

Chapter 3

RESERVATION POLICY



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- 3.1 Origin of Reservation Policies
- 3.2 Reservation for the Backward Classes in India
- 3.3 Government of India Act, 1935
- 3.4 Self Immolations
- 3.5 Recommendations for Educational Concessions
- 3.6 Recommendations for Economic Upliftment
- 3.7 Reservation for OBCs
 - 3.7.1 Percentage of Reservation
 - 3.7.2 OBCs Coming on Merit
 - 3.7.3 Creamy Layer
 - 3.7.4 Effective Date
 - 3.7.5 List of OBCs
 - 3.7.6 50% Rule
 - 3.7.7 Roster
 - 3.7.8 No Reservation in Promotion
 - 3.7.9 Relaxed Standard
 - 3.7.10 Caste Certificate
 - 3.7.11 Authorities for Issuing Caste Certificate
 - 3.7.12 Migration
 - 3.7.13 No De-reservation
 - 3.7.14 Criteria for Creamy Layer for OBCs
- 3.8 Reservation to Scheduled Castes, Scheduled Tribes in Universities and Colleges
 - 3.8.1 Admission of SCs and STs in Universities and Colleges
 - 3.8.2 Appointment to Teaching and Non-Teaching Posts

- 3.9 Reservation in Services for SCs, STs and OBCs in Public Sector Enterprises and Banks
 - 3.9.1 Maintenance of Rosters
 - 3.9.2 Concessions and Relaxations
 - 3.9.3 Steps to be Taken While Dealing with the Cases of SC/ST Relating to Appointments, Promotions Etc.
 - 3.9.4 Steps to be Taken While Dealing With Cases of De-reservation
 - 3.9.5 Steps to be Taken While Dealing With Cases of False Certificates
 - 3.9.6 Reservation in Allotment of Residential Accommodation for Scheduled Castes / Scheduled Tribes
 - 3.9.7 Forwarding of Applications
 - 3.9.8 Nomination of SCs And STs on Selection Boards/ Departmental Promotion Committees
 - 3.9.9 Separate Interview for SCs and STs
 - 3.9.10 Relaxation of Persons While selecting for Posting Abroad
 - 3.9.11 SCs, STs and OBCs Coming on Own Merit
 - 3.9.12 Other Administrative Instructions in Service Training
- 3.10 Social Engineering and Protective Discrimination in Favour of Children and Women
- 3.11 Educational Rights of Minorities
- 3.12 Constitutional Safeguards of the Weaker Section Industrial Society
- 3.13 SC/ST Issues and Concerns in the Development Era: A Woman's Perspective

3

RESERVATION POLICY

Discourse on welfare of backward classes which always centres on reservation has engaged every one at the local to national and the international level in an unprecedented manner drawing the attention of social reformists, intellectuals, voluntary action groups, human right activists, the political dispensation and at times in global perspective as well. Reservation is one of the most talked about subjects now-a-days.

There will be no newspaper, periodical journal or electronic media without something about reservation. One day, it will be regarding reservations in IITs/IIMs, other day regarding private sector reservation, Sachar Committee Report, Creamy layer, reservation for females, and reservation in case of religious converts and so on.

Reservation is a mechanism or protective discrimination, as a social policy of the state enshrined in the Constitution to ensure the participation of the traditionally neglected section of the society involving fixation of quota in the electoral, employment and educational institutions.

If one recalls those post-independence days, every body was concerned about the need for an integrated and harmonious society free of social antagonism. There was a firm determination for the uplifting of those who were left bigoted because of the prevailing social practices since centuries. Accordingly, there was a heart felt sympathy and a feelings of accommodation towards the intended beneficiaries of reservation who were inflicted with lot of hardships and inhuman treatment. Accordingly, need for the reservation was

accepted as a common consensus and national loyalty in those days.

With passage of time, this feeling of accommodation and sympathy has shattered taking almost a negative turn and has now created a situation of hatred. What changes during these years took place that contributed in such a drastic perception 'U' turn in the minds of the common people? Has the root cause for which reservation was introduced been completely eradicated? Have the social inequalities dwindled to redundant level? It is high time for introspection of all these basic questions, the society is confronted with.

Marc Galender renowned sociologist who has worked hard in depth on inequalities prevailing in the Indian society says, as regards reservation, "The problem of reservation protective discrimination is multi-dimensional involving formidable burdens of policy making and administration in a developing nation. The compensatory or protective discrimination in favour of backward section of society once recognized as unparalleled experiment betokening a generosity and farsightedness rare among the nations has developed into one of the most notorious provisions of the constitution."³⁰

He remarks, "The Society is unfortunately not only divided into pro-reservationists and anti-reservationists or sometimes retention lists and abolitionists, it has also accentuated the caste consciousness making caste the biggest party in India."

In order to expedite the development of backward classes, reservation and other means of protective discriminations were required in two main areas as mentioned overleaf:

30 Rana Mulchand. Reservations in India – Myths and Realities: First Edition: New Delhi: Concept Publishing Company; 2008

1. Education: Uplifting the backward classes in the sphere of education was required to permanently equip the backward classes.
2. Employment: Considering the large section of the backward classes were not as well qualified as some of the more fortunate classes, they needed to be given beneficial treatment in order to ensure that the former did not remain unemployed.

3.1 Origin of Reservation Policies

The thought of reservation has its roots way back in the year 1902, when Chhatrapati Shivaji Maharaja a small ruler in the Kolhapur State in Maharashtra in pre-independence days introduced Reservation in the jobs in his small Kingdom for the "Antayaj" i.e. hither to known as Shudras or the backwards. This was followed by another larger State of Mysore in South India introducing reservation in the State in the year 1921, on the basis of Report of Millar Committee. The idea of reservation covered scheduled castes, backward classes and most of non-Brahmin castes.

Incidentally Millar Committee appointed in 1918, was the first Committee/Commission appointed in India for suggesting upliftment measures for the socially deprived people. Immediately, thereafter in 1921 itself, the sprawling Madras Presidency introduced reservation for the backward classes including scheduled castes and most of non-Brahmin castes, many of which are not even in present list of OBCs. The large Bombay Presidency initiated the process in 1931 following the report of the State Committee for the depressed classes and some backward castes such as nomadic communities.

3.2 Reservation for the Backward Classes in India

India, which is a secular and democratic country, is regarded as model of pluralistic society, which is reflected in its cultural pluralism of various religions, caste, languages and regions. About 82% of the Indian population follow Hinduism and 15% follow Islam.

The plurality of Hinduism is visible in the four fold *Varna* system like Brahmin, Kshatriya, Vaishya and Shudra and about 5000 castes and sub-castes. Scheduled Castes is having 16.73%, the Scheduled Tribes having 7.95% and other Backward Classes (OBCs estimated to be) 52% and the rest regarded as upper caste or forward caste (estimated 23%).

This four modern caste categorise who include social segments of the minorities.

Social, Education and Economic inequality have existed from time immemorial in different social segment of Indian Society. The SCs, STs and OBCs (broadly known as Backward Classes) represents the social group which suffered through the ages due to caste prejudices, economic inequalities, educational backwardness and lagging behind in the field of Education and Economic development in comparison to certain advanced or the forward castes.

To minimise these social and economic deprivations, many social provisions were made to safeguard their interest along with the provision of equality before the law and prohibition of discrimination on ground of Race, Religion and Castes.³¹

31 Yadav & Rajbir Singh. India's Unequal Citizens – A Study of OBC: First Edition: New Delhi: Manohar Publishers & Distributors; 1994

3.3 Government of India Act, 1935

This was the first Statute during the British Regime, which incorporated the provisions for reservation to scheduled castes and scheduled tribes and many other backward castes. The Indian constitution after independence, not only regularized these provisions through its various articles, but also cast a duty bound obligation on the State to look after their overall development through numerous welfare measures for these categories that have lagged behind for centuries together due to peculiar social inequalities deeply rooted in the country.

However, the objective of the British behind the reservation provisions and the one by our own Constitution framers was quite different. The British were interested merely in maintaining the balance of power in the society to facilitate their rule. They had double standards in values and the objectives. They were liberal and also followed principle of social justice in the society but were not concerned with equality and social justice in their colonies.

They simply used the device of reservation as a tool to manage than the mounting social tensions along with penetrating fight for freedom. British cleverly focused on managing agitating forces, broadening their shaking base and thereby to perpetuate their own rule in India.

Thus, reservation policy during colonial regime was half hearted, short sighted and ill motivated, besides lacking its need-based coverage. It included number of minorities which never suffered social discrimination, but surprisingly ignored inclusion of those tribes deserted from the mainstream society and living in mountains and forests in a very pitiable condition. It was never so in the hearts

and minds of our visionary framers of constitution who were very well aware of the barbaric conditions of the downtrodden known as Scheduled Castes and Scheduled Tribes who were alienated from mainstream, economic justice and human freedom since centuries.

