

THE BANGALORE INITIATIVE

A Policy Framework and Draft Legislation
On
Affirmative Action in the Private Sector

Prepared by the

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
BANGALORE

THE BANGALORE INITIATIVE

Based on

‘Diversity and Affirmative Action in the Era of Privatisation’

A National Seminar on Scheduled Castes, Scheduled Tribes and Other Backward Classes and Their Share in the Nation’s Wealth, its Institutions and Transformative Processes

Sponsored by

Devaraj Urs Research Institute

Government of Karnataka

AND

Centre for the Study of Casteism, Communalism and Law (CSCCL)

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February 5, 2004

Principal Secretary to the Government of Karnataka,
M.S. Building,
Bangalore – 560 001.

Dear Sir,

SUB: THE BANGALORE INITIATIVE
A Policy Framework and Draft Legislation

The Constitution of India envisages and recognises law as the primary instrument in the realisation of its objective of social justice. The Centre for the Study of Casteism, Communalism and Law (CSCCL) of the National Law School of India University, Bangalore (NLSIU), was established to focus upon this particular aspect of the law. The Devaraj Urs Research Institute and CSCCL came together in April 2003 to organise a two-day national seminar on 'Diversity and Affirmative Action in the Era of Privatisation'. This was followed by another workshop sponsored by the Ministry of Social Justice and Empowerment, Government of India, to discuss a Draft Bill on affirmative action in the private sector prepared by Justice K. Ramaswamy. The present report of the NLSIU is based on the deliberations in these two conferences.

The Indian Constitutional obligation regarding affirmative action applies only to the State. But in the context of the current paradigm shift in the nation's economic and ideological spheres, the Government's ongoing withdrawal from public economic activity has led to the private sector filling in the gap. While the principles of social justice have always been hailed by civil society, the issue confronting the nation today is whether and how far legal obligations in this regard could be imposed on the private sector in India. As expected in a national seminar, several diverse views in this regard were expressed. The accompanying report however steers clear of extreme positions and seeks the creation of a consensus-building middle ground in this regard.

The report defines the problem and discusses the broad policy framework needed and the consequent programme of action which includes draft legislation for this purpose as well. It is intended to spur further discussion in this area and to thereby contribute to the formulation of an appropriate national and regional policy.

Yours sincerely,

(A. Jayagovind)

cc to: 1. Dr. Chandrama S. Kanagali
Director, Devaraj Urs Research Institute, Bangalore

A two-day national seminar on 'Diversity and Affirmative Action in the Era of Privatisation' was held on April 19-20, 2003, at the National Law School of India University, Bangalore (NLSIU). Organised by the Devaraj Urs Research Institute and the Centre for the Study of Casteism, Communalism and Law (CSCCL) of the NLSIU with the support of the Government of Karnataka, invitees and participants at the Seminar included High Court judges, prominent senior advocates, distinguished academics, high-ranking civil servants, representatives of the industrial sector and social activists. The Seminar saw numerous paper presentations and extensive discussion on the various aspects of the theme.

At the end of the Seminar, a Committee was constituted under the leadership of the renowned writer Dr. U. R. Ananthamurthy to prepare specific recommendations and suggest measures of legislative reform. Subsequently, a workshop sponsored by the Ministry of Social Justice and Empowerment, Government of India, was organised at the NLSIU on June 12-13, 2003. This workshop discussed the presentation of a Draft Bill prepared under the supervision of the Hon'ble Justice K. Ramaswamy (retd.) of the Supreme Court of India. What follows is the culmination of this year long process of preparing a policy note for affirmative action in the private sector. In pursuance of that endeavour, a set of two Draft Bills have been included herewith.

III. THE PROBLEM

It is widely acknowledged that in the last five decades since independence, affirmative action programmes have been implemented, albeit partially,¹ only in government institutions. The institution of economic reforms in 1991 paved the way for the withdrawal of the state from a wide range of economic activity and the consequent expansion of the private sector in the national economy. Professor Dr. Upendra Baxi characterises this process of globalisation and economic liberalisation in terms of disinvestment, denationalisation and de-regulation.² These transformations render the conventional targets of affirmative action policy – government institutions – incapable of achieving the radical social revolution that the Constitution seeks to achieve.

¹ Dr. Prakash Louis, *Nation Building, Privatisation and Affirmative Action*, Paper presented at the National Seminar. Dr. Louis discusses the inadequacies in the current implementation of affirmative action programmes.

² Upendra Baxi, *Statement of Concern*, Paper presented at the National Seminar.

cial patterns and methods of discrimination that operate to deny economic wealth remain intact. The new economy continues to predominantly employ, and be controlled by, upper caste communities. The inability and unwillingness of the private sector, as also its occasional antagonism, to redress this situation by responding to the purposes and directives of the Constitution compels us to look to the state to facilitate such compliance. In this context, the Seminar sought to interrogate the Constitutional goal of social revolution and suggest means of advancing the same in the current socio-economic environment. Should existing affirmative action policy as practiced in the state sector be simply extended to the private sector or should there be a re-conceptualisation of the legal means through which these goals may be achieved?

III. POLICY NOTE

This section of the paper begins by taking account of existent affirmative action practices in India. It then evaluates the various ongoing debates on diversity and affirmative action in India and abroad with a view to developing a clear and updated idea of how such a transformative project may go forward in India. To this end, the paper relies on materials presented in the Seminar and other secondary literature available on the subject. While this paper does not aim at presenting the most comprehensive discussion possible on the subject area, it does attempt to revisit the dominant trends in the discourse and show how these trends may be allied and consolidated in order to advance affirmative action.

1. Existing Policy Framework and Programmes

A common mistake in Indian debates is to equate affirmative action with the reservation of seats in academic institutions and the reservations of posts in public employment. This popular misunderstanding was entrenched in the 1990s with the intense media focus on the Mandal Commission's Recommendations. Marc Galanter's socio-legal study of affirmative action programmes in India – titled 'Competing Equalities'³ – provides us with a broad typology of the nature of programmes being pursued to advance the interests of the lower and weaker castes. These programmes range, besides the current reservations model, from the preferential allotment of petrol bunks and other state assistance to scholarships and the construction of hostels for lower-caste students. Debates on affirmative action often ignore the reservation of seats in different levels of government for women and Scheduled Castes and Scheduled Tribes, which are arguably the most important programme currently in operation.

³ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, (New Delhi: OUP, 1984).

the shadow of the Constitutional guarantee of equality and put into place by the numerous Executive Orders made by the Union and State Governments. Different justifications have been offered at various points for these programmes. While some commentators see such programmes as compensation for past discrimination, others suggest that they aim to enable an all-round, representative participation in public institutions, or even more broadly, to achieve social justice. Despite the divergent justifications offered for, and outcomes sought to be achieved by, these programmes, they all share an essential unity – they apply only to the state and to state controlled institutions. This limited scope of application is due to an outdated understanding of the scope of the equality guarantee in the Constitution. This will be examined at a later point in this paper.

2. Diversity and Affirmative Action

In the last few years the concept of diversity has begun to emerge as a significant new ingredient in affirmative action debates in India. It is often argued that a diversity-based affirmative action policy can provide us with a conceptual and legal framework with which to expand existing affirmative action practice in order to cope with the changing socio-economic scenario.⁴ This section of the paper considers the policy arguments regarding affirmative action in the private sector and the role that the concept of diversity should play in such a policy.

2.1. Diversity as a Legal Justification

This part of the debate on diversity and affirmative action has, like most other strands, been inspired by the affirmative action policies of the United States of America. It is therefore important that we study the legal status of the diversity rationale in American law. The diversity rationale emerged in American legal discourse in the case of *Regents of the University of California v. Alan Bakke*.⁵ In this case, the United States Supreme Court delivered a plural majority opinion that approved the use of preferential admission policies in the concerned University's medical school. Justice Powell's controlling opinion rejected the argument that past historical discrimination provided a justification for preferential admission policies but agreed with the University's controversial decision to implement a non-quota-based policy of preferential admission of black students. He defended the University's preferential admissions programme that sought to achieve a 'diverse' student body, which he thought to be essential to the educational enterprise.

⁵ *Regents of the University of California v. Bakke* 98 S Ct 2733 (1979).

rationale has had a chequered legal history. A federal court further approved the diversity rationale to justify the preferential allocation of radio spectrum in the *Metro Broadcasting*⁶ case but this was later overruled in the case of *Adarand Constructors v. Pena*⁷. The latter case narrowed the range of permissible justifications for the Federal policy of preferential contracting programmes to remedy proven past discrimination. This ruling in 1995 threw a large array of American affirmative action policies in the educational and labour markets into doubt as they had been founded on a broader justification of promoting diversity.

Recently, the United States Supreme Court in *Grutter v. Bollinger*⁸ gave the diversity rationale a fresh breath of life by upholding the University of Michigan Law School's use of 'race' as a valid criterion for determining preferential admissions in order to achieve a diverse student body. This decision re-establishes the legitimacy of the state's compelling interest in achieving diverse student bodies in educational institutions through policies that may be narrowly tailored to meet the strict standards of judicial scrutiny with regard to racial classification. The current constitutional status of the diversity rationale in United States stands determined by this decision.

To be able to assess the scope and utility of the diversity rationale in American affirmative action policy we must first take stock of the range and nature of its use. First, we should note that the diversity rationale supplies a valid justification for a minor segment of American affirmative action policy – the education sector. Its use in other areas of affirmative action has been disallowed by the *Adarand* case. Secondly, the bulk of American affirmative action programmes are built upon Federal and State Government initiatives to remedy the effects of past racial discrimination; the legal backbone for these programmes is the United States Civil Rights Act, 1967, which prohibits discrimination on the basis of race and other markers and allows courts to design remedies in the form of the preferential hiring programmes. Most American affirmative action policies are either court-enforced, or voluntarily adopted programmes by Federal, State and private actors to further this Act's objectives. Thirdly, diversity emerged, and remains, a second line of argument when courts refuse to allow racially conscious affirmative action. By depriving affirmative action of its ethical roots in a history of past discrimination, the diversity rationale promotes an a historical and apolitical agenda of affirmative action.

⁶ *Metro Broadcasting v. Federal Communications Commission* 110 S Ct 2997 (1990).

⁷ *Adarand Constructors v. Frederico Pena* 115 S Ct 2097 (1995).

⁸ <http://laws.findlaw.com/us/000/02-241.html> decided on 23 June 2003.

diversity rationale in the Indian legal framework. There are very few legal accounts of how the diversity rationale may be used in India. Those who argue that India would do well to adopt diversity-based affirmative action programmes attempt to peg the Indian legal debate onto the analytical legal framework developed in American constitutional law⁹. They propose that the diversity rationale substitute the existing anti-discrimination constitutional rationale that forms the basis of current Indian affirmative action programmes. Here diversity supports a caste-blind affirmative action policy that seeks to undo the post-independence legacy of caste-based identification of beneficiaries and replace it with an index that focuses on economic wealth alone. Although this will mean that there will be wider range of beneficiaries eligible for affirmative action programmes it will turn back the clock on efforts to ameliorate the condition of Scheduled Caste and Schedule Tribe communities in India.

This effort is not an untoward or twisted application of the American-developed diversity rationale to affirmative action policy in India. When we pay close attention to the history and development of the rationale in the United States we recognise that it was developed as a second line of legal argument to support programmes which were struck down by the Supreme Court for failing to meet the anti-discrimination standard. At this stage it is clear that diversity as a legal rationale does not provide all the answers to the problem we set out to resolve. Further, to avoid the disastrous consequences that a reckless transplantation of the doctrine into Indian law can produce, it is imperative that we are clear about the scope and content of the rationale. We need not for this reason abandon all talk of the diversity concept in Indian affirmative action policy. The next two sub-sections indicate how the concept of diversity may be employed profitably in the Indian debates.

2.2. Diversity and Reservations

An important part of the Indian debate on diversity includes writings by leading columnists and sociologists. Gail Omvedt¹⁰ mourns the national obsession with reservation politics as the only legal means of addressing the social and political revolution that Dalit communities require. She argues that the word ‘reservation’ symbolises “the rigidity and lack of imagination in the way the question of social justice has been taken up in

⁹ Sheela Rai, “Social and Conceptual Background to the Policy of Reservation” in *Economic and Political Weekly*, 19 October, 2002.

iversity and social justice are similar goals with more flexible

Like Gail Omvedt, Chandra Bhan Prasad also uses diversity to plot out the variety of programmes that may be adapted to advance Dalit interests. Prasad draws his inspiration from his personal experiences of traveling and studying affirmative action in the United States. He observes that “in the age of globalisation....we must make a new beginning with diversity where supplier/dealership diversity will open the window.”¹³ Going beyond reservations, he advocates a broad policy of diversity in areas ranging from government supply-and-dealership contracts to media ownership and control.¹⁴ This policy has the potential to undo the current situation in the media where Dalit presence remains at unacceptably low levels.¹⁵

The use of diversity in the manner described above is significantly different from the use of diversity as a legal rationale. Professor Kevin Brown made a crucial intervention at the Seminar to outline how the African-American experience in the United States may provide a possible way forward in terms of diversity. He calls the period from 1978 to the present, the “Diversity Era”¹⁶ and locates its roots in the U.S. Supreme Court ruling in *Regents of the University of California v. Alan Bakke*¹⁷. He observed that in this period, “diversity [emerged as] the only viable argument” which African-Americans could make in support of affirmative action.¹⁸ He emphasised the distinction between the use of diversity as a means to an end and diversity as an end in itself. . For those who see diversity as an end in itself – as diversity is consistent with a caste-blind policy, it will not necessarily ensure that Scheduled Caste and Scheduled Tribe communities are better represented. Sudhir Krishnaswamy¹⁹ cautioned against such a use of the diversity rationale as it was employed in the legal arguments considered in the previous section. However, when one advocates diversity as a means to an end, as Gail Omvedt and Chandra Bhan Prasad do, it is clear that diversity is a crucial device to ensure that educational institutions and labour markets include previously marginalised groups.

