

Chapter 5

PROTECTIVE DISCRIMINATION: IMPLEMENTATION OF RESERVATIONPOLICY

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PROTECTIVE DISCRIMINATION: IMPLEMENTATION OF RESERVATION POLICY

It is true that equality of opportunities is the essence of The Fundamental Rights enshrined in the constitution of India. But equality of opportunity will have to be examined in the context of the type of social order and social hierarchy we have in the country. This issue was discussed threadbare in the Constituent Assembly and after a protracted and heated debate, the fathers of the Constitution decided, whether willingly or unwillingly, to provide for protective discrimination.

Thus, though discrimination between citizens is not legal in the normal course, protective discrimination becomes legal in the circumstances that justify its need. "Protective discrimination is one of the three ways in which Government attempts to deal with problems confronting the SCs' and STs' Reservation". Reservation, which is one of the mechanisms of protective discrimination, is a social policy of the State enshrined in the Constitution to ensure a certain amount of participation of the traditionally neglected social groups.¹⁰⁸

Though the reservation policy is mandatory and legally binding, and violation of which is an offence, universities had not implemented this policy till 1976. The major reason advanced by the universities is that there was no provision in the Universities Act and therefore, it was difficult to comply with this requirement. The *Armugam Committee (1980)* observes this inexcusable argument. The fact is

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

that the universities had no intention to of giving effect to the Constitutional guarantees. The two arguments advanced in this connection are:

1. Universities require qualified teachers and if candidates who are not fully qualified are appointed, standards will have to be scarified,
2. Qualified candidates are not available from among the SCs and STs.

However, since 1976 the universities have agreed to give effect to the reservation policy as decided by the state. Accordingly, 15 and 7.50 per cent of the posts have to be reserved for the SCs and STs respectively at all levels and the roster system as adopted by the state has to be followed by the universities. The question is whether the universities have followed this sincerely and faithfully?

The Central Government and State Government having its executive hierarchy for implementation of reservation policy in State and Central level in Educational Institutions and Industrial area.

5.1 In Educational Area

The Committee on welfare of SC/ST issued instructions to all universities in the country to set up within the universities special cells to ensure implementation of the orders regarding reservation for SC and ST issued by the Government of India from time to time. The University Grants Commission is required to keep a watch that the all universities and colleges set up cells without any loss of time.

The expenditure of the staff engaged in these cells is reimbursed to the universities concerned by U.G.C. in addition to their grants.¹⁰⁹

The SC/ST cell was first set up in January-1979 and has been increased recently with a view to vigorously watch the effective implementation of various orders for employment and programmes etc., to access higher education to students belongs to SC and ST communities.

The following functions are to be performed by the SC/ST cell for the present:

1. To circulate the Government of India and Commissioner's decisions and to collect regularly, on annual basis information regarding course-wise admissions by reservation to candidate belonging to SC and ST in Universities and Colleges for different courses, by stipulated date in suitable forms prescribed and to take follow-up action where required.
2. To circulate Government of India orders and Commissioner's decision for the appointment of reservation of SC and ST in teaching and non-teaching staff.
3. To handle policy matters including Reports and parliament questions and collect, co-ordinate and circulate relevant information regarding SC and ST candidates from different divisions and sections in the U.G.C.
4. To collect report and information regarding Government of India orders on various aspects of education, training and

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

employment of SC and ST candidates for evolving new policy or modifying existing policy by the Commission.

5. To analyze the information collected and prepare reports and digests for onwards transmission to the Ministry of Education and Culture and such other authorities as may be required.
6. To deal with representations received from SC and ST candidates regarding their admission, recruitment, promotion and other similar matters in universities/colleges.
7. Any other work assigned from time to time to promote higher education among these two communities suffering from economic, social and educational deprivations.

The SCs and STs Cell in UGC is engaged in pursuing the progress regarding admission, employment, and utilization of fellowship, reservation in hostels, introduction of remedial courses and other measures with a view to bring about improvement in the educational levels of SC and ST candidates.

It is the responsibility of the U.G.C. (SC/ST Cell) to circulate the decisions of the Government of India and the UGC among universities and colleges and to collect, regularly, on an annual basis the factual position regarding course-wise admissions by reservation to candidates belonging to SC and ST for different courses by a stipulated date and to take follow up action, wherever required.