These great visionaries were of the firm opinion that the Nation cannot progress equitably undermining the woeful conditions of this one-fifth fraction of the society. Thus, reservation is not a number game of apportioning a percentage of vacancies for the eligible community candidates. But it is a mission of abscission of deeply rooted miserable social animosity.

Social backwardness is not insurmountable and establishing a social harmony wherein every citizen of the nation irrespective of his/her caste, creed or religion shall have an open, impartial and abundant opportunity as also vowed in our constitution.

Reservation is not a mere allocation of few seats or a percentage quota for the backward castes/classes. It is a Constitutional support to those who are deprived of adequate opportunity and equal treatment from the rest of the society for centuries. Indian society was so typically divided that bond of inequalities got further strengthened with more and more backing of religious sanctions, social beliefs, and occupational rigidities and so on. Breaking these strong barriers was certainly a Herculean task.

But on the other side were the determined will and now a constitutional intervention also to skirmish this hard hit handicap. Position after these sixty years clearly shows a marked impact of all these collective efforts.

Reservation is not a poverty alleviation programme as is generally misunderstood, but as revolutionary campaign of establishing social harmony and with that one nationhood.

The policy is often identified as "Protective discrimination" or "Compensatory discrimination". According to Marc Galanter, reservation constitutes protective or say compensatory discrimination in favour of the backward classes, which is envisaged to be used for the purpose of mitigating inequalities.

Marc Galanter states, "Compensatory Discrimination" may be advocated not as a device to ensure fairness to individuals, but as means to produce desired social customs, e.g. to reduce group disparities, afford representation, encourage development of social talent and so forth.

Reservation is also known as "Discrimination in Reverse". While affirming the constitution oath to consider all the citizens as equal, the Constitution also provides for some protective umbrella of ensuring a portion of the cake for those who are otherwise unable to avail off. Reasons of their inability are many. But the sum total is that they do need such protection. This may tantamount to discrimination i.e. instead of leaving the full cake for its availment as per one's individual capacity, here a small portion of cake is put aside for those who due share out of the total cake.

The Commission made several recommendations with foremost of all being 27% reservation for these castes/classes, allowing all concessions in line with SCs and STs, fresh calculation of caste wise OBC population, carry forward of unfilled vacancies and surprisingly

also reservation of OBCs in the Government assisted private sector.³²

OBC reservation has always dwindled under large-scale ups and downs. Soon after the submission of the Report, there was again a political power change at the centre with fall down of Janata Dal Government which initiated Mandal movement.

The report did not thereafter see the day light till change in political power once again at centre in 1989.

Shri V. P. Singh the new Prime Minister of the newly sworn in National Alliance Government declared acceptance of the Mandal Commission report on 7 August 1990 and started with implementation of reservation of 27% in all Government jobs, which was later on stayed by the Supreme Court's injunction.

The implementations of Mandal Commission Recommendations were confronted with huge uproar and protests. Many students in Delhi protested through self-immolations.

There was equally a strong political protest on the parliament floor. Amidst all this, Mandal Commission Recommendations particularly reservation in job quota were finally accepted.

3.4 Self Immolations³³

In September 1990, a student *Rajiv Goswami* from Delhi University poured kerosene over his body and set himself on fire. According to

32 Yadav & Rajbir Singh. *India's Unequal Citizens – A Study of OBC*: First Edition: New Delhi: Manohar Publishers & Distributors; 1994

33 Rana Mulchand. *Reservations in India – Myths and Realities*: First Edition: New Delhi: Concept Publishing Company; 2008

some accounts, Rajiv had initially only intended a mock self-immolation. As soon as he struck a match, his friends were supposed to have doused him with water, waiting for a few photographs to be snapped. These photographs and the attendant press coverage were to be used to draw dramatic media attention to the protests against caste reservations that had been mounting over previous six weeks.

But, in the heat of emotion, in the context of an impassioned protest against a Government decision that was seen as taking all future prospects of respectable employment away from young people with upper caste background. Goswami set his body alight without checking to see whether his friends were anywhere nearby, photographs were taken, his burning body could be seen on the front page of every news paper and cover of every glossy magazine in India over next few days.³⁴

After anti-Mandal agitations in Delhi, Chandigarh, Bhopal and Jaipur the matter went up to the Supreme Court in September 1990. There was a writ petition filed against the implementation of Mandal Commission Recommendations, which got the court injunctions till further hearing. A matter of noting with concern here is that there was no upper caste advocate of repute ready or willing to defend plea of OBCs in the Supreme Court. At last, Criminal Specialist Advocate Ram Jethmalani came to their rescue for this civil matter.

The matter came up for hearing before the Division Bench of 9 judges. The judges gave judgment on 16 November 1992 with 6 versus 3 majorities declaring the Mandal Commission implementation as perfectly constitutional. The judgment noted,

34 Purohit B.D. & Purohit S.D. Hand Book of Reservation for Scheduled Castes & Scheduled Tribes: First Edition: New Delhi: Jainsons Publications; 1990

"We don't intend to accelerate castism. But caste system is a bitter reality of our society. We cannot ignore existence of the caste"... And thus, finally the issue of Other Backward Classes (OBCs) got legally settled.

Justice Chenappa Reddy remarked, "Social status and economic power are so woven and fused into the caste system in the Indian Rural Society. Caste is the primary index of social backwardness, so that social backwardness is often readily identifiable with reference to a person's caste. There is an overpowering mutuality between poverty and caste on the Indian scene.

3.5 Recommendations for Educational Concessions

As stated earlier Mandal Commission recommendations do not only ask for a job quota. It has recommended various educational supports for the real and permanent uplift of the OBCs. These are:

1. Our educational system is elitist in character and results in a high degree of wastage. It is least suited to the requirements of an over populated and developing country. It is a legacy of the British rule, which was severely criticize during the independence struggle, and yet it has not undergone any structural changes. Though it is least suited to the needs of the backward classes, yet they are forced to run in the rat race with others, as no options are available to them.
2. Various State Governments are giving a number of educational concessions to Other Backward Class (OBC) students like exemption of tuition fees, free supply of books and clothes, mid-day meals, special hostel facilities, stipends,

etc. These concessions are all right as far as they go. What is required perhaps is not so much of provision additional funds, but for framing of integrated schemes for creating proper environment and incentives for serious and purposeful studies.³⁵

3. It is well known that most backward class children are irregular and indifferent towards schooling and their drop-out rate is very high. There are two main reasons for this. First; these children are brought up in the climate of extreme social and cultural deprivation and consequently, a proper motivation for schooling is generally lacking. Second; most of these children come from very poor homes and their parents are forced to press them into doing small chores from a very young age.
4. Upgrading the cultural environment is a very slow process. Transferring these children to an artificially upgraded environment is beyond the present resources of the country. In view of this, it is recommended that this problem may be tackled on a limited and selective basis on two fronts.
5. First, an incentive and time bound programme for adult education should be launched in selected pockets with high concentration of OBC population. This is basic motivational approach, as only properly motivated parents will take serious interest in educating their children.

Secondly, residential schools should be set up in these areas for backward class students to provide climate especially

35 Pandey J. N. Dr. The Constitutional Law of India: Forty Fifth Edition: Allahabad: Central Law Agency; 2008

conducive to serious studies. All facilities in these schools including lodging and boarding will have to be provided free of cost to attract students from poor and backward homes. Separate Government Hostels for OBC students with the above facilities will be another step in the right direction.

6. A beginning of both these fronts will have to be made on a limited scale and selective basis. But the scope of these facilities should be expanded as fast as the resource permit. Adult education programme and residential school be started on a selective basis will operate as growing points of consciousness for the entire community and their multiplier effect is bound to be substantial.

The Commission notes in this regard that whereas several States have extended a number of ad hoc concessions to backward class students, a few serious attempts have been made to integrate these facilities into a comprehensive scheme for a qualitative up gradation of educational environment available to OBC students.

7. After all, education is the best catalyst of change and educating the backward classes is the surest way to improve their self-image and raise their social status. As educational system, it is very important that their education is highly biased in favour of vocational training.

After all, reservation in services will absorb only a few small percentages of the educated backward classes and the rest should be suitably equipped with vocational skills to enable them to get a return on having invested several years in education.

8. It is also obvious that even if all the above facilities are given the OBCs students, they will not be able to complete on an equal footing with others in securing admission to technical and professional institutions.

In view of this, it is recommended that seats should be reserved for OBC students in all scientific, technical and professional institutions run by central as well as state governments. The reservation will fall under Article 15(4) of the Constitution and the quantum of reservation should be the same as in the Government services i.e. 27%.