¹¹ Gail Omvedt, *Infosys and Microsoft*, Paper presented at National Symposium in Bangalore, 2003.

¹² *Id.*

¹³ Chandra Bhan Prasad, *Our Right to Nationhood! Through Participatory, Inclusive and Dignified Processes Based on Equal Access to Resources, Institutions and the Wealth of the Nation*, Paper presented at the National Seminar.

¹⁴ *Id.*

¹⁵ S. Anand, *Diversity and the Media*, Paper presented at the National Seminar.

¹⁶ Prof. Kevin Brown, *Diversity and the African-American Experience in America with Racial Subordination in the United States: Lessons for Dalits and OBCs in India*, Paper presented at the National Seminar.

¹⁷ *Id.*

¹⁸ *Id.* However, he goes on to point out that there are significant differences between the Dalit and the African American experiences which would also have to be taken into account.

¹⁹ Sudhir Krishnaswamy, *Discrimination or Diversity? Justification for Affirmative Action*, Paper presented at the National Seminar.

2.3. Diversity in Social Policy

Prior to this National Seminar, there were few events exploring the role of diversity in social policy design. This section reviews the discussion around the diversity rationale in the Bhopal and Vancouver Declarations and examines other presentations in the Seminar regarding how we may design new social policies which advance affirmative action in the private sector.

At the end of the Bhopal Conference held on January 12-13, 2002, the intellectuals, activists and civil servants gathered there unanimously passed the Bhopal Declaration of 2002, which set out a 21-point agenda to chart out a new course for Dalits for the 21st century. This agenda referred to several issues including access to land, the prevention of atrocities, and the democratisation of capital to ensure the social progress of Dalit and Scheduled Caste and Scheduled Tribe communities. The majority of those demands for representation in state and non-state sectors of the economy was framed within the terms of the reservations model and vested sole responsibility for such programmes on the state.²⁰ Though the Declaration did talk about diversity, it did not elaborate upon how the concept could be used to the community's benefit, beyond demanding affirmative action in supplier/dealership contracts.²¹

The Vancouver Declaration was adopted unanimously by the International Dalit Conference held at Vancouver, Canada on May 16-18, 2003. This conference aimed to set up an institutional framework to facilitate continuous interaction between the resident and non-resident Dalit communities. The Declaration does not emphasise upon affirmative action in particular; instead, it makes a series of more general demands for the equitable distribution of resources and the realisation of social objectives by both the state and private players.²² Though the Vancouver Declaration does not make any explicit reference to diversity as a goal of social policy, it does not restrict itself to reservation-based forms of affirmative action either.

Apart from these two declarations, Raj Shekhar Vundru presented a paper at the Seminar which details an interesting comparative study of how other jurisdictions have used the idea of diversity in order to push affirmative action programmes in new and more pervasive ways. He points to the broad sweep of legislative

²⁰ *The Bhopal Declaration*, The Dalit Bhopal Document (Bhopal: Government of Madhya Pradesh, 2002). See points 10, 11, 19, 20 and 21.

²¹ *Id.* See points 13 and 15.

²² *The Vancouver Declaration – Dalit Vision for the 21st Century*, The Vancouver Vision of Diversity, International Dalit Conference 2003, Vancouver, Canada, 16-18 May 2003.

from the Civil Rights Act, 1964, till date to show how executive orders were used to put in place a system of affirmative action in both the state and non-state sectors. His paper provides us with some insights into how a dual system of incentives and penalties can work in tandem to make affirmative action programs more effective.²³ His analysis of the more recent legislative efforts of post-apartheid South Africa centred on the example of South Africa's Employment Equity Act of 1998 which seeks to combat unfair discrimination and promote diversity through a system of disclosures and corporate accountability. Both these jurisdictions adopt a wide array of programmes, quite different from the Indian reservations device, which apply equally to the state and non-state sectors

Though this comparative study provides us with a wealth of data it is relevant to remember that any reference to foreign contexts must be tempered by Professor and Senior Advocate Ravi Verma Kumar's observation regarding their frequent inapplicability in the India context.²⁴ While avoiding the reckless transplantation of ideas and schemes, it is clear that the comparative approach is valuable in terms of the range of options that it throws up, each of which may be suitably adapted to suit a specific Indian context. Since diversity has not been previously pursued as a serious means of achieving affirmative action in India, a social policy which seeks to implement diversity-related goals in India may need to draw on the experiences of a number of other jurisdictions in order to gain ideological and operational clarity.

To conclude, we must note that to succeed with diversity-based affirmative action policy we would require a confluence of factors, all of which cannot be achieved through a single legislation or through a series of legislations and executive orders. Gail Omvedt articulates this position well by noting that "compensatory discrimination programs", direct political power, cultural communities and economic groups converge to create the pressures necessary to achieve the goals of affirmative action initiatives.²⁵ As Professor D.L. Sheth pointed out Dalit "middle-classisation" enables the groups who have achieved such economic mobility to correspondingly forge new social and political alliances thus providing points of entry into more institutions and socio-economic spheres than had hitherto been possible. In his view, the "critical mass" required to be produced by the reservation policy has already come into existence and this will enable affirmative action

²³ Raj Shekhar Vundru, *Review of Legislation in United States and Other Countries on Affirmative Action and Diversity*, paper presented at the National Workshop. In particular, he presents the Small Business Act of 1968 as a good example of how concepts such as Minority Purchasing can expand the scope of affirmative action policy.

²⁴ Prof. Ravi Verma Kumar, *Reservation in the Private Sector (Including MNCs) – Constitutional and Legal Issues*, Paper presented at the National Seminar.

²⁵ Gail Omvedt, "Reservation in the Private Sector", <http://www.ambedkar.org/gasil/purposeof.html>

for diversity to succeed as an instrument promoting affirmative action. At this point is indispensable. The form that this legislation should take, its constitutional status and institutional design will be elaborated in the next two parts of this paper.

3. The Way Forward

This section of the paper confronts the challenges of developing a legal framework that advances the concerns identified in the earlier section. First, we look to the existing legal frameworks and analyse the possible difficulties in extending such a policy beyond its present boundaries.

3.1 Legal Framework

The legal basis of present affirmative action policies in India is to be found in the Constitution. The Constitution sets out a scheme for reserved electorates for Scheduled Castes, Scheduled Tribes and women at various levels of government.²⁷ Articles 15 and 16 allow the State to pursue special programmes to advance the interests of women, socially and educationally backward classes and Scheduled Caste and Scheduled Tribe communities. These programmes range from the reservation of seats in academic institutions and the reservation of posts in government employment to special provisions like scholarships and grants of state assistance. All these programmes are confined to state controlled institutions and have no application beyond this category.

This paper proposes to extend affirmative action policy to the non-state sector in a modified form. Such an extension will have to contend with and overcome several legal hurdles before it comes into being and is implemented. This section identifies the primary hurdles that this extension would face and suggests how they may be overcome.

3.2. State under Article 12

Current affirmative action policy is limited only to those entities that are under the control of the 'state' as defined in Article 12 of the Constitution. As constitutional guarantees of the rights of citizens are obligations imposed on the state, the burdens of executing affirmative action programmes has

²⁶ Prof. D. L. Sheth, *Movements and Political Parties: Divergent Discourses of Dalit Politics*, Paper presented at the National Seminar.

²⁷ Articles 243D and 243T at the panchayat and municipal levels, and Article 330 at the Union level.

the 1980s²⁸ the Supreme Court had allowed for agencies of the
provided that:

1. the government held a majority of the share capital, or,
2. if the government met a large part of its expenditure, or,
3. if the body enjoyed a monopoly status conferred by the state, or,
4. if the functions performed by the body are of public importance and closely related to government functioning.

The policy proposes to utilise this expanded understanding of the obligations of the ‘state’ to extend a modified version of affirmative action to two categories of non-state actors: first, the public limited company whose recognition by the state allows it to benefit from the use of public money; and secondly, those individuals and entities who benefit from the contracting powers of the state. There are no reasons to suggest why both these categories of actors should not be within the ambit of Chapter III of the Constitution. Moreover such obligations have been imposed in other jurisdictions including the United States and South Africa. The next section offers more reasons why such an extension of constitutional obligations on non-discrimination and affirmative action should be extended to these two categories of actors.

3.3 Horizontal Application of the Fundamental Rights

Article 17 of the Constitution clearly imposes an obligation on all individuals and civil entities to avoid the imposition of disabilities arising out of caste status. This Article was advanced by the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Both these Acts presume that Article 17 applies both to the relationship between the state and citizen and between citizens *inter se*.

Most other Articles of the Constitution are conventionally applied only to the relationship between the citizen and state. Recent Constitutions, like that of South Africa, have expressly gone beyond this narrow reading and provide for obligations arising out of civil and political rights to be enforced against non-state actors in appropriate circumstances. Even in the absence of such enabling constitutional provisions the U.S. federal government enacted the Civil Rights Act, 1964, to promote the achievement of constitutional objectives under the Fourteenth Amendment.

²⁸ *Ajay Hassia v. Khalid Mujib* AIR 1981 SC 487.

cases allowed for the horizontal application of the Fundamental Rights. In *Vishaka v. State of Rajasthan*²⁹ the Court ruled that sexual harassment in the workplace between private citizens fell within the scope of the anti-discrimination prohibitions contained in Article 15 of the Constitution. Though the Court did not address the nature of the horizontal application of the Fundamental Rights in the Constitution, it is certain that such an application is necessary to imbue the equality guarantee with sufficient gravity. This policy paper proposes that the Central Government take a similar legislative initiative in the general field of non-discrimination in the workplace to ensure affirmative action for Scheduled Castes and Scheduled Tribes.

3.3. Articles 14 and 15

The equality provisions in the Constitution are among its strongest and are of the widest application. Articles 15 and 16 expressly enjoin the state to make special provisions, including reservations, for Scheduled Castes, Scheduled Tribes, women, children and socially and educationally backward classes in a wide variety of contexts. There is nothing in these Articles to suggest that these obligations on the state are confined to activities that it carries out by itself or through its agencies.

We had earlier noted that Article 12 of the Constitution should be read widely to allow the state to advance equality goals by the regulation of public limited companies and other business entities which contract with the state. We propose that the state enact legislation to prevent discrimination in hiring as well as to promote diversity in the ownership and composition of the workforce in such entities.

However, the Supreme Court's reconciliation of the anti-discrimination and affirmative action components of the equality provisions in the Constitution have laid down some clear guidelines on how such affirmative action is to be structured. In *Indira Sawhney v. Union of India*³⁰ the majority decision delivered by Justice Jeevan Reddy established that the enabling provisions in Articles 15(4) and 16(4) are narrowly crafted exceptions to the prohibition on discrimination embodied in Articles 14, 15(1) and 16(1). This reading of the equality provisions places three independent restrictions on affirmative action policy design. These are: first, that reservations are the most intrusive form of affirmative action and should be used sparingly; secondly, that reservations should not exceed 50 per cent of available positions and, thirdly, that reservations may not be deployed where they are not expressly provided for.

²⁹ AIR 1997 SC 3011.

³⁰ AIR 1993 SC 470

When the courts are silent on the question of affirmative action in the private sector it is advisable that any proposed affirmative action policy does not disturb the current reading of the Constitution. Hence, this policy paper proposes an affirmative action programme that encourages voluntary compliance with the non-discrimination and preferential hiring guidelines without the use of clearly defined quotas. Moreover, the goals of diversity do not address the problem of the lack of representation in national workforces through rigid numerical requirements thereby avoiding the Supreme Court's strictures on the maximum limits to the use of quotas.