The UGC has, accordingly, collected information regarding the actual admissions made by universities and colleges to various

courses of studies from among these two communities from time to time. For the purpose of securing such information the courses have been divided as Undergraduate, Post-graduate and Research etc.

It has also been sub-divided as courses in Arts, Science, Commerce, Education, Engineering and Technology, Medicine, Agriculture, Veterinary Science, Law and others with the break up separately for SC and ST communities giving the individual position in respect of these communities for undergraduate and post graduate courses.

To ensure effective implementation of reservation policy for SC/ST candidates in the matter of employment and admissions etc. the following guideline has been issued by the University Grants Commission in the year 1989.

University Grant Commission's Guidelines to universities deemed University, etc. for full implementation of reservation in admissions for Scheduled Caste and Scheduled Tribe Students in all Courses and Faculties/Departments in All Universities and College from Academic Year 1989-90 onwards.

A rational movement has been launched for fulfilment of reservations for SC and ST on the basis of Constitutional Colligations. It is obviously necessary for the University System to join this national movement and given lead to it. In order to fulfil this without losing a single academic year, the U.G.C. issues the following guidelines for Universities, Deemed Universities and other institutions:

1. Different Percentage of reservations has been fixed for SC and ST in the Universities of different States in accordance with the percentage of SC population, ST population in the total

population of that State. The broad principle is that the reservation percentage for SC and ST should not be less than their population percentage.

In the case of Central Universities, the percentage of reservation in admission is 15% for SC and 7-1/2% for ST. All reserved seats should, according to the percentages of reservation fixed be filled in the academic year 1989-90 and every subsequent year.

2. This can be done by following the procedure explained below:
 - i. All SC and ST candidates who have passed the qualifying examination for admission to a University course may be arranged in the order of merit among themselves.
 - ii. Those who have marks above the level up to which general category students are admitted, should not be counted towards reserved quota at all and should be included in the general merit list of admissions.
 - iii. Excluding those admitted on merit along with general candidates as at (ii) above, other SC and ST candidates should be admitted in the order of merit going down the inter-se merit list up to the point necessary to secure adequate number of candidates of SC as well as ST to fulfil the reservation percentage completely.
 - iv. It is clarified that in order to fulfil reservation, there should be no hesitation to go down, if necessary to the pass percentage of the qualifying examination (e.g. Class XII, for admission to BA./B.Sc./B.Com. Pass Course as well as Honours; first

Degree for admission to a Second Degree or Post Graduate, and so on).

- v. Considering the ground reality that in many courses and faculties/departments, particularly the ones which are important for career advancement and social status the numbers admitted are less than the reserved percentages in most Universities, and considering that the availability of SC and ST candidates is relatively less, it is irrational to apply to them criteria like minimum eligibility marks and cut off point marks, which are much higher than the pass marks in the relevant examinations.

While these criteria may be justified in the case of general candidates because of a very large number of students available from that category, in the case of SC and ST, these steps are at present irrelevant and the procedure at (i), (ii), (iii) and (iv) above is appropriate to facilitate fulfilment of reservations in all courses, faculties /departments.

The position can be reviewed in each University as and when reservation is fulfilled completely and the number of SC and ST candidates increases so much as to warrant higher minimum eligibility and cut off points, but even then these may be lower for SC and ST than for others.

3. Seats reserved for SC and ST should be filled only with SC and ST candidates and not with others.
4. It has been noticed that the representation of SC and ST students is not evenly distributed in all courses and all faculties and the Departments. They are bunched up in less favoured courses and faculties/Departments and found in relatively smaller proportion in more favoured courses and

faculties/departments. In order to rectify this imbalance the fulfilment of reservation should be completed in every course and in every faculty/department.

5. In rare instances in which SC and ST students, with minimum pass marks of the qualifying examination are not available the following steps should be taken:

- (a) A special effort should be mounted by Notifying the number of reserved seats available for SC and ST in newspapers at least twice. While doing so the relevant courses, faculties/Departments should be mentioned.