9. While implementing the provision for reservation, it should also be ensured that the candidates who are admitted against the reserved quota are enabled to derive full benefit of higher studies. It has been generally noticed that these OBC students coming from an impoverished cultural background, are not able to breast with other students. It is therefore, very essential that special coaching facilities are arranged for all such students in our technical and professional institutions
10. The concerned authorities should clearly appreciate that their job is not finished once the candidates against reserved quota have been admitted to various institutions. In fact, the real task starts only after that. Unless adequate follow up action is taken to give special coaching assistance to these students, not only this young people will feel frustrated and humiliated, but the country will also be landed with ill-equipped and substandard engineers, doctors and other professionals.

3.6

Recommendations for Economic Upliftment

1. Vocational communities following hereditary occupations have suffered heavily as a result of industrialization. Mechanical production and introduction of synthetic materials had robbed the village potter, oil crusher, black smith, carpenter, etc., of their traditional means of livelihood and the pauperization of these classes is well known phenomenon in the country-side.
2. It has therefore become very much necessary that suitable institutional finance and technical assistance is made available to such members of village vocational communities who want set up small scale industries of their own. Similarly, assistance should be provided to those promising OBC candidates who have obtained special vocational training.³⁶
3. Of course, most State Governments have created various financial and technical agencies for the promotion of small and medium scale industries. But it is well known more influential members of the community are able to derive benefits from these agencies. It is therefore very essential that separate financial institutions for providing financial and technical assistance be established for the backward classes.
4. Co-operative societies of occupation groups will also help a lot. But due care should be taken that all the office bearers and members of such societies belong to the concerned hereditary occupational groups and outsiders are not allowed to exploit them by infiltrating into such co-operatives.

36 Rana Mulchand. Reservations in India – Myths and Realities: First Edition: New Delhi: Concept Publishing Company; 2008

5. The share of the OBCs in the industrial and business life of the country is negligible which partly explains their extremely low-income levels. It is imperative that all the State Governments suitably encourage creating a separate network of financial and industrial enterprising among OBCs to foster business venturing.

The Constitution of India permits the State to adopt reservation as it deems necessary to uplift the backward classes of citizen to level of equality with the rest of the countrymen. In the past the backward classes of citizen have been denied to enter into Government services on account of their inability to compete effectively in open selection on the basis of merit.

Therefore, it is open to the Government to reserve a certain number of seats in places of learning (education) and public services in favour of SCs, STs and OBCs to the exclusion of all others, irrespective of merit.

The Mandal Commission prepared one consolidated list of backward classes. L.R. Naiku, a member of the Commission suggested a separate list prepared for each state which should be in two parts³⁷:

- (1) Immediate backward classes
- (2) Depressed backward classes

In view of the legal constraints that total reservation should not exceed 50% for all categories, it limited this reservation to 27% in Government and Semi-government jobs and admission to educational institutions.

37 Yadav & Rajbir Singh, *India's Unequal Citizens – A Study of OBC*; First Edition: New Delhi: Manohar Publishers & Distributors; 1994

On August 13, 1990, the Government of India headed by Prime Minister Shri V.P. Singh, basing itself on the recommendations of the Mandal Commission, issued an office memorandum purporting to extend reservation for Socially and Educationally Backward Classes (SEBCs) in its services.

At present, the term "Backward Classes" denotes three different categories of castes such as SCs, STs and OBCs. These three groups represent the fourth *Varna* (Shudras) of ancient *Varna* System.

They are regarded as socially inferior to the best three *Varnas* namely Brahmin, Kshatriya and Vaishyas. The inferior social status also leads to their education and economic backwardness for the centuries and generation after generation.

3.7 Reservation for OBCs

While the instructions issued by the Government of India making special provisions of reservation and providing various relaxations and concessions for Scheduled Castes and Scheduled Tribes have been in force for a pretty long time and with the passage of time all the implementing authorities are well conversant with those instructions.

In this chapter, it is proposed to deal with the instructions relating to the Other Backward Classes which have come into effect from 08/09/1993.

Consequent upon the recommendations of the Expert Committee, Government of India has decided:

3.7.1 Percentage of Reservation

27% of the vacancies (now posts) in civil posts and services under the Government of India to be filled direct recruitment shall be reserved for the OBCs.

3.7.2 OBCs Coming on Merit

Candidate belonging to OBCs recruited on the basis of their own merit in an open competition on the same standards as applied to the general candidates shall not be adjusted against the reservation quota of 27%.

3.7.3 Creamy Layer

1. The aforesaid reservation shall not applied to persons/sections mentioned in the schedule.
2. The rule of exclusion will not applied to persons working as artisans or engaged in hereditary occupation, calling.³⁸

3.7.4 Effective Date

The aforesaid reservation shall take effect from 08/09/1993. However, this will not apply to vacancies where the recruitment process had already been initiated prior to that date.

3.7.5 List of OBCs

The OBCs for the purpose of the aforesaid reservation would comprise in the first place, the castes and communities which

38 Ministry of Social Welfare Resolution No. 12011/68/93 (BCC) (c) Dated 10/09/1993

are common to both the list in the report of the Mandal Commission and the State Government List. The aforesaid lists of OBCs in respect of almost all the States have since been published by the Government of India.

The National Commission for Backward Classes, set up under the provisions of the National Commission for Backward Classes 1993 in pursuance of the direction of the Supreme Court in the aforesaid case, shall entertain, examine and recommend upon request for the inclusion and complaints of over-inclusion and under-inclusion in the lists of other Backward Classes of Citizens.

3.7.6 50% Rule

The aforesaid contemplated in clause (4) of Article 16 should not exceed 50%. For the purpose of applying the rule of 50%, a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be.

This position would also apply in the case of carry-forward vacancies. The reservation provided to SC/ST/OBC put to gather should not exceed 50% of the vacancies arising in a year.³⁹

3.7.7 Roster

In respect of direct recruitment on All-India basis by open competition where there is a reservation of 15 % for SCs and 7.5% for STs, the earlier 40 point roster was revised into a 200 point roster, in order to give effect to the provision of 27% reservation for OBCs, Recently, the application of reservation on the basis of

39 Department of Personnel & Training OM No. 36012/22/93 Estt. (SCT) Dated 29/12/1993

vacancies available for filling up, was called into question in the courts (See Annex. I).⁴⁰

On the basis of Supreme Court Judgments, the Government of India issued instruction on 02/07/1997 substituting the existing vacancy based roster by post based roster in which SCs/STs/OBCs shall get reservation at the rate of 15%, 7.5% and 27% on the basis of total cadre strength through the revised 200 point roster only after they have earned a full point, unlike in the earlier roster when the vacancies were allocated to the reserved categories on the earlier points on a preferential basis when they had not even earned a full point on the basis of percentage (See Annex. I).

Similarly, in respect of direct recruitment on All-India basis otherwise than by open competition where there is a reservation of 16⅔% for SCs, 7.5 % for STs, the existing 120 point roster has been revised into a new post based 120 point roster(See Annex. V).

In respect of direct recruitment to Group 'C' and 'D' posts normally attracting candidates from a locality or a region, the existing 100 point rosters have also been revised (See Annex. VI).

Single Post Promotion/Roster

As regards promotion in case of single post situation, lot of misunderstanding prevails. There is a general impression that if there is only one post in a particular cadre e.g. Post Master General, Chief General Manager (Telecom) etc. such post will be automatically stand reserved for backward class. In reality, it is not

40 Muthuswamy & Brinda. Swamy's Compilation on Reservations & Concessions for Scheduled Castes and Scheduled Tribes OBC (Mandal Commission) Ex-Servicemen, Sportsmen, Compassionate, Appointment and Physically Handicapped: C-45th Edition: Chennai: Swamy Publishers (P) Ltd; 2002

so. Any post in government of public sector, irrespective whether it is a single post or more it will be filled as per updated roster point and not from the category of which the post is relinquished.

According to roster point, general category candidates will fill in first or single or any of the first six posts only. 7th will be filled in from the scheduled caste and 14th from the scheduled tribe (See Annex II).⁴¹

Supreme Court constitutional Bench of five judges in *Arati Ray Choudhury v. Union of India*⁴² had declared that were following a line of precedents and held reservation of single post with the help of the roster system was entirely constitutional.

3.7.8 No Reservation in Promotion

There is no reservation in posts filled by promotion for OBCs, Reservation for SCs and STs, however, shall continue to be provided at the rate of 15% for SCs and 7.5% for ST. This reservation shall be determined as per the same 200 point revised post based roster by ignoring the points earmarked for OBCs (See Annex II).

3.7.9 Relaxed Standard

In respect of written examination and interview in order to fulfil the quota earmarked for OBCs relaxation of standards is to be provided to OBC candidate as in the case of SC/ST candidate.

41 Department of Personnel & Administrative Reform OM No. 1/9/74 Estt. (SCT) Dated 29/01/1975 (p-194 Brochure) read with OM No. 36011/39/81 Estt. (SCT) Dated 30/11/1981 (p-197 Brochure)
42 (1974) 1 SCC 283

The upper age limit prescribed for direct recruitment shall be relaxed by three years respect of candidate belonging to OBCs.