3.4. Directive Principles of State Policy and Fundamental Rights

In the 1950s the Supreme Court was of the view that a law giving effect to Part IV principles must conform to the requirements of Part III of the Constitution. They went to the extent of finding in the case of *State of Madras v. Champakam Dorairajan*³¹ that "[t]he Directive Principles of State Policy have to conform to and run as subsidiary to the chapter on Fundamental Rights."³² The Court has since changed its view on the matter and has abandoned a hierarchical ordering of Part III over Part IV of the Constitution. In *Unni Krishnan v. State of Andhra Pradesh*³³ the Supreme Court restated its position on the relationship between Part IV vis-à-vis Part III. The Court held that the two Parts should be read together harmoniously wherever possible and expressly denied that the rights in Part III enjoyed a superior moral status to the principles in Part IV.³⁴

The proposal for affirmative action in the non-state sector relies on the principles of democratisation of wealth and resources outlined in Article 39(b) and (c) and the gradual elimination of inequality between individuals and groups set out in Article 38(2). Any interpretation of the equality provisions under Part III must be interpreted harmoniously with the principles of policy in Part IV of the Constitution outlined above.

3.5. Article 19(1)(g)

It is often argued that any extension of affirmative action programmes into the private sector would violate the rights to practise a profession or carry on any occupation, trade or business guaranteed to citizens under Article 19(1)(g). This argument misunderstands the scope and extent of the right guaranteed by this clause.

³¹ AIR 1951 SC 226:

³² *Ibid* at 228 per S. R. Das, J.

³³ AIR 1993 SC 2178. Coram: L. M. Sharma, C.J., S. Ratnavel Pandian, S. Mohan, B. P. Jeevan Reddy and S. P. Bharucha, JJ.

³⁴ *Ibid* at paragraphs 138 – 140.

(g) is subject to reasonable restrictions made by the state in the promotion of diversity, in the ownership and control over economic resources and the composition of employee workforce, is pursuant to the interest of the general public. A statute which seeks to achieve this interest in a measured manner with clear procedures and guidelines that do not allow for arbitrary state action should satisfy the reasonableness requirement under Article 19(6).

4. The Need for Legislation

The absence of any existing regulation on the discriminatory nature of current employment practices in the non-state sector and the contested Constitutional status of extending affirmative action to the private sector makes the pursuit of such policy by executive orders hazardous. Moreover the development of a uniform national policy on this crucial issue is essential for there to be clear guidance to the private sector regarding the conduct of its affairs. For these reasons the Central Government should legislate under existing Constitutional provisions to achieve greater diversity.

4.1 Draft Bill I

EQUAL OPPORTUNITIES AND DIVERSITY (AFFIRMATIVE ACTION FOR SCHEDULED CASTES AND SCHEDULED TRIBES) BILL, 2004³⁶

WHEREAS, Article 15(4) of the Constitution of India empowers the state to promote equality and non-discrimination through the enactment of special provisions for the advancement of Scheduled Castes and Scheduled Tribes;

AND WHEREAS, Article 39(b) and (c) of the Constitution of India require the state to create a just and equitable social order and prevent the concentration of wealth;

AND WHEREAS, continuing social inequality despite radical socio-economic changes has necessitated the introduction of special provisions in the form of an Act to promote the participation of diverse sections of society in all walks of life;

BE it enacted by Parliament in the Fifty Third Year of the Republic of India

³⁵ Article 19(6) of the Constitution of India.

³⁶ Prepared by Mr. Sudhir Krishnaswamy.

as follows:

CHAPTER I PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Equal Opportunities (Affirmative Action for Scheduled Castes and Scheduled Tribes) Act, 2003.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Definitions

- (1) In this Act, unless the context otherwise requires:
 - (a) “central committee” means the Central Equal Opportunities Committee constituted under Section 4 of this Act;
 - (b) “central commissioner” means the Central Equal Opportunities Commissioner as appointed under Section 3 of this Act;
 - (c) “government” means state as understood for the purposes of Article 12 of the Constitution of India;
 - (d) “prescribed” means prescribed by rules made under this Act or through guidelines notified by the concerned authority under this Act;
 - (e) “state commissioner” means the State Equal Opportunities Commissioner as appointed under Section 6 of this Act;

CHAPTER II CENTRAL EQUAL OPPORTUNITIES COMMITTEE & COMMISSIONER

3. Central Equal Opportunities Commissioner

- (1) There shall be a Central Equal Opportunities Commissioner appointed for the territory of India.

Appointment as Central Equal Opportunities Commissioner shall be
ment.

4. Central Equal Opportunities Committee

- (1) The Central government shall by notification constitute a body to be known as the Central Equal Opportunities Committee.
- (2) The Central Equal Opportunities Committee shall comprise of –
 - (i) The Central Equal Opportunities Commissioner;
 - (ii) A retired judge of the Supreme Court of India;
 - (iii) The Union Minister for Social Welfare;
 - (iv) One representative of a non-governmental organisation;
 - (v) All State Equal Opportunity Commissioners duly appointed hereunder.
- (3) No person shall be a member of the Central Equal Opportunities Committee, who –
 - (i) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or
 - (ii) is of unsound mind and stands so declared by a competent court; or
 - (iii) is or has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or
 - (iv) is or at any time has been convicted of an offence under any law for the time being in force in India.

5. Functions of the Central Equal Opportunities Committee –

The functions of the Central Equal Opportunities Committee shall include –

- (i) Coordinating this Activities of the various State Equal Opportunities Commissioners;
- (ii) To plan various affirmative actions schemes that may be implemented for the advancement of members of Scheduled Castes and Scheduled Tribes;
- (iii) To gradually evolve a common national standard for affirmative action in the territory of India;
- (iv) To ensure compliance by the State Equal Opportunities Commissioner with the various provisions of this Act and the Rules made thereunder;
- (v) Such other functions as may be prescribed by the Central Government.

6. State Equal Opportunities Commissioner

- (1) Every State Government shall by notification appoint a person to be known as the State Equal Opportunities Commissioner for that state.
- (2) The Central Government shall appoint State Equal Opportunity Commissioners for each Union Territory.
- (2) The qualifications necessary for appointment as State Equal Opportunities Commissioner shall be as prescribed by the Central Government.
- (3) No person shall be eligible for appointment as State Equal Opportunities Commissioner, who –
 - (i) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or
 - (ii) is of unsound mind and stands so declared by a competent court; or
 - (iii) is or has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or
 - (iv) is or at any time has been convicted of an offence under any law for the time being in force in India.

7. Functions of the State Equal Opportunities Commissioner

The functions of the State Equal Opportunities Commissioner shall include –

- (i) Coordinating various equal opportunity and affirmative action activities at all level in the state;
- (ii) To plan various affirmative actions schemes and policies that may be implemented for the advancement of members of Scheduled Castes and Scheduled Tribes at the state level and to advise the State Government on the same;
- (iii) To ensure compliance with the provisions of this Act, by requiring the submission of reports and records as prescribed herein.
- (iv) To prepare an Annual Equal Opportunities Report for the entire state and submit copies of the same to the Central Committee and the Central Government in such form and manner as may be prescribed.
- (v) To investigate into alleged non-compliance with the provisions of this Act and initiate legal proceedings as prescribed herein.

may be delegated to it from time to time by the Central Equal

CHAPTER IV NON – DISCRIMINATION

8. Application of this Chapter

This Chapter shall apply without exception to every individual and any entity carrying on operations within the territory of India.

9. Non-discrimination

- (1) No person shall be discriminated against on the grounds only of race, religion, sex, sexual orientation, place of birth, caste, disability, descent or any of them.
- (2) For the purposes of this section, ‘discriminate’ includes –
 - (i) Limiting, segregating, or classifying an applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee on any of the above grounds;
 - (ii) Utilising standards, criteria or methods of administration that –
 - (a) have the effect of such discrimination; or
 - (b) that perpetuate the discrimination of others on such grounds.
 - (c) Excluding or denying equal jobs or benefits of a qualified individual on such grounds.

10. Diversity

- (1) The state shall endeavour, in every possible manner, to ensure social diversity in the ownership and control over the economic and cultural resources of the nation.
- (2) The state shall ensure and promote the diversity of ownership of all mass communication media.
- (3) The state shall ensure that entities owned or controlled by members of the Scheduled Castes and Scheduled Tribes are given a fair proportion of all state supplier and dealership contracts.

CHAPTER V AFFIRMATIVE ACTION

10. Applicability of Chapter

The provisions contained in this Chapter shall apply to all ‘public companies’ within the meaning of the Companies Act, 1956.

Provided that the Central Government may, by notification in the Official Gazette, make this part applicable to any other entities.

11. Entities to ensure diversity

Every entity conducting operations within the territory of India shall endeavour to achieve and maintain employee diversity and a number of Scheduled Caste and Scheduled Tribe employees proportionate to their share in the national population as determined by the latest Census.

12. Submission of Annual Diversity Report

- (1) All entities shall submit an Annual Diversity Report together with Annual Report, to be placed before the Annual General Meeting, as defined under Section XXX of the Companies Act, 1956.
- (2) The Annual Diversity Report shall state the total number of persons employed by the entity, and the number of persons belonging to Scheduled Caste or Scheduled Tribe communities, and shall be in such form as may be prescribed.
- (3) A copy of the Annual Diversity Report shall be filed with the State Commissioner, within seven working days of placing the same before the Annual General Meeting.

13. Report of State Commissioner

- (1) On receipt of the Report, as provided for in Section 12, the State Commissioner shall scrutinise the same for compliance with such diversity norms as may be prescribed.
- (2) On such scrutiny, if the Commissioner comes to the conclusion that the entity has complied with the above norms, then he shall issue a compliance certificate indicating the same, no later than 15 days from the date of receipt of the Annual Diversity Report.
- (3) On such scrutiny, if the Commissioner concludes that the entity is not in substantial compliance with the above norms, then it shall issue notice to the entity within 15 days of receipt of the Report, requiring it to show-cause for non-compliance.

show-cause, the State Commissioner concludes that the reasons for non-compliance are within the entity's control and the entity undertakes to ensure compliance within a period of time as may be directed by the State Commissioner, then he shall issue a conditional certificate of compliance.

- (5) If after hearing the entity, asked to show-cause, the State Commissioner concludes that the reasons for non-compliance are within the entity's control, then he shall issue a certificate of non-compliance for that entity.

CHAPTER VI

GOVERNMENT CONTRACTS

14. Government Contracts

- (1) For the purposes of this Act, a "government contract" means a contract wherein one of the parties qualifies as 'state' for the purposes of Article 12 of the Constitution of India.
- (2) Notwithstanding anything contained in sub-section (1), a contract which is not a government contract as defined above, but which involves the performance of any obligations under a government contract, shall be considered a government contract, for the purposes of this Act.

15. Requirement of compliance certificate

- (1) Any entity seeking to enter into a government contract shall obtain a compliance certificate from the State Equal Opportunities Commissioner in the manner prescribed in Section 13.
- (2) Sub-section (1) shall apply to all entities, notwithstanding anything contained in Section 10.

16. Effect of certificate of non-compliance

- (1) The state shall not enter into any contracts with an entity which has been issued a certificate of non-compliance under this Act.
- (2) No entity, in which majority interest or control rests with an entity, which has received a non-compliance certificate, shall be a party to a government contract.

17. No retrospective operation –



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y to contracts entered into wholly or substantially prior to the

ENFORCEMENT OF PROVISIONS

18. Civil Proceedings

- (1) Any individual aggrieved by non-compliance with the provisions of this Act by an individual or entity, may initiate civil proceedings in accordance with the Code of Civil Procedure, 1908.
- (2) Notwithstanding anything contained in sub-section (1), the State Equal Opportunities Commissioner, may, on his own motion or on the application of an aggrieved individual initiate civil proceedings in accordance with the Code of Civil Procedure, 1908.

Provided however that the State Commissioner shall not initiate a proceeding unless the procedure as prescribed in Section 22 has been complied with.

- (3) Suits filed in accordance with sub-section (2) shall be initiated in the name of the State Equal Opportunities Commissioner, for the state in question.

19. Court of competent jurisdiction –

No court inferior to the High Court shall entertain any proceedings commenced under this Act.

20. Penalties for discrimination –

A person who has been discriminated against, in violation of Section 8, shall be entitled to compensation not exceeding Rs. 200000.

21. Relief that may be sought

In any suit initiated under the provisions of this Act, it shall be open to a plaintiff to seek one or more of the following:

- (i) injunctive relief, restraining the defendant from violating provisions of this Act;
- (ii) damages, including punitive and exemplary damages;
- (iii) affirmative action in the nature of court-ordered implementation of measures beneficial to the plaintiff;
- (iv) costs incurred in bringing the suit.
- (v) and any other relief which the court deems fit.

22. Commencement of proceedings by State Commissioner

compliance with the provisions of this Act, may make a request for
an investigation.

- (2) On receipt of such a request, the State Commissioner shall examine the same and if he is satisfied that a prima facie case is made out, he shall conduct an investigation of the alleged non-compliance.
- (3) If the State Commissioner concludes that no prima facie case has been made out, then he shall record his reasons in writing and deny the request for an investigation.
- (4) In all other cases the State Commissioner shall conduct an investigation into the complaint of non-compliance with the provisions of this Act.
- (5) The State Commissioner shall submit an investigation report, within two weeks from the commencement of such investigation and in no event later than one month from the receipt of the request for such investigation.
- (6) If the State Commissioner, after investigation, concludes that there has been non-compliance with any of the provisions of this Act, he shall proceed to commence civil proceedings in accordance with Section 18(2) of this Act and the Code of Civil Procedure, 1908.