- (b) It is possible that shortage may not exist in both the categories but only either in SC or in ST. In such cases, the existing guidelines of inter-transferability between the two should be followed.¹¹⁰

- (c) If even after every possible sincere effort, as above, there is non-availability of either SC or ST candidates or both,

- (i) The U.G.C. Special Commissioner for SC/ST, Vice Chancellor of the University and Ministry of Education should be informed of the non-availability of the SC and ST students with pass marks in the qualifying examination, the number of seats not filled on their account and efforts made to fill them up by various methods.

- (ii) Thereafter, subject to any advice that any of them may give, Seats may be thrown open to the general candidates in the current year.

110 Krishnan Anirudh and Sudersan Harini. Law of Reservation and Anti-Discrimination with Special Emphasis on Education and Employment: First Edition: New Delhi: LexisNexis Butterworths Wadhwa Nagpur, 2008

- (iii) Planning should be initiated to ensure that the shortage does not reoccur in future by ensuring adequate intake at the lower tier of the Education level.
6. As mentioned in 2(a) and (b) above, SC and ST students, who have marks comparable to that of general category candidates, should be admitted as general merit candidates and should not be counted towards reservation percentage.
 7. In those Universities where the procedure of central registration of SC and ST for admission exists at the University level and thereafter they are allotted to different colleges by the University, it has been found that a number of SC and ST students are made to go to and from which is felt as a humiliating experience, resulting in the build-up of frustration and resentment.

In order to avoid this, in such Universities, the admission process should be completed at the central registration level of the University itself and students authorized to attend the classes in the courses and faculties /departments in the colleges concerned. The university should leave no option with the college to decide on the admission and class attendance of SC and ST, who are centrally registered for admission by the University.

8. Some Universities have the procedure of holding entrance tests for certain courses. This has been misunderstood or misused in certain ways to find out Scheduled Caste and Scheduled Tribe students. This is inappropriate, where reserved seats have not been completely filled with SC and ST

candidates. Entrance test where they exist, are intended only to work out inter-se merit among the general candidates.

In the case of SC and ST candidates, admissions should be made in order of merit up to the full reservation percentage, on the basis of Entrance Test, subject here too the principle at 2(a) and (b) above, that those SC and ST students who get marks making them eligible to be admitted with General Category students should not be counted towards that Entrance test as it is not a qualifying test.

The qualifying examination is the examination which a candidate has passed at the lower level of education which he has already qualified in a duly conducted qualifying examination. The purpose of the Entrance test is only to arrange the candidates inter-se-merit especially in the context that candidates come from different sources and from different streams, often from different parts of the State of country with different standards of evaluation.

9. As the Head of the University family, the Vice-Chancellor will have to take the full responsibility by ensuring that the reservation for SC and ST is fulfilled according to these guidelines in all the courses and faculties/departments of the University and Colleges and other institutions affiliated to the University and that this is done in letter and spirit without any distortion or deviation.

10.

- (a) For fulfilling this responsibility, the Vice-Chancellor may make any internal arrangements as he deems fit.

- (b) There are already guidelines for setting up of an Advisory Committee under the Chairmanship of the Vice-Chancellor in every University to assist the Vice-Chancellor in every University in matters relating to reservation as well as other educational programmed for the SC and ST.

It is noticed that this committee has not been formed in a number of Universities. In some universities such a Committee has been formed but does not meet regularly and does not function effectively. These Committees may be immediately formed wherever they do not exist and should meet at least once in a quarter and more frequently according to the need.

There is need for this Committee to meet after the admission process is completed, but before the admission is closed to take stock of the fulfilment of the reservation in admissions and to take corrective steps in time before admission is closed. The Committee should be made effective.

Among the measures to make it effective is to include in it members of the teaching staff of the university belonging to the SC and ST who have been taking interest in the educational reservation and educational progress of SC and ST and members of the teaching staff, who while not belonging to SCs or STs, have also been taking similar interest.

- (c) The Vice-Chancellors may similarly vest in the Principals of colleges and heads of other affiliated institutions the responsibility for fulfilling reservations in their respective Colleges/Institutions.

(d) A similar Committee under the chairmanship of the Principal of the college or Head of the affiliated institutions may also be set up immediately.