3.7.10 Caste Certificate

For the purpose of verification of the castes and communities, the Government of India has prescribed a certificate from the following authorities as in the case of SC/ST.

3.7.11 Authorities for Issuing Caste Certificate⁴³

1. District Magistrate / Additional District Magistrate / Collector / Deputy Commissioner / Additional Deputy Commissioner / Deputy Collector / 1st Class Stipendiary Magistrate / Sub-Divisional Magistrate / Taluka Magistrate / Executive Magistrate / Extra Assistant Commissioner (not below the rank of 1st Class Stipendiary Magistrate.)
2. Chief Presidency Magistrate / Additional Chief Presidency Magistrate / Presidency Magistrate.
3. Chief Revenue Officer not below the rank of Tehsildar.
4. Sub-Divisional Officer of the area where the candidate and/or his family normally resides.⁴⁴

In the light of the Supreme Court's Judgment in the *Indra Sawhney* case, the persons/sections (Creamy Layer) to whom the benefit of

43 Background Material on "Post-based Reservation including the effect of Constitutional 81st and 82nd Amendment for SCs, STs and OBCs", during the 14th and 16th February, 2002 at Hotel "The Connaught", New Delhi: Institute of Socio-Economic Research And Action; 2002

44 G.I., Department of Personnel & Training, OM No. 36012/6/88 Estt. (SCT), (srd) III, Dated 24/04/1990 and No. 36036/8/98 Estt. (Res.) Dated 16/03/1999

reservation shall not apply as per the Schedule in Chapter IV, the same authorities who are notified as competent to certify OBC status have also been authorized to certify that the candidate does not belong to the 'Creamy Layer'.

Instructions have been issued to the direct authorities to verify and issue the necessary certificate to the candidates regarding his/her OBC status as well as exclusion from the "Creamy Layer".

3.7.12 Migration

Persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education etc., experience great difficulty in obtaining Caste Certificate from the State from which they have migrated.

In order to remove this difficulty, it has been decided that the prescribed authorities of a State/Union Territories Administration may issue the OBC Certificate to a person who has migrated from another State on the production of a genuine Certificate issued to his father by the prescribed authority of the State of his father's origin except where the prescribed authority feels that a detailed inquiry is necessary through the State of origin before the issue of the Certificate.⁴⁵

The Certificate will be issued irrespective of whether the caste of the OBC candidate in question is included in the list of OBCs pertaining to the State/Union Territory to which the person has migrated.

45 Background Material on "Post-based Reservation including the effect of Constitutional 81st and 82nd Amendment for SCs, STs and OBCs", during the 14th and 16th February, 2002 at Hotel "The Connaught", New Delhi: Institute of Socio-Economic Research And Action.; 2002

The facility does not alter the OBC status of the person in relation to one or the other State/Union Territory. The OBC person on migration from the State/Union Territory of his origin to another State/Union Territory where his caste is not in the OBC list is entitled to the concessions/benefits admissible to the OBCs from the State of his origin and also from the Union Government but not from the State to which he has migrated.

Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste / Scheduled Tribes only in relation to State to which he originally belonged and not in respect of the State to which he has migrated.

The guideline is interpreted so as to mean that a person belonging to a particular State say Maharashtra in relation to which his caste/tribe is recognized as SC/ST can claim the benefit of constitutional protection extended to SC/ST only if he claims such benefit within the State of Maharashtra.⁴⁶

Social Justice in Real Perspective

Constitutional Bench consisting of Chief Justice Y.K. Sabharwal, Justice K.G Balkrishnan and others have stated in *M. Nagraj and Others*⁴⁷ that Equality of opportunity has two different and distant concepts. There is conceptual distinction between a non-discrimination principle and affirmative action under which the State is obliged to provide level playing field to the oppressed classes. Affirmative action in the above sense seeks to move beyond the concept of non-discrimination towards equalizing results with

46 Purohit B.D. and Purohit S.D.: Hand Book of Reservation for Scheduled Castes and Scheduled Tribes: First Edition: New Delhi: Jainsons Publication; 1990

47 (2007) 11 SCC 522, AIR 2007 SC 71

respect to various groups. They further added "Social justice" is one of the Sub-divisions of the concept of justice. It is concerned with the distribution of benefits and burdens throughout a society, as it results from social institutions, property system, public organizations etc.

The problem is what should be the basis of distribution? Writers like Raphael, Mill and Hume defines, "Social Justice" in terms of rights. Other writers like Hayek and Spencer define "Social Justice" in terms of deserts. Socialist writers define "Social Justice" in terms of need.

Therefore, there are three criteria to judge the basis of distribution, namely rights, deserts and needs. These three criteria can be put under two concepts of equality: (a) "Formal Equality" and (b) "Proportional Equality".

It means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged or disadvantaged section of the society. Concept of "Proportional Equality" expects the State to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy.

Under the Indian constitution, while basic liberties are guaranteed and individual initiative is encouraged the State has got the role of ensuring that no class prosperous at the cost of the other class and no person suffers of drawbacks which is not his, but social.⁴⁸

48 Muthuswamy & Brinda. Swamy's Compilation on Reservations & Concessions for Scheduled Castes and Scheduled Tribes OBC (Mandal Commission) Ex-Servicemen, Sportsmen, Compassionate, Appointment and Physically Handicapped: C-45th Edition: Chennai: Swamy Publishers (P) Ltd; 2002

Merit is always Context Specific

One needs to remember that criteria for assessing merit are very arbitrary and often not related to the job or expectation. So if we have a better system of assessing skill and attitude other than rote learning and examination based system, many of those currently considered as without merit will get in.

Most of US Universities, when they seek references specifically whether the marks are true reflection of the candidate's ability and if not, whether there were any reason why the candidate could not perform will despite being a meritorious or talented person. Why don't we do in India, which is observed at handful of universities?

Merit according to Justice Kapadia in Supreme Court Case in the above said case "Merit" is context specific. It derives its meaning from particular conditions and purposes. The impact of any affirmative action policy on "Merit" depends on how that policy is designed.

The Sociologists like Bourdieu refers the term Merit as "Cultural Capital". While some of these are acquired in educational institutions, part of these and how well we learn them depends upon our social background. So, if we come from an illiterate family without a culture of learning or reading, then in general, we don't do as well, because of many reasons such as limited help at home with studies, interaction with peers who are not very knowledgeable, limited knowledge and awareness because of lack of books, newspapers, TV etc. at home and so on.

In India, because of past discrimination, those with a lower economic status are mostly those with a low social or caste status. The objective of reservations therefore is to offset social and cultural deprivations resulting from past and present discriminatory behaviour by one section of the population against another.

Justice O. Chenappa Reddy comments, "There is no merit in a system which brings about such consequences". He says, "It is not a child of the scheduled caste, scheduled tribes or other backward classes who has been brought up in an atmosphere of penury, illiteracy and anti-culture who is looked down upon by tradition and society, who has no books and magazines to read at home, no radio to listen, no TV to watch, no one to help him in his home work, who goes to the nearest local board school and college, whose parents are either illiterate or so ignorant and ill-informed that he cannot even hope to seek their advice on any matter of importance, a child who must necessarily know what is happening in the world.

Has not this child got merit if he with all disadvantage is able to secure the qualifying 40% or 50% of the marks at a competitive examination where the children of the upper classes who have all the advantages, who go to St. Paul's High School or St. Stephen's college and who has perhaps been specially coached for the examination may secure 70%, 80% or 90% of the marks?

Surely, a child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life. If springs flower, he cannot be autumn flower he may be. The Judge also says, "Why then should he be stopped at the threshold on an alleged meritarian principle?"

Supreme Court constitutional Bench in this case notes, "It is the State who is in the best position to define and measure merit in whatever ways, they consider it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit".⁴⁹

Efficiency in administration was held to be a constitutional limitation on the discretion vested in the State to provide for reservation in public employment. Under the proviso to Article 335, it is stated that nothing in this Article shall prevent the State to relax qualifying marks or standards of evaluation for reservation in promotion. This proviso is conferring discretionary power on the State to relax qualifying marks or standards of evaluation. Efficiency is a variable factor. It is the concerned State to decide in a given case, whether the overall efficiency of the system is affected by such relaxation.

Article 335 has also to be read with Article 46, which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people. Therefore, where the State finds compelling interests of backwardness and inadequacy, it may relax the qualifying marks for SCs/STs.

Justice Venkat Ramaiyah in the matter of *U.P. v. Pradip Tandan*⁵⁰ gave two minor reasons of taking "classes" to mean "castes". For one thing, it is caste that is pervasive as well as durable in India. He quoted the "Backward Class Commission Report" to the effect that "The Brahmin taking to tailoring does not become tailor by caste. A Brahmin may be a seller of shoes and yet his status is not lowered thereby.