23. Powers of Commissioner during investigation

The State Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely : -

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

MISCELLANEOUS

24. Offence of fraudulent representation

Whoever, fraudulently avails or attempts to avail of any benefit meant for members of Scheduled Castes and Scheduled Tribes, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.

25. Commissioners and officers to be public servants

The State Commissioner, Central Commissioner and other officers and staff provided to them shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

26. Acts in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Governments or the local authority or any officer of the Government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules, orders or guidelines made under this Act.

27. Act not in derogation of other laws

The provisions of this Act, or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons covered under the present Act.

Given hereunder are two pieces of proposed legislation to ensure affirmative action in the private sector in furtherance of the Constitution. The first is a proposed amendment to the Constitution of India, whereas the second is a Draft Bill to ensure the operation of such a policy.

1. **Proposed Constitution (Eighty Eighth) Amendment Bill³⁷**

NOTICE OF BILL

Dated.....

To,

The Secretary-General,
Lok Sabha,
New Delhi.

Sir,

1. I give notice of my intention to move for leave to introduce during the next/current session of Lok Sabha the following Bill:

Short title : **THE CONSTITUTION () AMENDMENT BILL, 2004**

2. I enclose herewith:
 - a. a copy of the Bill;
 - b. Statement of Objects and Reasons duly signed;
 - c. Financial Memorandum; and,
 - d. Memorandum Regarding Delegated Legislation.
3. I also request you to obtain, if necessary, the recommendation of the President for introduction and /or consideration of the Bill in Lok Sabha.

Yours faithfully,

Member of Parliament
Division No.....

³⁷ Prepared by Justice K. Ramaswamy.

A BILL TO FURTHER AMEND THE CONSTITUTION OF INDIA

THE CONSTITUTION () AMENDMENT BILL, 2004

1. Notwithstanding anything contained in Part III of the Constitution, to give effect to the Directive Principles of State Policy and to enable all Scheduled Castes and the Scheduled Tribes to secure equality of status, dignity of person and socio-economic justice it is necessary to further amend the Constitution in Articles 15 and 16 read with Articles 38, 39 and 46 of the Constitution. This Constitution () Amendment Act, 2004, is hereby enacted.

Amendment to the Ninth Schedule 2. In the Ninth Schedule to the Constitution after Entry ____, the following Entries shall be inserted, namely:

- (i) The Constitution () Amendment Act, 2004;
- (ii) Equal Opportunities and Diversity (Affirmative Action for Scheduled Castes and Scheduled Tribes) Bill, 2004;
- (iii) Promotion of Equal Opportunity and Prohibition of Discrimination Against the Scheduled Castes and Scheduled Tribes in Matters of Employment (in Services, Trade, Business, Commerce, Contracts, Construction, Transport or other Utility Services in the Private Sector) Bill, 2004.

WHEREAS the Preamble of the Constitution assures every citizen equality of status and of opportunity and the security of justice – social and economic, which has been declared in S. R. Bommai's case to be part of the basic structure of the Constitution.

AND WHEREAS Article 46 of the Constitution enjoins upon the State the duty to promote with special care the educational and economic interests of the weaker sections of society and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice;

AND WHEREAS Article 38 of the Constitution directs the State to promote the welfare of the people by securing and effectively protecting a social order in which social, economic and political justice informs all institutions of national life and, to

AND WHEREAS Article 51A(j) of the Constitution imposes the Fundamental Duty upon every citizen to strive towards excellence in all spheres of individual and collective activity for the greater benefit of the nation's achievement and endeavour;

AND WHEREAS the Scheduled Castes and Scheduled Tribes are the weakest and the most deprived and disadvantaged sections of society;

AND WHEREAS the Constitution emphatically underlines the constant duty of the State to promote with special care the best interests of the Scheduled Castes and Scheduled Tribes and to minimise the inequalities they face in status, facilities and opportunities;

AND WHEREAS it is the fundamental duty of the State to effectively implement the directives of the Constitution and to enable the Scheduled Castes and Scheduled Tribes to enjoy unfettered their right to social and economic justice, equality of opportunity, status and personal dignity;

AND WHEREAS the new economic reforms and policy have necessitated the withdrawal of the State from the national economy resulting thereby in weaker institutionalised protection structures for Scheduled Castes and Scheduled Tribes in the market economy;

AND WHEREAS to increase the proportional participation of Scheduled Castes and Scheduled Tribes in the private sector and in the nation's wealth at large, in terms of appointments and promotions, it is necessary to make an express provision in that behalf in the Constitution and a separate statutory enactment to that end;

AND WHEREAS existing Constitutional measures to promote the interests of Scheduled Castes and Scheduled Tribes, contained in Articles 15, 16 and 29(2) of the Constitution dealing with the reservation of seats and posts in educational institutions and public employment, have remained in operation since Independence and, in particular, after the Constitution came into force in 1950;

AND WHEREAS, despite the directives of the Constitution, Scheduled Castes and Scheduled Tribes continue to remain grossly underrepresented in public employment, governance and services of the State and in the affairs of the Union of India more than half a century after Independence;

...al oppression and systemic discrimination Scheduled Castes and Schedules
...economic backwardness and are thus unable to compete in national affairs

at par with the general mainstream;

AND WHEREAS the recent judgements of the Supreme Court in Indira Sawhney v. Union of India 1992 (Supp) 3 SCC 217, Dr. Preeti Srivastava v. State of Madhya Pradesh (1997) 7 SCC, and Ajit Singh & Others (II) v. State of Punjab (1999) 7 SCC 120 prevented the government from effectively implementing the existing policies of reservations of seats in educational institutions for Scheduled Castes and Scheduled Tribes;

AND WHEREAS, it is imperative that national legislation be framed to ensure the greater participation of Scheduled Castes and Scheduled Tribes in the private sector through a system of affirmative action and, further, that this legislation be protected from legal challenge vis-à-vis Articles 13, 14, 15, 16(2), 19 and 29(2) of the Constitution by its insertion into the Ninth Schedule of the Constitution;

NOW THEREFORE the Constitution (Eighty Eighth) Amendment Bill, 2004, providing for affirmative action in the private sector as a matter of right for Scheduled Castes and Scheduled Tribes is necessary for an equitable and prosperous national development.

BE it enacted by Parliament in the Fifty Fourth Year of the Republic of India as follows:

| | |
|--------------|--|
| Short title | Section 1(1):- This Act may be called The Constitution (Amendment) Act, 2003. |
| Commencement | Section 1(2):- It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. |
| Amendments | Section 2(I):- In Article 16 of the Constitution, Clause 4(A) shall be omitted. Section 2(II):- After Clause (2) of Article 16 the following Clauses (2A) to (2C) shall be substituted: 16(2A). A citizen either of the Scheduled Castes or Scheduled Tribes shall have the right to reservation in appointments and promotions with consequential seniority to any post or classes of posts in the services under the State and in the private sector as defined in Clause (31) of Article 366 of the Constitution. |

: State shall make provisions in favour of candidates belonging

: Scheduled Castes or Scheduled Tribes for the relaxation of qualifying marks in any examination or the lowering of evaluatory standards in matters of promotion to any class or classes of service or post in connection with the affairs of the Union or of a state.

Consequently omit the proviso in Article 335 of the Constitution.

16(2B). The State and private sector employers shall club single posts in the respective service in the Union of India, the State government and the private sector carrying equal scales of pay, duties and responsibilities and provide reservations thereupon to Scheduled Castes and Scheduled Tribes.

16(2C). The State shall provide reservations to Scheduled Castes and Scheduled Tribes in private sector employment as defined in Article 366(31) and shall also regulate the same by a statutory enactment and rules made thereunder.

Section 2 (III):- Clause (31) of Article 366 of the Constitution shall be added after Clause (30) of Article 366:

Article 366(31). "Private Sector" shall mean and include a person, firm or partnership registered under the Indian Partnership Act; an autonomous body constituted under a Central or state Act; a company or a corporation registered under the Companies Act 1956; a Trust registered under the Indian Trust Act or a relevant state Act; a cooperative society registered or deemed to have been registered under the Central Act or the relevant state Act; all State-recognised or affiliated educational institutions in receipt of or admitted to a grant-in-aid or those educational institutions established and administered by minorities under Article 30 of the Constitution; public utility services privatised by the Central or state Governments; a public sector undertaking disinvested under the National Industrial Policy of the Central Government or a State Government; a multinational company with links to the private sector as defined herein or having a memorandum of understanding with the Union of India or a State Government, or a Union Territory; private overseas companies registered under the Securities and

Board of India Act or the Foreign Exchange Maintenance Act and
seas entities licensed to engage in trade, commerce, business, or
utility services within the territorial jurisdiction of India having received or in
receipt of tax concessions, capital formations for the Indian share markets,
concessional land allotment, utility supplies from the State, financial aid,
loans or grants from the Central Government or a State Government or a
Union Territory or a nationalised bank or any financial institution owned or
controlled by the Central Government or a State Government; a public
sector undertaking with twenty or more employees or personnel including
contract labour supplied by a contract labour agency or outsourced or any
other method or mode of appointment or employment made. In addition,
the President may, by notification, include any institution, sector, entity,
juristic person or otherwise within the meaning, ambit and scope of “Private
Sector”, for the purposes of this clause.

Section (3):- After Clause 2 of Article 15 the following Clauses (2A) to (2C)
shall be added:

15(2A): Notwithstanding anything contained in this Constitution and
specifically in Article 29(2), a citizen belonging to the Scheduled Castes or
Scheduled Tribes shall have the right of reservations in the admissions
process in all courses of study in all educational institutions maintained by
the State or recognised by the State or receiving State aid or funds.

15(2B): The State shall make provisions in favour of candidates belonging to
any of the Scheduled Castes or Scheduled Tribes for the relaxation of
qualifying marks in any examination and for reservations in matters of
admission in any course of study in all educational institutions mentioned in
Article 15(2A) to ensure full and proper occupancy of those seats reserved
for Scheduled Caste and Scheduled Tribe candidates respectively.

15(2C). Notwithstanding anything contained in the Constitution, the State
shall club single posts in educational institutions covered under Article
15(2A) and carrying equal scales of pay or similar duties, responsibilities or

for the purpose of prosecution of the course of study and shall
in the admission process in the courses of such study
therein by the Scheduled Caste and Scheduled Tribe candidates.

Section 4:- In Article 16(4B) the words “or delete clause (4A)” should be substituted with “clauses (2A) and (2B).”

Section 5:- In Article 19(6) after the words “general public” substitute the following: “reservation for the Scheduled Castes and Scheduled Tribes in the private sector as defined in clause (31) of Article 366 of the Constitution” and any law made the regulation.

FINANCIAL MEMORANDUM

No additional/fresh recurring or non-recurring expenditure is involved since the existing concerned Departments and Ministries are already implementing the rule of reservations in education and the services.

3. Draft Bill II

PROMOTION OF EQUAL OPPORTUNITY AND PROHIBITION OF DISCRIMINATION AGAINST THE SCHEDULED CASTES AND SCHEDULED TRIBES IN MATTERS OF EMPLOYMENT (IN SERVICES, TRADE, BUSINESS, COMMERCE, CONTRACTS, CONSTRUCTION, TRANSPORT OR OTHER UTILITY SERVICES IN THE PRIVATE SECTOR) BILL, 2004³⁸

WHEREAS the constitutional philosophy of the Democratic Socialist Republic of India is founded upon an inclusive, participatory democracy of all social groups of India;

AND WHEREAS large social segments, in particular, the Scheduled Castes and Scheduled Tribes are socially and economically deprived, disadvantaged and discriminated due to historic oppression and systemic discrimination;

³⁸ Prepared by Justice K. Ramaswamy.

*the need to bring Scheduled Castes and Scheduled Tribes into the national
all in the preamble of the Constitution as the basic structure declared in*

S.R. Bommai's case;

AND WHEREAS the State shall strive to promote their welfare by securing and protecting, as effectively as it may, a social order in which socio-economic justice shall inform all the institutions of the national life;

AND WHEREAS the State shall strive to minimise economic disparities and inequality in income and constantly endeavour to eliminate inequalities in status, facilities and opportunities amongst individuals and groups of people engaged in different avocations;

AND WHEREAS the State shall promote with special care the particular the economic interests of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation;

AND WHEREAS every citizen has a fundamental duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

AND WHEREAS the Constitution envisaged a mixed economy for socio-economic restructure with primary emphasis on a public sector economy in which Scheduled Castes and Scheduled Tribes are presented with the opportunities and facilities for employment and economic empowerment;

AND WHEREAS due to the change in economic policy resulting in increased privatization, trade liberalization and gradual divestment of the public sector economy, the State is now withdrawing from its constitutional and social responsibility of socio-economic empowerment of the weaker sections of society, in particular the Scheduled Castes and Scheduled Tribes;

AND WHEREAS the private sector gained entry into, and operation of, the hitherto public sector economy and expanded its economic operations without the corresponding obligation to secure socio-economic justice, a Fundamental Right to the Scheduled Castes and Scheduled Tribes, as was declared by the Supreme Court;

AND WHEREAS the constitutional goal of the socialist democratic republic requires this national obligation to be met and implemented by all the players of the economy, public and private, for the continued achievement of participatory democracy and the national prosperity;

AND WHEREAS the participation of the Scheduled Castes and Scheduled Tribes in the private sector economy per force being minimal and to provide facilities and opportunities in private sector service, trade, commerce, business, contracts, utility services and to prevent discrimination against them;

social order contributing to the Indian welfare state and to this effect this law is being enacted.