11. Every college and every affiliated college should send a report about fulfilment of reservations for SC and ST to the Vice-Chancellor of the University within a week of the completion of the admission process but not before closing admissions so that in case any corrective steps are required for the current year, it may not be too late.

12.

(a) The Vice-Chancellor of the University should send a complete and comprehensive report of admissions of SC and ST, fulfilment of the reservation in all courses and faculties/departments incorporating and analyzing the reports sent by the college to the U.G. C. within 14 days of the completion of the admission process but not before admission is closed to facilitate timely remedial measures, if necessary, in the concerned academic year itself, with a copy to the Special Commissioner for SC/ST.¹¹¹

(b) The University will scrutinize the reports of the Colleges and other affiliated institutions immediately on receipt and issue corrections, if necessary, in time.

(c) The U.G. C. will similarly scrutinize the report of Universities and issue necessary correctives, if necessary, for adoption within the academic year. The Special Commissioner's advice will also be available in terms of Constitutional safeguards.

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

13. The reports of the colleges and Universities, mentioned at items (11) and (12) above may be sent in the monitoring Performa.
14. The Universities and colleges are requested to bear in mind the need to give the maximum possible encouragement and support to girls of the SC and ST.
15.
 - (a) For SC and ST, if in the opinion of the University or the student himself, there is need for remedial teaching or special coaching, the University/College should organize such courses.
 - (b) There is a U.G.C. scheme for this purpose which Provides funds for honorarium, etc. which has not been availed of by most Universities and Colleges. This may now be availed of fully. This should not be conducted in a casual manner but should be so conducted as to be reflected in the improvement of the performance of the SC and ST students bringing them to the general level. Competent and interested teachers should be engaged for this purpose.¹¹²
 - (c) Students requiring remedial teaching and special coaching should be motivated with sympathy and consideration for their feelings to join these courses.
16. The Vice-Chancellor and Principal/Head of the affiliation may devise and undertake any other measure required to fulfil reservation completely and bring the performance of SC and ST students to the general level.

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

5.2 The Commissioner for Scheduled Castes and Scheduled Tribes

5.2.1 Appointment

Article 335 protects the claims of SC and ST to employment in public services consistently with the maintenance of efficiency of administration.

Article 338 provides for a Special Officer for SC and ST to be appointed by the President, whose duty is to investigate all matters relating to the safeguard provided for SC and ST under the Constitution and to report to the President upon the working of those safeguard at such intervals as the President may direct, and present all such reports to be laid before each House of Parliament. Article 338(3) provides that:-

"In this Article reference to the SC and ST shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of Article 40 by order specify and also to the Anglo-Indian community".¹¹³

Under **Article 339** the President is empowered to appoint at any time, and is under an obligation to appoint at the expiry of ten years from the commencement of the Constitution, a Commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the States.

¹¹³ Basu Durga Das. Constitutional Law of India: Seventh Edition: New Delhi: Prentice-Hall of India Pvt. Ltd. 1998

Article 339(2) provides that the executive power of the Union extends to give directions to a state as to the drawing up and execution of schemes specified in the direction as essential for the welfare of the SC/ST in the State.

Article 340 provides for the appointment of a Commission to investigate into the conditions of backward classes. The commission is to report on the facts found by them to make such recommendations as they think proper and Article 340(3) provides.¹¹⁴

"The President shall call a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

The Liaison Officers who have been nominated in the Ministries etc. For work relating to representation of SC and ST should ensure the extension of necessary assistance to Commissioner for SC and ST in the investigation of complaints received by the latter in regard to services matters.

5.2.2 Functions

The Commissioner for SC and ST has been appointed under Article-338 of the Constitution to investigate all matters relating to safeguards provided for the SC and ST in the Constitution and report to the President upon the working of those safeguards. In regard to the safeguards relating to the appointment of SC and ST

114 Singh D.K. Constitution of India: Seventh Edition: Lucknow: Eastern Book Company; 1982

to services and posts the Commissioner has raised the following two questions:¹¹⁵

1. If he can not call for the original records and files in specific cases where complaints have been made to him so that he can satisfy himself that the safeguards provided for the SC and ST in the Constitution have not been violated and.
2. Whether SC and ST Government Servants can write to him directly bringing their grievances to his notice.