49 Rana Mulchand. Reservations in India – Myths and Realities: First Edition: New Delhi: Concept Publishing Company; 2008

50 AIR 1975 SC 563

Surely, the answer to the opposite question tells us as much about India today, when a person who was born into a caste that has been enumerated a scheduled caste become a journalist or an IT professional of a film star or a cricket player all above a caste; is he looked upon as someone from a caste or as a journalist/IT professional/film star/Cricket Star?

Supreme Court in *Post-Graduate Institute of Medical Education and Research Case*⁵¹ stated that it is the constitutional imperative of the executive to provide opportunities and facilities to the handicapped to acquire the degree in specialities, super specialities or technical posts. Denial thereof is a total denial of right to enjoy equality.

It is well settled legal position that fundamental rights are to be interpreted broadly to enable the citizens to enjoy the rights enshrined in Parts III and IV of the Constitution vide *Ahmedabad Xavier's College Society v. State of Gujarat*⁵², *Marri Chandra Shekhar Rao v. Seth G. S. Medical College*⁵³ and *Ashok Kumar Gupta v. State of U.P.*⁵⁴

Reservation in post-graduation specialities or super specialities is detrimental to the high degree of efficiency and violative of Article 14 is obviously incorrect, erroneous, illegal and unconstitutional. Thus, it is held that the reservation in post-graduation speciality or super speciality is valid under Article 14, 15(4) of the Constitution.

Chief Justice Lahoti in recent Supreme Court case *P.A.Inamdar and others v. State of Maharashtra and others*⁵⁵ decided on 12 August

51 (1997) 6 SCC 283

52 MANU/SC/0088/1974

53 MANU/SC/0457/1990

54 MANU/SC/1776/1997

55 AIR 2005 SC 3226

2005 on unaided professional educational institutions whether minority or non-minority observes:

1. Imposition of State seats in unaided professional institutions is an act constituting serious encroachments on the rights and autonomy of private professional educational institutions.
2. Merely because the resources of the State in providing professional education are limited, private education institutes which intend to provide better education cannot be forced by the State to make admissions available on the basis of reservation policy less meritorious candidates.
3. A limited reservation not exceeding 15% may be allowed to NRIs depending on management's discretion subject to condition that such seats should be utilized for bona fide NRIs only and for their children towards and that within this quota merit should not be given a complete go by.
4. Unaided Institutions can have their own admission system if fair, transparent, non-exploitative and based on merit is adopted in the admission process.
5. Every Institution is free to devise its own fee structure and generate reasonable surplus to meet cost of expansion and augmentation of facilities subject to the limitation that there can be charged directly or indirectly or in any other form.

The Supreme Court observed in *Ashok Kumar Gupta v. State of U.P.*⁵⁶ that Article 16(4) aims at providing adequate representation

⁵⁶ (1996) 6 SCC 580

to SC/ST/OBCs in government services. Unless these groups get reservation in the higher, they will not be adequately represented”.

3.7.13 No De-reservation

The vacancies reserved for Other Backward Classes which remain unfilled should not be de-reserved but should be carried forward as such for a period of three recruitment years or till the vacancies are filled by OBC candidates, whichever is earlier.

3.7.14 Criteria for Creamy Layer for OBCs⁵⁷

1. Description of Category: Constitutional Posts

To whom rule of exclusion will apply: Son(s) and Daughter(s) of

- (a) President of India;
- (b) Vice President of India;
- (c) Judges of the Supreme Court and of the High Courts;
- (d) Chairman and Members of UPSC and of the State Public Service Commissions; Comptroller and Auditor General of India;
- (e) Persons holding Constitutional position of like nature.

57 Muthuswamy & Brinda. Swamy's Compilation on Reservations & Concessions for Scheduled Castes and Scheduled Tribes OBC (Mandal Commission) Ex-Servicemen, Sportsmen, Compassionate, Appointment and Physically Handicapped: C-45th Edition: Chennai: Swamy Publishers (P) Ltd; 2002

2. Description of Category: **Service Category**

A. Group A/Class I officers of the All India Services Whom rule of exclusion will apply: Son(s) and Daughter(s) of

- (a) Parents both of whom are class I officers ; Central and State Services (Direct Recruits)
- (b) Parents, either of whom is a class I officers ;
- (c) Parents, both of whom are class I officers, but one of them dies or suffers permanent incapacitation.
- (d) parents, either of whom is a class I officer and such parent dies or suffers permanent incapacitation and before such benefit of employment in any International Organization like UN, IMF, World Bank etc. for a period of not less than 5 years.
- (e) Parents, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of both, either of them has had the benefit of employment in any International Organization like UN, IMF, World Bank etc., for a period of not less than 5 years.

Provided that the rule of exclusion shall not apply in the following cases:-

- (a) Sons and daughters of parents either of whom or both of whom are class I officers and such parent's dies/die or suffer permanent incapacitation.
- (b) A lady belonging to OBC category has got married to a class I officer, and may she like to apply for a job.

B. Group B/Class II officers of the Central and States Services
(Direct Recruitment)

- (a) Parents both of whom are class II officers
- (b) Parents of whom only the husband is a class II officer and he gets into class I at the age of 40 or earlier.

- (a) Parents, both of whom are class II officers and one of them dies or suffers permanent incapacitation and either one of them has had the benefit of employment in any International Organization like UN, IMF, World Bank etc., for a period of not less than 5 years before such death or permanent incapacitation.

- (b) Parents of whom the husband is a class I officer (direct recruit or pre-forty promoted) and wife is a class II officer and the wife dies, or suffers permanent incapacitation, and

- (d) Parents of whom the wife is a class I officer Direct Recruit or pre-forty promoted) and the husband dies or suffers permanent incapacitation.

Provided that the rule of exclusion shall not apply in the following cases:

Sons and Daughters of:-

- (a) A parent both of whom are class II officers and one of them dies or suffers permanent incapacitation.
- (b) Parent, both of whom are Class II officers and both of them dies/die or suffer permanent incapacitation, even

though either of them has had the benefit of employment in any international organization like UN, IMF, World Bank etc. for a period of not less than 5 years before their death or permanent incapacitation.

- (c) Employees in Public Sector Undertaking etc. to whom rule of exclusion will apply:

The criteria enumerated in A and B above in this category will apply *mutatis mutandis* to officers holding equivalent or comparable posts in Public Sector Undertakings, banks, insurance organizations, universities etc. and also to equivalent or comparable posts and positions under private employment, pending the evaluation of the posts on equivalent or comparable basis in these institutions.

3.8 Reservation to Scheduled Castes, Scheduled Tribes in Universities and Colleges

There is a reservation quota from the school level to College levels in the State and Central.⁵⁸

The University of Grant Commission considered the questions of reservation for SCs and STs in its meetings held from time to time.

In the matter of appointment to teaching posts in the Universities, keeping in view the constitutional provisions and instructions issued by Government of India, the University Grants Commission agreed in principle that reservation be provided for SC and ST for recruitment to the posts of Lecturers in the universities and colleges

58 Purohit B.D. and Purohit S.D. Hand Book of Reservation for Scheduled Castes and Scheduled Tribes: First Edition: New Delhi: Jainsons Publication; 1990

and for the effective implementation of the recruitment in the lecturers post according to reservation of SC and ST.

The commission was further of the view that the interest of student, the teaching post should not remain vacant for long period. Otherwise it will affect the academic standards of the students.

It was therefore decided that the reservation may not be carried forward from year to year as done in other services.

It was decided that the percentage of reservation should be maintain in the Central Universities as decided by the Central Government and the percentage of reservation in the State Universities on the basis of reservation provided by the State Government.

However, it may be mentioned that the reservation is provided in the post of lecturers only and not for the readers and professors.

The guideline of the Government of India in matter of reservations to various courses of study and appointments of teaching and non-teaching posts in universities and colleges were brought to the notice of educational institution by the University Grants Commission from time to time.

It was already declared in the various notifications and circular regarding reservation for SC and ST candidate in the matter of admissions.

The interchange ability was also allowed for reservation from SC to ST and from ST to SC in case of non availability of any one of them.

The UGC has further advised the universities and colleges that a concession of 5% marks be given to SC/ST candidates in respect of minimum percentage of marks prescribed for admission to courses to ensure admission up to the reserved percentage.

It was also suggested that a further relaxation in the marks in order of merit be also considered so that the total reservation percentage of the reserved seats for SC and ST candidates are filled.

As the number of candidates seeking admission to colleges for exceeds the number of seats available, the validity of orders passed by Government reserving seats for SC/ST and Backward Classes in certain cases at engineering, medical and other colleges providing technical education was also considered in number of cases.

In *State of Madras v. Shrimathi Champakam Dorairajan*⁵⁹ the Supreme Court held that the circular concerning reservation of seats of SC/ST students violates Article 29(2).