A Bill to prohibit discrimination in matters of employment and to provide equal opportunity and all-round participation in trade, business, commerce, contract, construction, transport or utility services to Scheduled Castes and Scheduled Tribes in private sector employment so as to secure to them justice, social and economic – declared by the Supreme Court to be part of the basic structure of the Constitution and a Fundamental Right, and, to thereby invoke in the private sector social responsibility and Constitutional accountability with regard to the implementation of the Directive Principles of State Policy and, further, to provide a mechanism for the enforcement of matters arising out of this right or connected therewith or incidental thereto.

**BE it enacted by Parliament in the Fifty Fourth Year of the Republic of India
as follows:**

CHAPTER I

PRELIMINARY

1. Short title, commencement and application

- (1) This Act may be called the Promotion of Equal Opportunity and Prohibition of Discrimination Against the Scheduled Castes and Scheduled Tribes in Matters of Employment (In Services, Trade, Business, Commerce, Contract, Construction, Transport or Other Utility Services in Private Sector) Bill, 2004.
- (2) It shall come into force with immediate effect.
- (3) It shall apply to all private sector concerns engaging in any business, trade, commerce, contract, construction, transport and other utility services within the territorial jurisdiction of India
- (4) It applies to the whole of India.

2. Definitions

- (1) In this Act, unless the context otherwise requires -
 - (a) “Notification” means a notification issued under this Act and published in the Official Gazette of India;

- by rules made by the Ministry of Social Justice and Empowerment, Government of India, or by rules made by the Ministry of Social Justice and Empowerment, Government of India, or by the executive orders of the ministry, or those made by the Central Government and in force but not inconsistent with this Act or Rules;
- (c) “Prescribed Authority” shall mean the Ministry of Social Justice and Empowerment, Government of India, as nodal ministry or an officer authorised by it;
- (d) “private sector” shall correspond to the definition given in Clause (31) of Article 366 of the Constitution of India;
- (e) “recruitment year” means the English calendar year during which a recruitment is made and shall include part of the year preceding the recruitment if such recruitment is made more than once within a year as per the procedure or as defined in the relevant recruitment rules, regulations, bye laws, standing orders etc. made by the private sector concern or those rules or instructions framed under this Act. All pre-existing rules, orders, directions, byelaws or standing orders inconsistent with this Act or Rules shall cease to operate;
- (f) “Rules” means those Rules made under this Act and instructions, directions, or orders issued under this Act or of those existing but not inconsistent with this Act and Rules;
- (g) “Scheduled Castes” and “Scheduled Tribes” shall have the same meanings assigned to them respectively under Clauses (24) and (25) of Article 366 of the Constitution and notified by the President of India under Article 341(1) and 342(1) as amended from time to time by the Scheduled Castes and Scheduled Tribes List (Amendment) Act, 1976 under Articles 341(2) and 342(2) of the Constitution;
- (h) “Service” shall mean and include any service or post or class of posts or office, appointed to for remuneration in connection with the affairs of the private sector by recruitment, promotion, transfer, deputation and up gradation including contractually, through outsourcing, or otherwise.
- (2) The respective State Governments may bring out a suitable similar enactment with provisions *mutatis mutandis* as a condition to grant or allot loans, concessions, subsidies, share capital, land, or, utility services to any private sector concern by whatever nomenclature used within the territorial jurisdiction of the State or Union Territory as specified in the First Schedule of the Constitution.

CHAPTER II

RESERVATIONS OF POSTS, OFFICES OR SERVICE IN THE PRIVATE SECTOR

3. Reservation and percentage thereof

- the services of the private sector employing or
- by or more employees or persons, appointed or availing their services on regular, contracted or outsourced basis, or by any other method or mode of service;
- (ii) There shall be a prohibition of discrimination against, and the provision of equal opportunity to, all Scheduled Castes and Scheduled Tribes in considerations for recruitment, promotions, up-gradations or transfers including the clubbing of single posts, at all levels of recruitment for appointments, promotions, transfers, deputations, up-gradations in pay-scales or designations;
- (iii) There shall be prescribed reasonable qualifications or eligibility criteria for appointments, promotions or up-gradations to offices, posts or services by an appropriate rule made in that behalf under this Act. Till such time those existing rules, bye laws or standing orders of the private sector concern not inconsistent with this Act or Rules made by the Central Government and applicable to Scheduled Castes and Scheduled Tribes shall remain in operation;
- (iv) All offices, posts, classes of posts or services in connection with the private sector concern so reserved shall not be filled by any other candidate other than the Scheduled Caste and Scheduled Tribe candidates respectively, except as otherwise expressly provided under this Act;
- (v) Notwithstanding anything in any law, judgment, decree, direction or order of any court, tribunal or an authority to the contrary, every private sector concern shall adopt just, equitable and fair procedures in recruitment, promotions, transfers and up-gradations so as to secure the requisite compliance with the law of reservations to the Scheduled Castes and Scheduled Tribes;
- (2) Reservations to Scheduled Castes and Scheduled Tribes in the employment of the private sector shall be proportionate to their respective population as per the latest census gazetted by the Union of India. The census, for the purposes of this Act, shall be considered complete if covers more than 70 per cent of the total population of the country, irrespective of whether it remained incomplete in one or more states wholly or partially for any reason whatsoever.
- (a) Notwithstanding such incompleteness of the census in any part of the territory of India, the Union of India shall take into account the immediate preceding gazetted census of that part

to give effect to the increase in the percentage of reservation

- (3) Notwithstanding anything in any law, judgment, decree, direction, or order of any court, tribunal or authority to the contrary, a Scheduled Caste or a Scheduled Tribe candidate, as the case may be, selected on merit shall not be barred from availing the benefit of relaxed qualifying marks or lowering the standards of evaluation to subsequent promotion or selection.
 - (a) Notwithstanding anything in any law, judgment, decree, direction or order of any court, tribunal or authority to the contrary, the Scheduled Caste or the Scheduled Tribe candidate as the case may be, selected on merit in a direct recruitment, promotion, up-gradation or appointment by transfer, shall have his *inter se* consequential seniority on such post with any general category candidate from the date of joining. However, he shall be eligible for future consideration for reserved posts and to the rights of reservation under this Act.
 - (b) Notwithstanding anything to the contrary in any law, judgment, decree, direction, or order of any court, tribunal, or authority to the contrary, and notwithstanding any *inter se* merit list separately prepared by the recruitment authority, a board, or a competent person for the general or reserved category candidate, a Scheduled Caste or Scheduled Tribe candidate appointed, promoted, upgraded or transferred to a reserved post shall get his *inter se* consequential seniority from the date of joining and adjusted in the service as per the *inter se* general seniority so maintained.
- (4) Reserved posts for the Scheduled Castes or the Scheduled Tribes under sub-section (1) of Section 3 shall only be filled in the prescribed manner and no general category candidates shall be appointed or posted to the reserved post.
- (5) Unfilled reserved posts or classes of post lying vacant whatever reason, shall not be de-reserved and shall be carried forward from time to time.
- (6) In the event that the required numbers of Scheduled Caste or Scheduled Tribe candidates are lesser than the numbers of vacancies available the same shall be filled up by the other reserved category candidates.
- (7) If, however, in a subsequent recruitment or selection, another reserved category candidate is selected and appointed, the relevant reserved quota shall be adjusted for that category. Thus the prescribed percentages of all respective reserved categories shall always be maintained.
- (8) Notwithstanding anything to the contrary in any law, judgement, decree, direction, or order of any court, tribunal, or any authority to the contrary, any rule limiting by half the number posts or vacancies to be reserved for recruitment or promotion in a recruitment year shall not apply to

subsequent recruitment year, carried-forward posts or vacancies in any recruitment year shall not be clubbed. Separate recruitment shall be

conducted for carried-forward posts or vacancies.

- (9) The head of the private sector concern or the concerned appointing authority shall be responsible to implement this Act in its letter and spirit.

4. Relaxation and concessions

- (1) A private sector concern or its appointing authority shall do the following:-
- (i) The upper age limit fixed for appointment to an office, post or service may be relaxed by such number of years as may be prescribed in the Rules made under this Act, but it shall not fall less than five years. However, till then the rules, instructions or regulations made or issued by the Union of India in that regard shall remain in operation to the extent consistent with this Act.
 - (ii) The fee fixed for applying for selection to a service, post or office separately or combined through an examination or otherwise may be exempted to such extent as may be prescribed. Till then the existing rules or instructions issued by the Union of India or the Union Public Service Commission shall remain in operation.
 - (iii) Notwithstanding any law, judgment, decree, order or direction of any court, tribunal or authority to the contrary, the Union of India or the private sector concern shall always be deemed to have power to make provisions by prescribed authority for relaxation and lowering of the prescribed qualifying marks, the standards of evaluation, and other such other qualifications, and, to relax the requirements of work experience for direct recruitment or length of service for promotion or up-gradation for Scheduled Castes and Scheduled Tribes candidates and employees to secure their representation as per the procedure prescribed in Section 3(2).
- (2) The recruiting authority or competent officer, as the case may be, may pay to the Scheduled Caste or Scheduled Tribe candidate such travelling allowance as may be determined by prescribed authority when summoning him to an interview. Till the rules are made under this Act, the existing rules or instructions issued by the Union of India or the Union Public Service Commission shall remain in operation.

5. Clubbing of single posts

, judgment, decree, order or direction of any court, tribunal or
s carrying equal scale of pay or equal responsibility and duty in

the departments in the private sector concern shall be clubbed and reserved for the appointment, promotion, up-gradation or transfer of Scheduled Caste and Scheduled Tribe candidates in accordance with this Act and the Rules. Instructions or directions, by whatever name called, issued by the Union of India but not inconsistent with this Act shall remain in operation till then.

- (2) Private sector concerns shall prepare a forty-point roster and earmark roster points for Scheduled Caste and Scheduled Tribe candidates as required by the Union of India and in operation prior to the judgment of the Supreme Court in *R. K. Sabharwal v. State of Punjab* (1995) 2 SCC 745. Scheduled Caste or Scheduled Tribe candidates shall be placed at their respective roster points specified for them according to the order of merit in the respective category.
- (3) Notwithstanding anything in any judgment, decree, order or direction of any court, tribunal or authority to the contrary, on appointment by direct recruitment, promotion, up-gradation or transfer to a post, grade, service or category on regular basis in accordance with the Rules, Scheduled Caste or Scheduled Tribe candidates shall be placed at the appropriate roster point earmarked for their respective reserved category. The seniority of such candidate shall be determined accordingly.

CHAPTER III

6. Equal opportunity, facilities and participation in trade, business, commerce, transport, contracts, supplies, manufacturing, utility services or other economic activity

- (1) The State and the private sector shall promote and provide equal opportunity and facilities to members of the Scheduled Castes and Scheduled Tribes by an affirmative economic action programme and shall not discriminate against them in the awarding of contracts, subcontracts, services, trade, business, commerce, construction contracts, transport, contracts to supply goods or utility services or any other economic activity not expressly covered. A private sector concern that avails or utilises the contract services of a subcontractor or contract labour agency shall ensure that at least 25 per cent of the contractual services are to Scheduled Castes and Scheduled Tribes.
- (2) When a private sector concern contracts to purchase goods or services from the suppliers of such goods or services, at least 25 per cent of such contracts of supply of goods or services shall be made with Scheduled Caste and Scheduled Tribe suppliers, small establishments, enterprises or cooperative societies wholly composed of and managed by Scheduled Castes and Scheduled Tribes or both only.