Occasions for consulting the original files of the Ministries or Departments by the Commissioner for SC and ST would probably be few and far as usually the full facts of the cases are furnished to the commissioner for SC and ST whenever enquiry's made by him in such matters.

However, there may be cases where the commissioner might require seeing the originals records and files in order to satisfy himself that no injustice has been made.

- (a) Files relating to the appointment of candidates belonging to the SC and ST against the reserved quota, should, on demand, be made available to the Commissioner for SC and ST.
- (b) In all other cases, a comprehensive note explains position may be furnished to him.
- (c) Should the Commissioner have any doubts in regards to the explanations given, the matters may be referred to

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the Home Secretary who will go through the original records and answer the queries made by the Commissioner where possible, he will also send the record with the reply ; and

- (d) Scheduled Caste and Scheduled Tribes Government employee may be permitted to write to the Commissioner for SC and ST direct on matters relating to appointments against the reserved quotes.

5.3 Liaison Officers

In each Ministry/Departments, the Deputy Secretary in charge of administration will act as Liaison Officer in respect of matters relating to representations of SC and ST in all establishments and services under the administrative control of the Ministry/ Department. He will be specifically responsible for:-

1. Ensuring due compliance by the subordinate appointing authorities with orders and instructions pertaining to the reservation of vacancies in favour of SC and ST and other benefits.
2. He should also ensure:
 - (a) Submission of annual statement by each appointing authority under the Ministry to Ministry showing total number of Government servants of SCs and STs as on 1st January.
 - (b) Submission of annual statement showing recruitment made during calendar year by each appointing authority under the

Ministry/Department to the Ministry/Department and the post filled by SC and ST.

- (c) Scrutiny and consolidation of the above annual statements in respect of all establishment and services in and under the control of Ministry/Department and sending the consolidated statements to the Ministry of Home affairs.
- (d) Acting as Liaison Officer between the Ministry/Department and the Ministry of Home Affairs for supply of other information, answering questions and queries and clearing doubts in regard to matters covered by reservation orders.

5.3.1 Responsibilities of Liaison Officers for Implementation of Reservation Orders

Department of Personnel and Administrative Reforms considered the need for strengthening the existing institution of Liaison officer and setting up of special cells to ensure enforcement of reservation orders in respect of SC and ST candidates. For this purpose Government of India has issued following instructions which inter-alia included sending of annual statements and proposals for de-reservation etc?

1. The Liaison Officer of the Ministry or Department will be responsible for the implementation of reservation orders in the Ministry/Department. However the purpose of sending the annual statement to the Department of personnel and Administrative, is the Liaison Officer of the Ministry or Department will properly co-ordinate and compile the statements received from all attached and subordinate offices including Head of the Department and send the consolidated

statement to the Department of Personnel and Administrative Reform.

2. In each attached and subordinate offices, there will be a separate Liaison Officers, who will look after the implementation of reservation orders. However the Liaison officers will send like annual statement on behalf of attached/subordinates office.
3. The Officers under the various Heads of the Department will continue to have separate Liaison Officers but the annual statement or any other return or information entails pertaining to such offices shall be Punishable to Liaison Officers of Ministry.
4. In respect of attached/subordinate offices the proposals for degeneration of vacancies resented for SC and ST shall be certified to be in order on the pro-forma by out concerned Deputy Secretary/Director in the particular Division of the Ministry/Department.

It has been also further decides that Cells be set up in each attached/subordinate office to ensure due compliance of the orders of reservation issued from time to time in favour of SC/ST employees and to scrutinize the satisfied data in respect of the attached/subordinate office required to be furnished to the Ministry/Department proper.

The main function of cell would be to assist the Liaison Officer to discharge his duties effectively. The strength of the Cell would be depend on the work-load and the norm; but not to designate or

have a Cell irrespective of its numerical compositions dictated by the quantum of work-flow will not be in order.

5.4 Discrimination against Scheduled Castes and Scheduled Tribes

Ministry/Department are aware that the Government as a part of programmed for the general welfare of the persons belonging to the SCs/STs, have provided reservation in Central Government services accompanied by various other benefits concessions and relaxations.