A further relaxation in the marks may be given to them in order of merit *inter se* amongst themselves so that all the reserved seats are fulfilled by candidates belonging to these categories.

The Ministry felt that to improve the conditions of SC and ST candidates and to bring them to the level of the more advanced sections of the community it is 'essential to give all possible concessions in the matter of admissions without seriously affecting the standard of education.

⁵⁹ (1951) SCR 525, (1951) SCJ 313

The University Grants Commission discussed this question with the Government of India and Commissioner of SC and ST in the matter of the unsatisfactory position regarding the actual admissions and appointments being made by universities and colleges from among the available SC and ST candidates.

In order to give pointed attention to this, the UGC has also set up reservation orders in favour of SC and ST candidates.

3.8.1 Admission of SCs and STs in Universities and Colleges

The UGS has been bringing to the notice of the universities and colleges the guidelines of Government of India regarding reservation for SC and ST candidates in the matter of admission to various course of study and appointment to teaching and non teaching posts in Universities and Colleges.⁶⁰

3.8.2 Appointment to Teaching and Non-Teaching Posts

It is seen that out of 1.83 lakhs of teachers in universities and colleges, there were only about -2,700 teachers belonging to SC community. This works out to 1.64%.

In the case of ST communities the total number of teachers appointed by the universities and colleges from among them was 0.52%. From the State wise position, it can not be stated that there

⁶⁰ Pandey J. N. Dr. The Constitutional Law of India: Forty Fifth Edition: Allahabad: Central Law Agency, 2008

is improvement in any of the States both in the matter of appointment of teachers belong to SC and ST communities.

As regards to Professors and Readers in the case of SC communities, the position is miserably low and needs immediate attention. As regards to Lecturers/Assistant Professors, position is far from satisfaction.

The UGC has not taken any specific decision regarding reservation to the teaching posts at the level of Professor or Reader. The Commission at the time intimated the Government that the reservation suggested by it is for lecturers only.

The University Grants Commission at its various meeting held from time to time considered the recommendation of the Committee of Vice-Chancellors of Central Universities and Colleges as follows:⁶¹

1. Before the beginning of the each academic year, the University should determine the likely vacancies that may occur during the year of recruitment to the posts of Lecturers.
2. The number of posts of filled under the reserve category may be determine faculty-wise although no individual post may be designated as "reserved posts".

The advertisement for these posts should indicate that preference would be given to SC/ST candidate who are considered fit. On receipt of the applications, the University may invite for interview all SC/ST candidates

61 Purohit B.D. and Purohit S.D.: Hand Book of Reservation for Scheduled Castes and Scheduled Tribes: First Edition: New Delhi: Jainsons Publication; 1990

who fulfil the minimum qualifications prescribed for recruitment for the post of lecturers.

The candidates belonging to the SC and ST may be interviewed separately in the first instance. The candidates belongs to the general may then be interviewed separately keeping in the view the recommendations made by the UGC in respect of SC/ST candidates. In the case of SC/ST candidates interviewed by the committee, if suitable candidates are not available for appointment to the post of lectures, the selection committee may recommend appointment of suitable candidates as research associates for a period of up to 3 years and these person could later compete for the post of lecturers as and when vacancies occur.

3.9 Reservation in Services for SCs, STs and OBCs in Public Sector Enterprises and Banks

Based on the Government of India's instructions the Department of Public Enterprise, issued presidential directives through their respective administrative Ministries/Departments to various Public Sector Enterprises, in terms of their Articles of Association, since the Government instruction could not be applied directly is those bodies having autonomous character.

3.9.1 Maintenance of Rosters

The Rosters can an aid to determine the number of vacancies to be reserved for SCs and STs and OBCs. In other words rosters are a

mechanism to implement the provision of percentage of reservation prescribed by the Government for SCs, STs and OBCs.

The rosters have nothing to do with the seniority or neither order of appointment nor this is in any manner a records of appointments. Right from 1950 onwards rosters were being maintained for direct recruitment and later separately for promotion also wherever reservation orders have been made applicable by the Government based on vacancies as and when available for appointment.

The percentage of reservation for SCs, STs and OBCs are as under:

SCs	15%
STs	7.5%
OBCs	27 %

SC/ST/OBC persons appointed on their own merit would be shown against unreserved points. While replacing such SC/ST/OBC as and when required the posts will be filled by unreserved categories.

Till June 1997 the rosters were operated on the basis of vacancies to be filled either by direct recruitment by promotion. The rosters were in the form of running account and as and when a reserved point was earmarked for SC/ST/OBC it was filled up accordingly.

A proper format was prescribed covering all aspects like brought forward reservation, roster points, names of the candidates appointed or promoted their status, whether SC/ST or OBC carry-forward of filled reservations, signatures of the appointing authority and remarks.

All the rosters are maintained calendar year wise and the Liaison officer was expected to inspect those rosters annually and submit his annual inspection report in a prescribed format in the beginning of the following year.

In terms of Government of India's instructions of 2nd July 1997 the system of vacancy based roster was discontinued and replaced by the post/cadre based rosters on the strength of the Supreme Court judgment in the case of *R.K. Sabharwal v. State of Punjab*.⁶²

Even though the Court held that the Vacancy based rosters can operate till such time as the representation of persons belonging to the reserved categories in cadre reaches the prescribed percentage of reservation but the Government of India have been given to the effect to the maintenance of post based rosters with immediately effect i.e. from 2/7/1997 and existing rosters deemed to have been closed from that date.

The Government of India have also done away with them existing and stopped all Special Recruitment Drives. This has been substituted by the shortage/excess, if any, of the SC/ST and OBC to be adjusted against future vacancies through the replacement system.

However, the SC/ST/OBC candidate appointed on their own merit in direct recruitment will not be counted against the quota reserved for them. The operation of the new post/cadre based rosters will be based on the replacement system keeping the respective percentages of prescribed level. Following are some of the principle for making operating the post based rosters:

62 AIR 1995 SC 1371

1. Vacancy based rosters to be closed and new post based started from the date fresh appointments are made except where panels were approved before 2nd July 1997. In those cases all such appointment will reflected in the vacancy based rosters and fresh appointment, for which action was initiated after 2/7/97 to be shown in the new post based rosters subsequently.
2. There should be separate rosters for direct recruitment and promotions, where ever reservation also applies to promotion.
3. The new rosters points prescribed in post based rosters will be taken into account while preparing the revised rosters.
4. The number of points in each roster shall be equal to number of posts in a cadre.
5. Where the appointments in a cadre are made by more than one method i.e. direct recruitment and promotion, the cadre strength would be bifurcated on the basis of the percentage fixed for each method.
6. In the case of posts filled on deputation/transfer basis where reservation order do not apply, the share of posts on the basis of prescribed percentage will be concluded from the cadre strength while operating rosters for direct recruitment and promotion (See Annex. IV).

7. In case, there is any increase or decrease in the cadre strength in future, the roster shall be expanded or contracted correspondingly.
8. While reservation for the entitled categories is to be kept within the prescribed percentage of reservation the 50% limit would be made applicable to the cadre strength.
9. The roster is to be operated on the principle of replacement and not as a running account as hitherto. In other words, the points at which reservation for different categories apply are fixed as per the roster and vacancies caused by retirement etc. of person occupying those points shall be filled by appointment of persons of the respective categories.
10. SC/ST/OBC persons appointed on their own merit would be shown against unreserved points. While replacing such SC/ST/OBC as and when required, the posts will be filled by unreserved categories.
11. In a small cadre of 13 posts, method prescribed does not permit reservation for all the three categories i.e. SC, ST and OBC as in the 13 post cadre only one point for SCs and 3 points for OBCs are covered. ST point is beyond the 13th point. In such cases grouping should be made for a combined roster (See Annex. II).
12. Initial operation of roster to start with the cadre strength as on 2/7/1997 in chronological order by making an appropriate remark "utilized by SC/ST/OBC/Gen" against each point in the roster (See Annex. IV).

13. Thereafter shortage/excess, if any, in the cadre may be identified and adjustments made against future vacancies through replacement system.
14. In case of small cadres up to 13 posts where grouping is not possible, all the post shall be earmarked (See Annex. III).
15. In case of small cadres up to 13 points where grouping is not possible, all the post shall be earmarked on the basis of new roster, but replacement of incumbents shall be by rotation as shown horizontally against the strength. If going beyond 50% the relevant point may be skipped (See Annex. III).

3.9.2 Concessions and Relaxations⁶³

Reservation and relaxations go together as reservation will have no meaning without relaxing standards in favour of SC/ST as compared to general candidates. If the SC/ST/OBC is able to secure proper share without relaxations, reservation will not be necessary. Relaxation in upper age limit by five years, exemption from payment of application fee, relaxation of experience qualification in direct recruitment, provision of TA, separate interview etc. are common knowledge.

