated Special Courts in all districts
Goa	Three designated Special courts in North Goa, Panaji and south Goa.	Rajasthan	Special Courts set up in 16 districts- Jaipur, Udaipur, Ajmer, Kota, Bikaner, Pali, Alwar, Merta, Pratapgarh, Dausa, Jhalawar, Sawai Madhopur, Baran, Tonk and Sri Ganganagar.
Gujarat	All District Sessions Courts designated as Special Courts.	Sikkim	District and Sessions Court Designated Special Court.
Haryana	No special courts set up as only 39 cases were pending.	Tamil Nadu	Existing Sessions Courts designated as Special Courts in all districts.
Himachal Pradesh	District and Sessions Courts in 9 districts- Shimla, Mandi, Sirmour, Solan, Hamirpur, Kangra, Una, Chamba and Bilaspur designated. Special Courts.	Tripura	Sessions Court in the districts of West, North and South Tripura designated Special Courts.
Jammu and Kashmir	No information available. POA Act is not applicable to Jammu & Kashmir.	Uttar Pradesh	All district Sessions Courts designated Special Courts.
Jharkhand	All District Sessions Courts designated Special Courts.	Uttaranchal	All District Courts designated Special Courts.
Karnataka	4 exclusive Special Courts in Bijapur, Kolar, Raichur and Gulbarga. Sessions Courts in all other districts designated Special Courts.	West Bengal	All District Courts designated Special Courts.

Source: National Commission for Scheduled Castes and Scheduled Tribes- Fourth Report 1996-97 & 1997-98, Vol. I.