- public sector undertaking, industry, company or utility service
- concern for supply of goods or services, the contract should contain a clause that the private sector concern shall purchase or avail at least 25 per cent of the contracted goods or services from Scheduled Caste and Scheduled Tribe suppliers, small establishments, enterprises or cooperative societies wholly composed of and managed by Scheduled Castes and Scheduled Tribes or both only as subcontractors.
- (4) When a private sector concern has a construction contract with the Central Government or a public sector undertaking, industry, company or utility service, the private sector concern shall avail or utilise the services of, or purchase at least, 25 per cent of the contracted goods or services from Scheduled Caste and Scheduled Tribe suppliers, small establishments, enterprises or cooperative societies wholly composed of and managed by Scheduled Castes and Scheduled Tribes or both only.
 - (5) In the awarding of contracts, outlets, licenses, public utility services, leases, allotments or auction of shops, industrial units, plots of land for industrial or commercial purpose, dealerships and distribution of any other largesse, the Central Government or public sector undertaking, industry, company or utility service shall allot at least 15 per cent to Scheduled Caste recipients and at least 7½ per cent to Scheduled Tribe recipients. Where adequate numbers from either category are not available or do not avail such awards, the residue shall be allotted to the other category.
 - (6) In awarding of surface transport services, at least 15 per cent or 7½ per cent quotas must be allotted to Scheduled Caste and Scheduled Tribe recipients respectively, or a cooperative society composed wholly of Scheduled Castes or Scheduled Tribes.
 - (7) The private sector in its allotment of contracts, outlets, licenses, utility services, leases, shops, franchises, dealerships, distribution of any work, goods or services, shall allot at least 15 per cent to Scheduled Castes recipients and 7½ per cent to Scheduled Tribe recipients. Where an adequate number of either category is not available or does not avail such awards, the residue shall be allotted to the other category.
 - (8) (a) Benami transactions regarding the item or items covered under Sections 6(6) and 6(7) shall be void and the allottee or the benami acquires no right, title, or interest therein.
 - (i) If any person covered by the transactions described in Sections 6(1) to Section 6(5) misrepresents himself to be from the Scheduled Caste or Scheduled Tribe community, he stands declared as ineligible for such subcontract, supply, service or goods.

concern on satisfying itself as to the nature of the
all allot to any other Scheduled Caste or Schedule Tribe

recipient such subcontract, supply, or service or goods.

- (b) Such benami transaction shall be cancelled following a just and fair procedure consistent with the principles of natural justice with brief reasons in support thereof.
 - (c) On such cancellation, the same shall be re-allotted to any other Scheduled Caste or Scheduled Tribe person.
 - (d) The Assistant Central Labour Commissioner having territorial jurisdiction over the private sector shall on a complaint, or in a *suo motu* proceeding, inquire into such benami transactions or misrepresentation and after giving reasonable opportunity of oral hearing to the affected person, cancel the allotment with brief reasoned orders in support thereof and serve a copy on him.
- (9) In the production or procurement of defence goods, services or equipment, when awarding a contract or a subcontract, the concerned authority or officer shall award at least 15 per cent or $7\frac{1}{2}$ per cent of the value and volume of the contract or subcontract to Scheduled Caste or Scheduled Tribe recipients respectively, or cooperative societies wholly composed of and managed by Scheduled Castes or Scheduled Tribes.
- (10) A private sector concern, contractor, or a subcontractor making any false statement or noting for the purpose of obtaining the contract, service, or supply of goods shall be liable to pay a penalty of not less than one-third of the total value of the contract or subcontract, which shall be recovered on a certificate issued by the Central Assistant Labour Commissioner as arrears of land revenue by the Executive Magistrate having territorial jurisdiction over the private sector concern and the same shall be credited to a fund created by the nodal ministry.
- (a) The Central Assistant Labour Commissioner exercising territorial jurisdiction over the private sector shall on a complaint, or in a *suo motu* proceeding, enquire into the veracity of the statement and after giving reasonable opportunity of oral hearing to the offending person pass brief reasoned orders in support of his conclusion and serve a copy thereof on him.

[Burden of Proof]

ment is not false shall lie on the person making the statement. On
in case of a *suo motu* proceeding, the concerned officer in the
Central Assistant Labour Commissioner's Office to substantiate it.

[*Appeal*]

- (12) An appeal against the orders of the Central Assistant Labour Commissioner under Section 6(8)(d) and Section 10(a) shall lie to the Regional Central Labour Commissioner exercising territorial jurisdiction over the private sector concern who, after giving reasonable opportunity of oral hearing to the appellant, shall decide the appeal within three months from the date of filing the appeal with brief reasons in support of the order.

7. The nomination of accountable persons by the private sector; the authorised officer or officers from the nodal ministry and their responsibilities; the constitution of the Regional Conciliation and Counselling Committee and its duties

- (i) The private sector shall notify to the nodal ministry within two months from the date of commencement of this Act, an 'accountable person' of the private sector who shall be responsible for the implementation of this Act, its Rules, and all directions or orders issued by the nodal ministry or those in operation. The accountable person is answerable to the appropriate committee, officer or authority under this Act.
- (ii) The nodal ministry shall authorise an officer of the rank of Joint Secretary for the implementation of this Act, its Rules, and all instructions or directions of the nodal ministry. He shall also interact with the private sector to secure the enforcement of and compliance with this Act to provide equal opportunity in service, trade, business, commerce or any other diverse contractual activity of the private sector to the Scheduled Castes and Scheduled Tribes in matters related to the entry into contract, supply of contract labour service, goods, utility services or any other activity connected within the private sector.
- (iii) The Joint Secretary in consultation with the Secretary, Labour Department, Government of India, or any other department of the Government of India, shall collect all relevant information and maintain a register containing a list of eligible and qualified persons of Scheduled Caste and Scheduled Tribe community for supply when called for by the private sector.
- (iv) The Joint Secretary, in collaboration with the private sector or independently, shall arrange and organise training for Scheduled Caste and Scheduled Tribe persons so as to impart the necessary knowledge, training and skills required in the private sector for service, trade, business, commerce,

utility service, performance of contract or transmission of
either in existing institutions or institutions created for such

purpose at such places as are necessary.

- (v) The accountable person of the private sector shall interact with and inform the Joint Secretary of the eligibility requirements and qualifications of private sector personnel so as to enable the Joint Secretary to make available the needed personnel to the private sector or, in collaboration with the private sector, to organise and impart the necessary training to Scheduled Caste and Scheduled Tribe persons.
- (vi) Private sector concerns shall also arrange to impart from time to time, prior to or on appointment, promotion or up-gradation, the required knowledge, training and skills to all Scheduled Caste and Scheduled Tribe candidates.
 - (a) A member of the Scheduled Caste or Scheduled Tribe community who applies for appointment, award of contract, subcontract, agency, contract labour supply agency or any other economic activity and is not provided such opportunity for appointment, award of contract, subcontract, agency, contract labour supply agency or in any other economic activity, or is discriminated against, may make a complaint to the Central Assistant Labour Commissioner having territorial jurisdiction over the private sector concern.
 - (b) On receipt of the complaint the Central Assistant Labour Commissioner shall summon the accountable person of the private sector, or anyone duly authorised by him, to appear in person or through counsel to explain to his case.
 - (c) On a *prima facie* concurrence that the complainant was denied opportunity or was discriminated against the Central Assistant Labour Commissioner shall conciliate the matter between the complainant and the accountable person, or his authorised representative, and give such directions as may be necessary to provide opportunity to the complainant for his employment or participation in the concerned economic activity.
- (viii) In case of the conciliation fails the Central Assistant Labour Commissioner shall refer the matter to the office of the Regional Central Labour Commissioner who, upon such receipt, shall refer the same to the Regional Conciliation and Counselling Committee.
- (ix) The nodal ministry shall constitute in each region of a State a Regional Conciliation and Counselling Committee to further conciliate any matter received from the Central Assistant Labour Commissioner.
- (x) The Regional Conciliation and Counselling Committee shall consist of
 - (a) A representative of the private sector;

... necessary knowledge and experience in the concerned sphere of the
... also committed to social justice and the empowerment of the

Scheduled Castes and Scheduled Tribes;

- (c) A local advocate engaged in voluntary assistance to the Scheduled Caste and the Scheduled Tribe community.
- (xi) The Regional Central Labour Commissioner shall convene a meeting of the Regional Conciliation and Counselling Committee for further counselling and conciliation between the private sector and the complainant by summoning them to do so.
- (xii) The Regional Conciliation and Counselling Committee shall report the outcome of their efforts to the Central Regional Labour Commissioner.
- (xiii) The Regional Central Labour Commissioner shall, considering all necessary factors, take a decision with reasoned orders in support thereof and communicate it to both parties. If the Regional Central Labour Commissioner so finds he may direct the private sector concern to employ the complainant or engage in economic activity with him. If the claim is found unjustified the same shall be communicated to the complainant.
- (xiv) The private sector concern shall be directed to implement the order of the Regional Central Labour Commissioner within one month from the date of its receipt and report compliance thereof.
- (xv) If the private sector concern persists in not providing equal opportunity and discriminates against the complainant, the Regional Central Labour Commissioner shall impose a minimum penalty of Rs. 30,000/-, or above, and communicate the same to the private sector concern for immediate compliance.
- (xvi) The Regional Central Labour Commissioner shall issue a certificate of the penalty along with a non-compliance notice to the District Magistrate exercising territorial jurisdiction over the private sector concern, who upon its receipt, shall recover such penalty as arrears of land revenue and have it credited to the fund constituted by the nodal ministry.

CHAPTER IV

CONSTITUTION OF EQUAL OPPORTUNITY AND PREVENTION OF DISCRIMINATION MONITORING COMMITTEE AND ITS POWERS AND PROCEDURE.

8. Constitution and composition of the Equal Opportunity and Prevention of Discrimination Monitoring Committee

...e a committee known as the Equal Opportunity and Prevention
...committee and appoint the following members:

- (a) Two Scheduled Caste Members of Parliament, one from the Lok Sabha and one from the Rajya Sabha;
- (b) One Scheduled Tribe Member of Parliament from either the Lok Sabha or the Rajya Sabha;
- (c) A member representing the private sector;
- (d) A member with experience or knowledge of both private sector work and human rights;
- (e) The Secretary, Ministry of Company Affairs, Government of India;
- (f) The Secretary, Ministry Social Justice and Empowerment, Government of India and;
- (g) The Secretary, Ministry of Labour, Government of India.

The Chairman of the Committee shall be elected from among the three Members of the Parliament who shall preside over the Committee. In his absence any other Member of Parliament may preside over the meeting.

- (1A) The Joint Secretary, Ministry of Social Justice and Empowerment, Government of India, shall be the Secretary of the Committee and shall convene all meetings and have custody over its records.
- (2) The term of office of the Committee shall run *co terminus* with the Lok Sabha.
- (3) If any vacancy arises in the membership of the Committee under clauses (a) to (d) of sub-section (1), due to resignation, death, or otherwise, the same may be filled by the President by appointing any other member for the remaining term of the Committee from the respective category.
- (4) Till a succeeding Committee is constituted after general elections to the Lok Sabha, the existing committee shall continue to operate and function.
- (5) In the event of a vacancy in the Committee or the absence of any member attending its meetings, the proceedings of such meetings shall not be void or invalid.
- (6) The Committee shall meet regularly at least twice a week and review the proper and effective implementation of this Act, its Rules, any directions, orders or policy affirmative action programmes for employment or socio-economic empowerment of the Scheduled Castes and the Scheduled Tribes.
- (7) The Committee, upon the receipt of any complaint, or in a *suo motu* action, transmit its decisions to the Central Assistant Labour Commissioner exercising territorial jurisdiction over the relevant private sector concern to take further action thereon.

Parliament every year of all action taken by it regarding the rules, and all directions, orders or policy affirmative action

programmes. The report shall be placed on the floor of each House of Parliament and any recommendations by Parliament shall be enforced.

- (9) The nodal ministry shall constitute a fund for the implementation of this Act from its budgetary allocations as also from penalties recovered from the private sector.
- (10) Penalties recovered by the District Magistrate from the private sector as arrears of land revenue shall be credited to the account of the fund.
- (11) The amount accumulated in the fund shall be utilised to impart knowledge and skills training for all members of the Scheduled Castes and Scheduled Tribes employed in the private sector or engaged in any economic activity therein.
- (12) The District Magistrate may, if he is of the opinion that any private sector concern remains in non-compliance with this Act or its Rules as certified by the Regional Central Labour Commissioner, in addition to recovery of the penalty as arrears of land revenue, direct the accountable person to show cause as to why a sentence of imprisonment not be imposed upon him. In that event, a further opportunity of hearing shall be given to the accountable person in person, or through representing counsel, to explain his case. If the District Magistrate is so convinced a sentence of imprisonment of not less than three months but up to six months may be imposed.
- (13) The Regional Central Labour Commissioner shall periodically report to the Equal Opportunity and Prevention of Discrimination Monitoring Committee every six months of all action taken in implementation of this Act.

9. Coordination and implementation

The nodal ministry, in collaboration with the Ministry of Company Affairs and Ministry of Labour, shall be responsible for the coordination and implementation of this Act, its Rules and all directions, orders or policy affirmative action programmes made thereunder and shall report to the Committee.

CHAPTER V MISCELLANEOUS

10. Protection of action taken in good faith

ng shall lie against any private sector concern or implementing
nuance of this Act, its Rules, or any other direction.

11. Nomination of liaison officer

Private sector concerns shall nominate an officer from its Scheduled Caste or Scheduled Tribe officers of such rank prescribed under this Act to function as a liaison officer to enforce this Act. If such officer is not available any other officer shall be nominated. He shall be responsible, in particular, for:

- (a) Coordination and strict implementation of this Act, its Rules and all instructions or directions by the Union of India in true spirit and purpose to achieve the objects of this Act;
- (b) Submission of reports and returns to the nodal ministry within the prescribed period;
- (c) Facilitating the inspection of records by the nominated officer of the nodal ministry.
- (d) Any other incidental work necessary for the above purposes.