Relaxations in qualifying or competitive standards both in case of direct recruitment and promotion have also been allowed. In the case of promotion by selection method, there is also relaxation in the zone of consideration through extension of

⁶³ Muthuswamy & Brinda. Swamy's Compilation on Reservations & Concessions for Scheduled Castes and Scheduled Tribes OBC (Mandal Commission) Ex-Servicemen, Sportsmen, Compassionate, Appointment and Physically Handicapped: C-45th Edition: Chennai: Swamy Publishers (P) Ltd; 2002

the zone to 5 times the number of vacancies for SCs and STs only.

The Government of India have made a departure from the earlier instructions in the matter of application of relaxed qualifying marks/standards of evaluation of performance in form of SC/ST candidates in the case of posts filled by promotion through departmental qualifying/competitive examinations.

According to the new instructions of 22nd July, 1997 qualifying standards will be same for SC/ST as in the case of general candidates. The orders have, however, been issued in such a manner that the same are confusing both for competitive and qualifying standards.

It is, however, clarified that the competitive standards would continue to be relaxed for SC and ST but at the same time those candidates shall at least fulfil the qualifying levels or fitness level keeping in view the provision of Article 335. In the case of OBCs apart from relaxation of three years in the upper age limit, selection standards are also relax able as in the case of SC/ST in the case of posts filled by direct recruitment.

3.9.3 Steps to be taken while dealing with the Cases of SC/ST Relating to Appointments, Promotions Etc.⁶⁴

The SC/ST candidates are allowed to approach the National Commission for SC and ST directly without routing their

⁶⁴ G.I., Department of Personnel & Training, OM No. AB-14017/30/89 Estt. (RR) Dated 10/07/1990

representations through proper channel with regard to the grievances in the matter of appointments against "reserved quota".

The National Commission for SC/ST is required to inquire into specific complaints with respect to the deprivation of rights and safeguards provided for SC and ST.

A large number of representations are regularly received from the SC/ST employees working in the Government Departments, Public Sector Undertakings, Banks and autonomous bodies, including allied bodies, to seek redressal of their grievances against violation of service safeguards.

The Commission would have to investigate all such matters if there is prima-facie case of discrimination or violation of the Government instructions.

The Commission may not interfere in the administrative matters like vigilance cases, disciplinary cases, criminal cases, merit of adverse Confidential Reports, cases of transfer, unless the applicant is able to produce evidence that there was a case of discrimination against him when compared to other employees in a similar situation.

All cases taken up for investigation need to be referred to the concerned authority for factual details and their comments. After receipt of information, the cases would be examined in terms of the existing instructions on the subject before giving the findings for remedial action.

3.9.4 Steps to be taken while dealing With Cases of De-reservation⁶⁵

De-reservation is a formal permission of the competent authority to fill up a reserved post by others in the event of non-availability of SC/ST candidates, even after following the prescribed procedures to select the SC/ST candidates. While in the case of direct recruitment there is a complete ban on de-reservation except in the case of Group 'A' posts which can not be advised to keep the post physically vacant and continue efforts to locate suitable SC/ST candidates. In the case of Public Sector Undertakings, in the case of Group 'B' and 'C' technical posts, which cannot remain vacant in public interest, they can be de-reserved but only at the level of Administrative Ministry.

In the normal course, however, power to de-reserve has been delegated to the Chief Executive or the Board of Directors in the Public Sector Undertakings.

Thus all the posts reserved for SC/ST under the direct recruitment have to be filled up by SC/ST candidates except where the authorities could justify that the post can not be kept vacant indefinitely.

In the case of promotion, while there is no ban on de-reservation, the Government of India has taken the following steps to minimize the de-reservation therein:

⁶⁵ Background Material on "Post-based Reservation includes the effect of Constitutional 81st and 82nd Amendment for SCs, STs and OBCs", during the 14th and 16th February, 2002 At Hotel "The Connaught" New Delhi: Institute of Socio-Economic Research And Action; 2002

1. In promotional posts, where there is an element of direct recruitment as per the Recruitment Rules, the unfilled reserved posts would be filled by direct recruitment by transferring the post to the direct recruitment quota.
2. If an organization can afford to keep the promotion post vacant for some time, there would be no de-reservation. Under the provision, the concerned authority has to take a conscious decision, and the Commission can certainly suggest to the authorities to withhold the de-reservation if an SC/ST candidate is likely to become eligible for promotion in the near future.

3.9.5 Steps to be taken while dealing With Cases of False Certificates

There have been a large number of cases of false certificates in various organizations. In spite of a number of steps taken by the authorities to ensure that the caste certificates are issued to genuine SC/ST persons after due verification of the caste status, a number of people still manage to get those certificates by misrepresenting facts or through other unfair means. All such cases when brought to the notice of the Commission have to be referred to the concerned authority seeking full details, keeping in view the following points:⁶⁶

1. That the community claimed is actually recognized in the State to which individual belongs.

⁶⁶ Shukla Nigamendra. APPENDIX XL – The Scheduled Castes And The Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Rules: Second Edition: New Delhi: Modern Law Publications; 2005

2. That the candidate actually belongs to the State claimed to be his permanent place of residence.
3. In the case of area restrictions in relation to a particular State, the community claimed is recognized in that area of the State and the applicant actually belongs to that area.
4. A Scheduled Caste has to belong to Hindu, Sikh or Buddhist religion.
5. Whether the certificate is issued by a competent authority.
6. Whether the certificate is issued in the prescribed format.
7. In case of females the name of the father is mentioned in the certificate and not of husband as inter-caste marriage does not change the status of the females in this connection.
8. In cases of migrated persons whether the applicant migrated to the present of residence before the issue of the relevant order declaring certain communities as SC and ST.
9. If a Scheduled Caste person converts to any religion other than the Hindu, the Sikh or the Buddhist, he or she ceases to be a Scheduled Caste.
10. In case of adoption whether the adoption was valid under the law.

Where it is proved that the certificate was false, the concerned authority need to be advised to terminate the services of the employee.



3.9.6 Reservation in Allotment of Residential Accommodation for Scheduled Castes/Scheduled Tribes⁶⁷

Under the House Allotment Rules, reservation for allotment of quarters to SC/ST employees is available according to their entitlement as under (based on the guidelines of the Department of Public Enterprise.)

Lowest Types A and B	10%
Next Types C and D	5%

While applying reservation in allotment of residential accommodation for SC/ST employees, following points are to be kept in view:

1. The houses to be reserved for SCs and STs in the ratio of 2:1 in Types A and B and Types C and D. Separate waiting lists may be maintained for SCs and STs. In case there is no SC employee available, the quota reserved for SCs would be allotted to ST employees and vice-versa.
2. The SC/ST employees, in addition to reservation, are also to be considered for allotment in their turns/seniority along with General Category employees.

⁶⁷ Purohit B.D. & Purohit S.D. Hand Book of Reservation for Scheduled Castes & Scheduled Tribes: First Edition: New Delhi: Jainsons Publications; 1990

3. The reservation is made out of the number of accommodation available for allotment to employees.
4. The reservation is to be made applicable in each type on quarters and not floor wise.
5. SC/ST employees who are already allotted accommodation of their own turn will not be entitled to be considered for allotment of higher types from the reserved quota.
6. The liability of reservation of company accommodation to SC/ST employees is at the time of initial allotment and not thereafter on becoming entitled for higher types of accommodation. A 60 point roster is maintained with following points :
 - (a) Category A and B Point Nos. 10, 20, 40 and 50 for SCs and Point Nos. 30 and 60 for STs in a 60 point roster.
 - (b) Category C and D Point Nos. 20 and 40 for SCs and Point No. 60 for STs in a 60 Point roster.
7. There will be no carry forward of reservation of accommodation.

3.9.7 Forwarding of Applications

Application for employment elsewhere of employees belonging to Scheduled Caste/Scheduled Tribes should be readily forwarded except in very rare cases where there may be compelling grounds of interest of the company for withholding of applications. Cases

where applications of employees belonging to Scheduled Castes/Scheduled Tribes could not be forwarded due to compelling grounds of interest of the Company should be reported within a month to the officer nominated as Liaison Officer in the Project/Station/Office.⁶⁸

3.9.8 Nomination of SCs and STs on Selection Boards/ Departmental Promotion Committees

Selection Boards/Departmental Promotion Committees are generally constituted with the departmental officers of appropriate status and background keeping in view in nature of the post(s) Departmental Promotion Committees.

An SC/ST officer should invariably be associated while constituting the Selection Boards/Departmental Promotion Committees for recruitment/promotions.

In case of a non-availability of suitable SC/ST officer within the organisation, SC/ST officers of appropriate status who hold senior position in other Public Sector Undertakings or in Central or State Governments can be included in the Selection Boards/ Departmental Promotion Committees.

In the case of recruitment/promotion to Group 'C' and 'D' posts it has been made mandatory to nominate an officer from SC/ST/OBC, minority community and women in such Selection Boards/ Departmental Promotion Committees.

⁶⁸ Department of Personnel & Administrative Reform OM No. 27/4/(iv)/70 Estt. Dated 02/09/1970 (p. 273 Brochure)

3.9.9 Separate Interview for SCs and STs

In direct recruitment through interview or through examination followed by interview, candidates belonging to the SCs and STs would be called for interview on a separate day or in a separate sitting of the Selection Board so that they are not adjudged in comparison with general candidates.

3.9.10 Relaxation of Persons While selecting for Posting Abroad

While it may not be possible to provide for any specific norm of relaxation, in favour of SC and ST employees/Officers in the matter of posting in foreign countries, when a Ministry/ Department/Office etc. makes selection of persons for posting in its units located in foreign countries, it should see that the eligible employees belonging to SCs and STs are also considered for such posting along with others.⁶⁹

3.9.11 SCs, STs and OBCs Coming on Own Merit

In cases of direct recruitment to posts under the Central Government Public Sector Undertakings and Banks, the SC/ST/OBC candidates who are selected on their own merit (without relaxed standards) along with candidates belonging to the other communities, will be adjusted against unreserved vacancies. The relaxed standard can only be linked with the performance of SC/ST candidates in a test/interview and not with relaxation of age and percentage of marks in the prescribed qualification.

69 Purohit B.D. & Purohit S.D. Hand Book of Reservation for Scheduled Castes & Scheduled Tribes: First Edition: New Delhi: Jainsons Publications; 1990

It is further clarified that the SC/ST/OBC candidates selected on own merit and adjusted against unreserved points will continue to be treated as SC/ST/OBC for any future benefits.

3.9.12 Other Administrative Instructions in Service Training

In order to improve the chances of Scheduled Castes/Scheduled Tribes Officers for selection to the higher categories of posts in Group 'A' the following measures should be taken:

1. Scheduled Castes/Scheduled Tribes Officers in Group 'A' services/posts should be provided with more opportunities for institutional training and for attending seminars/symposia /conferences.
2. A Considerably large number of Scheduled Castes and Scheduled Tribes officers should be nominated for the training programmes run by various Training Institutions. They should lay down a time-limit, say, 3 years, within which training of such officers in appropriate fields should be completed. A phased programme for sponsoring such officers for training to various institutions should be drawn up.

The training needs of the Scheduled Castes and Scheduled Tribes officers should be identified and then examined as to which training programme these officers should be deputed. The Training Department should render all assistance in suggesting or even devising programmes wherever necessary.

3. It would be useful to earmark 25% of the seats for officers of Scheduled Casts and Scheduled Tribes wherever possible. In case this becomes difficult in any particular programme, then such officers could be covered in the next course or special programmes may be arranged for them.
4. It would be useful if officers belonging to Scheduled Castes and Scheduled Tribes are included in the various training programmes abroad. It would enable them to broaden their outlook and also build up specialized knowledge.⁷⁰
5. It should be the special responsibility of the immediate superior officers of the Scheduled Caste/Scheduled Tribe Officers in Group 'A' to give advice and guidance to the latter to improve the quality of their work.

3.10 Social Engineering and Protective Discrimination in Favour of Children and Women

Next to the Scheduled Castes and Scheduled Tribes and Backward Classes of Indian Society are children and women who need Constitutional protection. "Social Justice" says Subba Rao, the former Chief Justice of India, "must begin with children."

The first priority in the scale of social justice shall be given to the welfare of children. That is reason why the framers of Constitution required under the one of the Directive Principle of State Policy that the State shall direct its policy towards securing that the tender age

⁷⁰ Background Material on "Post-based Reservation including the effect of Constitutional 81st and 82nd Amendment for SCs, STs and OBCs", during the 14th and 16th February, 2002 at Hotel "The Connaught", New Delhi: Institute of Socio-Economic Research And Action; 2002

of children is not abused and the childhood and youth are protected against moral and material abandonment.

Article 24 says that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 45 requires the State to provide for free and compulsory education for all children below 14 years. The State may make any special provision for children.

The peculiar position of the women in society needs special care and preferential treatment. "The very word 'Woman' meaning a wife, sums up," says the Encyclopaedia, Britannica, "Long history of dependence and subordination". In almost all societies woman have been treated with inferior position. Women have suffered inferior position in Hindu and Mohammedans Personal Laws.

According to Manu, "Day and Night must women be held by their protectors in a status of subjection?" With the advancement of society women's liberation movement is getting momentum and no country can afford to ignore the position of women in national life. The framers of the Indian Constitution prohibited any kind of discrimination on the ground of sex, prohibited traffic in human beings including traffic in women for immoral purposes.

3.11 Educational Rights of Minorities

The Constitution guarantee of educational extended to the minorities based on religion or language. Minorities based on religion or language has four types of rights under article 30 of the Constitution:

1. The right to establish educational institutions
2. The right to administer educational institutions
3. The right to determine the nature of their educational institutions at their own choice and
4. Claim non-discriminatory grant of aid from the state. The minority right under article 30 is cached in absolute terms.

Clause (2) of Article 30 indicates that State is prohibited from discriminating while awarding grants-in-aid to educational institutions on the ground that such institutions are under the management of religion or language based minorities.

It indicates that government has to spend money from common exchequer in nourishment of minority institutions and therefore, it is implied that state should have right to regulate minority institutions in national interest. Further minorities are part and parcel of society and they owe some duties to the common people too.⁷¹

3.12 Constitutional Safeguards of the Weaker Section Industrial Society

Economic justice is one of the important justices to be secured by the Constitution of India, to all its citizens. The Constitution of India provides that State shall direct its policy towards securing.

71 Shukla V.N. Commentaries on the Constitution of India: Second Edition: Lucknow: Eastern Book Company; 1956

1. That the citizens, men and women equally, have the right to and adequate means of livelihood.
2. That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.
3. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
4. That there is equal pay for equal work for both men and women.
5. The health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength.

3.13 SC/ST Issues and Concerns in the Development Era: A Woman's Perspective⁷²

Social status of women in Indian society remained subordinate status barring a few communities since the society in general is dominated by men. Though situation is changing gradually due to spread of education, social awareness, Government enactments and so on but the process of change is nevertheless extremely slow.

⁷² Navle Anil Professor and Sharma Mona. Special Issue on Development of SC/ST in Indian Society – Issues and Challenges: Vadodara: The Faculty of Social Work, The Maharaja Sayajirao University of Baroda, Vadodara.

The Scheduled Castes in India, who account for 15.75% of India's Population, have long suffered from several social economic, political and religious disabilities. For centuries they were treated as untouchables, assigned the lowest status in society and denied the right to own property, the freedom to choose an occupation, admission to educational institutions, permission to hold public posts and access to all public places.

However, for some time past several efforts have been made for their emancipation and uplift but it was only after achieving independence serious and organized efforts on a national level have been made to improve their general conditions and absorb them into the main stream of Indian Society.

In fact, since then several social, economic, educational, political and religious safeguard besides numerous programmes that involved large outlays of expenditure and implemented for the development of the Scheduled Castes. The results of those programmes have influenced public, the politicians, the planners, the bureaucrats and the scientists.

To prove their respective points of view the planners, politicians, reformers, administrators, social scientists and welfare workers have to rely upon the findings of surveys and studies which have often been lopsided be it social, economic, educational, political or religious. They have largely failed to reveal the truth of multi dimensional situations.

An exact point of view depicting the reality from all angles and acceptable to all would have been possible, had there been adequate numbers of micro level as well as macro level, topical as well as area wise, comprehensive as well as in depth scientific

research studies. Such studies focusing attention on a scientific analysis of the impact of planned programmes on the life of the Scheduled Castes is the need of the hour. Indeed such scientific studies are yet to be attempted in adequate numbers.

The paper is an attempt to review the existing condition of Women particularly those that comprise of the dalit group in terms of vulnerability being faced them. In an attempt to do so an experiment to uplift the status of these women forms the description of the paper which is an experiment for the cause of Woman Empowerment in a place called Nellore in Hyderabad. A large number of Dalit or untouchable souls irrespective of whether they are men or women remained as subordinate citizens since centuries, at least after the introduction of *Manu Smruti* as Hindu Code of Law.

Within Dalit society again there are men and women each community had been allotted certain profession with participation of both sexes, the treatment mooted to dalit women by their own men and those by other communities are various aspects that should be considered for upliftment and providing them at least minimum fundamental rights in accordance to Constitution of India, are few aspects dealt in this paper. The paper deals exclusively with Dalit women, their virtues, their triumph and tragedy, their pains and joy.⁷³

73 Pandey J. N. Dr. Constitutional Law of India: Forty Fifth Edition: Allahabad: Central Law Agency; 2008