12. Submission of annual report and maintenance of records thereof

- (1) Private sector concerns shall maintain such records as may be prescribed and shall furnish the same every year to the nodal ministry in such manner and at such time as may be prescribed. This shall include an annual report on appointments, promotions, up-gradations or transfers of all Scheduled Caste or Scheduled Tribe personnel made during the previous year, information regarding the number of unfilled posts or vacancies and the steps taken to fill them up and the reasons for not filling them up.
- (2) An officer authorised by the nodal ministry, not below the rank of Director, shall inspect records relating to the services maintained by the private sector concerns so as to ensure implementation of this Act.
- (3) It shall be the duty of the private sector concern through its liaison officer to make available such records or documents relating to subsection (2) for inspection by the inspecting officer and to furnish such information and extend or arrange such assistance as may be necessary to carry out the inspection.

13. Penalty for contravention of this Act and false claims or issue of false social status certificate

lison officers or the accountable person responsible for Chapter III of this Act found contravening the provisions of this

Act, its Rules or any instructions or directions, shall be liable to pay a penalty of Rs 30,000 or more.

Provided that if the concern, liaison officer or accountable person proves that he made every bona fide and sincere effort and exercised utmost care, attention and diligence to implement this Act, its Rules and all directions issued thereunder or those in force he shall be exempted from paying the penalty.

- (2) A person claiming to be a member of any Scheduled Caste or Scheduled Tribe shall file an affidavit to that effect and in that regard duly attested by an officer specified in the schedule;
- (3) As soon as an appointment to a reserved post is made, the appointing authority of the private sector concern, or the concerned department of the Union of India, public sector undertaking, industry, company, or nationalised bank, shall immediately send the affidavit, original social status certificate and application for recruitment, or social status existing as on date of promotion or up-gradation, to the Director of Social Welfare or the Tribal Welfare, Department of the appropriate State Government for verification.
- (4) On receipt of the record mentioned in sub-section (3) from the private sector concern, the appointing authority or a competent officer of the Union of India, public sector undertaking, industry, company, or nationalised bank, the Director of Social Welfare or the Tribal Welfare Department of the appropriate State Government shall verify the veracity of the social status of the appointee and shall report back on such veracity within three months from the date of the receipt of the record.
- (5) In case such report is adverse to the appointee, the appointing authority or the competent officer shall immediately issue a show cause notice to the appointee together with a copy of the report received from the Director of the Social Welfare or Tribal Welfare Department calling for an explanation within a specified time. On receipt of the explanation, if any, within the specified or extended time, the private sector concern shall take appropriate action within one month as per the rules or in accordance with the principles of natural justice. It should pass an order with brief reasons in support therefore. If the appointee seeks oral hearing in person, before an order is passed, such an opportunity may be given. The order shall be served in person on the appointee or, in case of avoidance, send it by registered post with acknowledgement due to the last known address. A copy thereof shall be sent to the Director of the Social Welfare or the Tribal Department.
- (6) An appeal shall lie against an order passed under sub-section (5) to the Head of the Department of the private sector concern or the Head of the Department of the Union of India, public sector

- nationalised bank. He shall, after giving an opportunity of decide the same with brief reasoned orders within three months from the date of filing the appeal. The decision binds the appointee. It shall be served on the employee either in person or by registered post with acknowledgement due. In case the order is favourable to the employee, a copy shall be communicated to the Director of the Social Welfare or the Tribal Welfare Department of the appropriate State Government who, upon its receipt, may question the same under Article 226 of the Constitution.
- (7) (a) Whoever falsely claims to be a member of a Scheduled Caste or Scheduled Tribe and produces such a social status certificate shall be punishable with imprisonment of not less than six months and fine up to Rs. 20,000/- or more.
- (b) Whoever, charged with the responsibility of issuing caste certificates to members of the Scheduled Castes and Schedules Tribes, issues a false caste certificate shall be liable to imprisonment of not less than three months and fine up to Rs. 10,000/-. The falsity of the claim can be proved by the report of the Director of Social Welfare or the Tribal Welfare Department regarding the social status of the appointee. The burden shall be on the appointee or the certificate issuing officer to prove otherwise.
- (c) *Prima facie* proof of the falsity of the claim can be met by the report of the Director of Social Welfare or Tribal Welfare Department regarding the falsely claimed social status of the appointee and the finding of the appellate authority, if any appeal was filed, confirming such report. The burden shall be on the accused employee or the certificate-issuing officer to prove otherwise. If proved otherwise, the burden shifts on to the prosecution to prove its case.
- (8) An appointee accused and convicted under subsection 7(a) of this section shall stand disqualified for any future appointment in any private sector concern or in the Union of India, State Government, public sector undertaking, industry, company or nationalised bank. He shall not be eligible to contest any electoral representative office including Member of Parliament, Member of Legislative Assembly or Council, local body and so on.
- (9) No prosecution for an offence under this Act shall be maintainable against an officer except by or with the sanction of the nodal ministry with prior approval of the National Commission for Scheduled Castes or National Commission for Scheduled Tribes. The said respective Commission shall examine the veracity of the conclusion of *prima facie* violation of this Act. The nodal ministry shall ordinarily accept such recommendation unless it further consults the respective Commission and if the respective Commission revised such recommendation. The Commission for Scheduled

and its recommendation within three months from the date of

Note: The Representation of the People Act, the Local Bodies Acts or the Cooperative Societies Acts shall be deemed to have been suitably amended to the extent of the disqualification clause in Section 13(7)(a).

14. Cognizance of the offence by a competent court

- (1) No competent court shall take cognizance of an offence punishable under Section 13(7) save on a complaint filed by the aggrieved person or competent police officer or authorised officer of the nodal ministry or the Director of the Social Welfare or the Tribal Welfare Department of the appropriate State Government.
- (2) No court inferior to that of the Courts of the Metropolitan Magistrate or the Judicial Magistrate of the First Class shall try an offence punishable under this Act.

15. Cognisance and non-bailable

The offences under this Act shall be cognisable and non-bailable.

- (a) The provisions of the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, stand inapplicable as to the extent of this Act.

16. Power of Central Government to give directions

Private sector concerns shall be bound by this Act, its Rules or such directions or instructions by whatever name called issued by the Union of India and in operation but not contrary to or inconsistent with the provisions of this Act or any general or special orders, given in writing from time to time, to give effect to the provisions of this Act.

17. Act to have over-riding effect

Notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall have overriding effect.

18. Removal of difficulties

the provisions of this Act, the nodal ministry may, by order
provisions not inconsistent with the provisions of this Act as
may be necessary for removing such difficulty.

19. Parliamentary approval

All rules, instructions, directions or orders made under this Act shall, as soon as may be after it is so made, be placed before each House of Parliament for approval prior to its operation.

20. Presenting of Annual Report

The Ministry of Social Justice and Empowerment shall, every year, place before each House of Parliament a report giving a full account of the implementation of this Act during the preceding year.

21. Power to make rules

- (1) The Ministry of Social Justice and Empowerment may, to give proper and full effect to this Act, notwithstanding the operation of the provisions of Section 3 and 4 *per force*, by notification, make rules to carry out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing provisions, the nodal ministry may make such provisions and may provide for all or any of the following matters namely:-
 - (a) to ensure that the percentages of posts, offices or services to be reserved in the private sector for the members of the Scheduled Castes and Scheduled Tribes under sub-section 2(a) of Section 3 of this Act be not less than 15 per cent and 7½ per cent respectively or as may be amended from time to time;
 - (b) manner of filling the posts reserved for Scheduled Castes and Scheduled Tribes under sub-section (5) of Section 3;
 - (c) relaxation of upper age limit etc. under clause (1) of sub-section (1) of Section 4;
 - (d) exemption of fee for applying for recruitment to a service under clause (ii) of sub-section (1) of Section 4;
 - (e) the authority to determine travelling allowances under sub-section (2) of Section 4;
 - (f) rank of officer to be nominated as liaison officer under Section 11;
 - (g) the prescribed authority under section 4(1)(iii);
 - (h) the manner of conducting annual inspection of records under Section 12;

private sector concerns under Section 12, the manner in which,
I report on the appointments, promotion or up-gradation of

Scheduled Castes or Scheduled Tribes persons made during the previous year to be furnished;

- (j) any other matter which is required to be, or may be, prescribed;
 - (k) form of affidavit of the candidate and attesting officer under Section 3;
 - (l) procedure for enquiry by the appointing authority and appellate authority;
 - (m) such other rules or orders or directions to carry out the provisions of this Act.
- (3) Every rule made under this Act or instructions or directions shall be placed, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised of one session or of two or more successive sessions, and if, before the expiry of the session immediately following the current session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. Any such modification or annulment shall be without prejudice to the validity of anything previously done under this Act, its Rule, directions or orders.

SCHEDULE AFFIDAVIT

I _____ S/D/o _____ of Village/Town
_____ within the jurisdiction of _____ Police Station in
_____ Taluk/Mandal/Subdivision _____ in the Districts/Division
_____ of the State/Union Territory _____ belong to _____
Community/Caste/Tribe by birth and continue to be a Scheduled Caste/Tribe which is recognised in item
No. _____ as Scheduled Caste/Scheduled Tribe under the Constitution (Scheduled
Caste/Scheduled Tribe) Order, 1950 or as amended from time to time by the Scheduled Caste/Scheduled
Tribe List Modification Order, 1956, the Bombay Reorganisation Act, 1960, The Punjab Reorganisation
Act, 1966, The State of Himachal Pradesh Act, 1970, The North-Eastern Areas (Reorganisation), 1971
and the Scheduled Caste/Scheduled Tribe Order Amendment Act, 1976 of the Scheduled
Caste/Scheduled Tribe Amendment Order _____.

_____ S/D/o _____ further state that my parents and myself
_____ ge/Town and within the jurisdiction of _____

Police Station in Taluk/Mandal/Subdivision _____ in the District/Division
_____ of the State/Union Territory. I further verify and solemnly state that the facts
stated above are true and correct to the best of my knowledge, belief and information and no part of the
statement is incorrect or false.

Signature of the Candidate

Attested by a Gazetted Officer

Note: In case the candidate is son or daughter of a migrant labour or transferee, and in service of the
Central Government or a State Government or other authority, it should further be stated in the affidavit of
the date of migration or transfer of the parent and the duration of stay in the migrated or transferred place
in which the Caste or Tribe was not recognised as Schedule Caste or Scheduled Tribe.

The following officers are eligible to attest the affidavit:

- (1) District Magistrate/ Additional District Magistrate and the District Collector/ Deputy
Commissioner/ Additional Deputy Commissioner/ Deputy Collector/ Additional Joint District
Collector/ Judicial Magistrate First Class/ First Class Stipendiary Magistrate/ Sub-Divisional
Magistrate/ Taluka Magistrate/ Executive Magistrate/ Extra Assistant Commissioner.
- (2) Chief Presidency Metropolitan Magistrate/ Additional Chief Presidency, Metropolitan
Magistrate/ Presidency Magistrate.
- (3) Revenue Officer not below the rank of the Tehsildar
- (4) Sub-Divisional Officer/ Mandal Revenue Officer / Mandal Development Officer of the area
where the candidate and/or his family normally reside/ migrated to or transferred.

APPENDIX 1

Diversity and Affirmative Action in the Era of Privatisation

(A Two Day National Seminar on Scheduled Castes, Scheduled Tribes and Other Backward Classes and their Share in the Nations Wealth, its Institutions and Transformative Processes)

organised by

**Devaraj Urs Research Institute, Govt. of Karnataka
and**

**Centre for the Study of Casteism, Communalism and Law (CSCCL)
National Law School of India University (NLSIU), Bangalore**

Date : Saturday, the 19th and Sunday, the 20th April, 2003

Venue : National Law School campus, Nagarbhavi, Bangalore-560072

Programme Schedule

19.04.2003 – Saturday

| | |
|------------|---|
| 9.00 a.m. | Registration |
| 9.30 a.m. | Coffee and Get-together |
| 9.50 a.m. | Participants requested to be seated in the conference hall |
| 10.00 a.m. | Theme Songs: Dr. Banandur Kempaiah & Mr. Janardhan |
| 10.10 a.m. | Welcome: Dr. A. Jayagovind Professor of Law & Acting Director, NLSIU |
| 10.20 a.m. | Introduction to theme: Dr. S. Japhet Associate Professor & Seminar Coordinator and Faculty Coordinator, CSCCL, NLSIU |
| 10.30 a.m. | Inaugural Address: Shri. Mallikarjuna Kharge Honøble Home Minister, Government of Karnataka |
| 10.45 a.m. | Keynote Address: Shri. B. Shankaranand Former Union Minister |
| | Main Speakers |
| 11.00 a.m. | Dr. Bhalchandra L. Mungekar Vice-Chancellor, University of Mumbai |
| 11.20 a.m. | Dr. Raja Sekar Vundru, IAS Deputy Secretary, Union Ministry for Social Justice and Empowerment and Member of Task Force for the Implementation of Bhopal Declaration |
| 11.40 a.m. | Mr. Devanooru Mahadev Writer and Intellectual and Recipient of Dr. Baba Saheb Ambedkar Award for 2003, Govt. of Karnataka |
| | Chief Guests |
| 12.00 p.m. | Shri. V. Shrinivas Prasad Honøble Union Minister of State for Consumer Affairs, Food and Public Distribution |
| | Smt. Motamma Honøble Minister for Women and Child Welfare, Govt. of Karnataka |
| | In Chair |
| 12.10 p.m. | Shri. A. Krishnappa Honøble Minister for Social Welfare, Govt. of Karnataka |
| 12.20 p.m. | Vote of Thanks : |

Dr. Chandrama S. Kanagali,
Director, Devaraj Urs Research Institute

- 1.30 p.m. *-The Crisis of Exclusion in Indian Society, the Constitutional Mandate and the Social Responsibility of the Private Sector'*
Dr. Suresh Mane
Professor of Constitutional Law, University of Mumbai
- 1.50 p.m. *Reservation in the Private Sector (including MNCs) – Constitutional and Legal issues*
Prof. Ravi Verma Kumar
Senior Advocate and Former Chairman, Permanent Backward Classes Commission, Govt. of Karnataka
- 2.10 p.m. *Discrimination or Diversity? Justification for Affirmative Action*
Sudhir Krishnaswamy, Doctoral Candidate (Constitutional Law)
Oxford University, U.K.
- 2.20 p.m. *Remarks/Observations :*
Hon'ble Justice P. Vishwanatha Shetty,
Judge, Karnataka High Court
Chair's Address
- 2.30 p.m. **Justice P.B. Sawant**, Former Judge, Supreme Court of India
- 3.00 p.m. *Tea*
- Session II**
- 3.15 p.m. *What Should be the Path of Our Nation-Building?
The Discredited Path of Elite- led Development Generating Disunity and Unrest or
the Path of Growth with Social Justice and Equity Promoting Fraternity and
Dignity?*
Dr. G. Ramakrishna, Editor, HOSATU, Bangalore
- 3.30 p.m. *Our Right to Our Nationhood! Through Participatory, Inclusive and Dignified
Processes Based on Equal Access to Resources, Institutions and Wealth of the
Nation.*
Mr. Shyam Babu,
Fellow, Rajiv Gandhi Institute for Contemporary Studies, New Delhi /
Dr. Chandra Bhan Prasad, Dalit Columnist, New Delhi
- 3.45 p.m. **Open House**
- 4.15 p.m. *Chair's Address*
Prof. B.K. Chandrashekar, Hon'ble Minister for Primary and Higher Education, Govt. of Karnataka
- 4.30 p.m.-6.30 p.m. : Special Address & Chief Minister in Conversation with Intellectuals**
Shri. S.M. Krishna,
Hon'ble Chief Minister, Government of Karnataka
Main Speakers
- 4.30 p.m. **Dr. Chandra Bhan Prasad**, Dalit Columnist, New Delhi
- 4.45 p.m. **Dr. Brown D. Kevin**, Professor of Law, Indiana University, USA
- 5.00 p.m. **Dr. Amar Singh**, IAS
Personal Secretary to CM of Madhya Pradesh Government
- 5.15 p.m. *Special Address :*
Shri. S.M. Krishna, Hon'ble Chief Minister
- 5.45 p.m. **CM in Conversation with Twenty Intellectuals and Scholars**
- 7.30 p.m. *Seminar Dinner*

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Session III

- 9.30 a.m. *Given the Social/ Economic /Cultural/Political Diversity of India-the Share of Each Caste and Each Community Must Fairly, Legitimately and Transparently be Reflected in All Employments, Businesses, Contracts and Economic Transactions with Special Reference to Agricultural Sector*
Dr. G. Nancharaiah
Vice-Chancellor, Ambedkar National University, Lucknow
- 9.50 a.m. *Globalization and Privatization : The Implications for Subaltern Groups*
Dr. M. Kunhaman, Professor of Economics, University of Kerala
- 10.10 a.m. *Role of the State and Civil Society in Strengthening Economic Activities and Enterprises of SC/ST/OBCs/Minorities through Market and Non-Market Initiatives During the Era of Liberalisation*
Dr. D.M. Nanjundappa ,
Former Vice-Chancellor and Chairman, Planning Commission, Govt. of Karnataka
- 10.30 a.m. Remarks/Observations
Prof. N.D. Sadanshiv
Former Member, Law Commission, and Editor WORKSHOP
- 10.40 a.m. A Private Sector Response
Mr. T.V. Mohan Das Pai, Infosys, Bangalore
Mr. Harbans Thukral, President,
Greater Mysore Chamber of Commerce & Industry
Mr. K.M. Jayalingappa, President,
Federation of Karnataka Chamber of Commerce & Industry
- 11.00 a.m. Remarks :
Dr. Mogalli Ganesh, Professor, Hampi University, Karnataka
- 11.10 a.m. *Chair's Address*
Prof. V.B. Singh
Former Director, CSDS, Delhi
- 11.25 a.m. *Tea*
- 11.35 a.m. **Panel Discussion [11.30 a.m.- 12.30 p.m.]**
Panelists
Please Note: We welcome brief and well prepared interventions (in English or the vernacular) from the floor on specific aspects relating to the themes of the respective session
- 12.30 p.m. **Open House**
- 12.45 p.m. Moderator : **Prof. K. Ramdas**, Writer and Intellectual, Karnataka
- 1.00 p.m. Lunch
- Session IV**
- 2.00 p.m. **[2.00p.m. – 4.00 p.m.]**
The American Experience?
Prof. Brown D. Kevin, Indiana University, USA
- 2.20 p.m. *The Madhya Pradesh Experience?*
Dr. Raja Sekar Vundru, IAS, Deputy Secretary, Union Ministry for Social Justice and Empowerment and Member, Task Force for the Implementation of the Bhopal Declaration
- 2.40 p.m. *The Karnataka Experience?*
From Devaraj Urs to S.M. Krishna
Whither Are We Going?
Dr. Narendra Pani
Senior Editor, The Economic Times, Bangalore
- 3.00 p.m. Remarks
Prof. K.B. Siddaiah, Poet, Karnataka
- 3.10 p.m. **Open House/ Resolutions**
- 3.30 p.m. Chair's Remarks

Valedictory Session [3.55 p.m. – 5.30 p.m.]

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|-----------|---|
| 3.55 p.m. | Welcome Dr. A. Jayagovind Director, NLSIU |
| 4.00 p.m. | <i>Main Speakers</i> Justice K. Ramaswamy Former Judge, Supreme Court of India |
| 4.15 p.m. | Dr.U.R. Ananthamurthy Writer and Jnanapeet Awardee |
| 4.30 p.m. | Mr. L.G. Havanur Former Chairman, Karnataka First Backward Classes Commission |
| 4.45 p.m. | Dr. Dhiru Bhai Seth , Senior Professor, CSDS, Delhi and Former Member, Backward Classes Commission |
| | <i>Address by Chief Guests</i> |
| 5.00 p.m. | Shri. R.B Thimmapur Honøble Minister for Planning, Institutional Finance & Statistic , Govt. of Karnataka |
| 5.10 p.m. | Shri S. Muniraju Chairman, Karnataka State Backward Classes Commission |
| 5.20 p.m. | Shri Anjana Murthy Chairman, Karnataka State SC/ST Commission |
| 5.30 p.m. | Chairø Concluding Address Shri. Kagodu Thimmappa Honøble Minister for Heath and Family Welfare, Govt. of Karnataka |
| 5.45 p.m. | Vote of Thanks Dr. Chandrama S. Kanagali Director, Devaraj Urs Research Institute Prof. V.S. Mallar , Registrar, NLSIU |



APPENDIX II

Workshop to Prepare Draft Legislation for Affirmative Action in the Private Sector

Sponsored by

Ministry of Social Justice and Empowerment, Government of India

and

Centre for the Study of Casteism, Communalism and Law (CSCCL)

National Law School of India University (NLSIU), Bangalore

Date : 12-13 June, 2003

Venue : National Law School campus, Nagarbhavi, Bangalore-560072

Programme Schedule

Thursday, the 12th June, 2003

Introductory Session

| | | |
|--------------------|--|--|
| 11.15 a.m. | Welcome | Dr. S. Japhet Faculty Coordinator, CSCCL, NLSIU |
| 11.20 a.m. | Introduction to the Workshop | Dr. A. Jayagovind Director, NLSIU |
| 11.30 a.m. | Introduction to the Draft Bill | Hon'ble Justice K. Ramaswamy Former Judge Supreme Court of India |
| 12.30 p.m. | Comments on the Constitutional Validity / Legislative Competence of The Proposed Bill and Other Issues | |
| 01.30 p.m. | Lunch | |
| Business Session I | | |
| 02.30 p.m. | Review of the Legislations in USA and Other Countries on Diversity and Empowerment Employment Equity | Dr. Raja Sekar Vundru, IAS, Deputy Secretary, Ministry for Social Justice and Govt. of India, New Delhi |
| 04.00 p.m. | Discussion on the Draft Bill | |

Prof. D. N. Sadanshiv
Former Member, Law Commission of India

Dr. A. Jayagovind
Director, NLSIU

Mr. L.G. Havanur
Former Law Minister &
Former Chairman, First Karnataka Backward
Classes Commission

Dr. Chandra Bhan Prasad
Writer & Journalist, Pioneer
New Delhi

Dr. D. Shyam Babu
Fellow, Rajiv Gandhi Institute
for Contemporary Studies,
New Delhi

Shri. J. Alexander
Former Chief Secretary
Govt. of Karnataka
presently MLA & Chairman
Karnataka Pollution Control Board
Government of Karnataka, Bangalore

Shri. Ishwar Bhat
Former Law Secretary
Govt. of Karnataka

Mr. Madan Mohan Rao
Thinksoft, Hyderabad

Prof. V. S. Mallar
Registrar, NLSIU

Dr. Chandrama S. Kanagali
Director, Devaraj Urs Research
Institute

Shri. Babu Rao Mudbi, IAS
MD Karnataka SC/ST
Development Corporation
Government of Karnataka

Mr. S. Nanjundaiah
Executive Director
KRIES, Govt. Of Karnataka

Prof. Baladandapani
Visiting Faculty, Chennai

06.00 p.m.

Business Session II

Towards Evolving Consensus
On the Draft Bill

Hon'ble Justice, K. Ramaswamy
Prof. D. N. Sadanshiv
Shri. Raja Sekar Vundru, IAS,
Dr. Chandra Bhan Prasad
Dr. D. Shyam Babu



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Business Session III

| | | |
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| 09.00 a.m. | Finalising the Draft Bill | Hon'ble Justice K. Ramaswamy Former Judge Supreme Court of India |
| 09.30 a.m. | Comments | Prof. D. N. Sadanshiv Former Member Law Commission of India |
| | Moderator | |
| | Hon'ble Justice H. G. Balakrishna Former Judge High Court of Karnataka | Shri. C. Gopal Reddy, IAS Principal Secretary Ministry of Social Justice & Empowerment, Government of India |
| | Shri. Narayanamurthy IES Joint Secretary Ministry of Social Justice & Empowerment, Government of India | Shri. Phalguni S. Rajkumar, IAS Principal Secretary, Ministry of Social Welfare Government of Karnataka |
| 10.30 a.m. | Discussion | |
| | Concluding Session | |
| 11.45 a.m. | Presentation of the Final | Hon'ble Justice K. Ramaswamy Former Judge Supreme Court of India |
| 12.15 p.m. | Concluding Remarks | Dr. A. Jayagovind, Director, NLSIU |
| 12.30 p.m. | Vote of Thanks | Prof. V. S. Mallar, Registrar, NLSIU. |

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‘To provide for full equality of opportunity particularly in education and employment for Dalits, tribals, OBC’s and religious minorities.’

‘The UPA government will immediately initiate a dialogue with industry and other parties on how best the private sector can fulfil the aspirations of Scheduled Castes and Scheduled Tribes youth.’

-- Commitment of the United Progressive Alliance Government as stated in its National Common Minimum Programme, 2004.

“Nor, contrary to the allegations of those who jump when they see their own shadows, is it our aim to do away with qualifications. What we are against is not the upholding of standards as such but the sustaining of barriers to the attainment of standards; the special measures that we envisage to overcome the legacy of past discrimination are not intended to ensure the advancement of unqualified persons, but to see to it that those who have been denied access to qualifications in the past can become qualified now, and that those who have been qualified all along but overlooked because of past discrimination, are at last given their due...”

The first point to be made is that affirmative action must be rooted in principles of justice and equity. In its essence it is no more nor less than the application of the principles of the rule of law to the processes of equitable transformation of our society...It must be based upon patently just, and wherever possible, universally agreed, criteria of entitlement and redress and be implemented according to widely acceptable and clearly equitable procedures. It should seek, where possible, and without diluting its essential aims, to find the least onerous solutions and to function according to the widest achievable consensus...”

-- Nelson Mandela, Opening Statement to a Conference on Affirmative Action in a new South Africa, Port Elizabeth, October 1991.