The main objective for providing reservation in appointment to SC and ST in civil posts and services of the Government is just not to give jobs to some persons belonging to these communities and thereby, increase their representation in services but to uplift the people socially and merge them in main stream of the nation.

It has however observed by the Department of Personnel the SC and ST officers, after appointment are subjected to harassment and discrimination on grounds pointed out that the SC/ST officers are sometimes transferred to the far off plans and also placed at insignificant positions. It has also been observed that such officers are not accepted at the concerned posting places by their superior officers.

In this connection it is emphasized that Government servant should desist from any act of discrimination against members of SC/ST communities on the ground of their social origin. It was also desired that the Senior Officers, including the Liaison Officers of the Ministry/Department should keep a close watch to ensure that

such incident do not occur at all. However, any such incident comes to the notice of the authorities; action should be taken against the erring officials promptly.

5.4.1 Recommendations of The “Parliamentary Committee on Welfare of SC/ST”

The Parliamentary Committee on welfare of Scheduled Castes and Scheduled Tribes has made the following recommendations.

1. The Committee informed that all the authorities should submit their annual statement regarding recruitment etc. of SC/ST to concerned Ministries/Departments and the Ministries or Departments should send this statement to the Department of personnel and Administrative Reforms.

The Committee act that the main purpose of these annual statement will be defeated if they are not submitted within time limit. Failure to submit these within time limit of statements is regarded as a serious lapse on the part of Head of the concerned Ministry/Department.

2. The Committee also suggested that any deficiency found in annual statement should be examined and analyzed so that the concerned authority could take necessary corrective measures without any delay.

The recommendations of the Parliamentary Committee and welfare of SC/ST as sated above were again specifically brought to the notice of Ministries/Departments failure to submit the annual statement by concerned Department/ Authority without any valid

reason should be brought to the notice of Secretary/Additional Secretary to the Government in the Ministries/Departments or the Head of the Department in respect of offices under a Head of Department.

5.4.2 Liaison Officers and Special Cells

Officers of the Deputy Secretary have been nominated by the Ministries and Departments to work as Liaison Officers.

It is an also special responsibility of Liaison Officers to conduct an annual inspection of maintenance of roster in the office in charge of them.

It is also duty to Liaison Officer to scrutinize the proposals for de-reservation of reserved vacancies before they are sent to the Department of Personnel and Training.

The Liaison Officer has to make note for de-reservation regarding his full knowledge and occurrence recorded. The System of nominating Liaison Officers has also been extended to the Head of Department under ever Ministry/Department.

Ministries/Departments have also been asked in 1969 to set up a small Cell within the Ministry/Department under the direct control of Liaison Officer.

The Function of such special cell is mainly to assist the Liaison Officer is discharge the duties of Liaison Officers effectively.¹¹⁶

¹¹⁶ Department of Personnel & Administrative Reform OM No. 36022/2/84 Estt. (SCT) Dated 18/01/1985 (p. 247 Brochure) and Department of Personnel & Administrative Reform OM No. 36013/6/81 Estt. (SCT) Dated 07/12/1981 (p. 245 Brochure)

5.4.3 Annual Statements

It shows particulars of recruitment made such the number of vacancies filled and the number of SC and ST recruited has been person for submission by the appointing authorities to Administrative/Ministries.¹¹⁷

5.4.4 Prior approval for De-reservation

Prior approval of the Department of Personnel in direct recruitment is required to be obtained by the appointing authorities whenever it becomes necessary to de-reserve a rescued vacancy included in the roster for permanent and long terms temporary appointments to non-availabilities of suitable candidates belonging to SC and ST.

The power of de-reservation, however have been delegated subject to following conditions:

1. There are no eligible SC/ST candidates.
2. A copy of each proposal is sent to the Commissioner for SC/ST and Department of Personnel.
3. The Proposal should be concurred in by Liaison Officers of the Ministry.
4. De-reservation should be accorded at a level not lower than that of Joint Secretary to the Government of India.

¹¹⁷ Department of Personnel & Administrative Reform OM No. 36013/1 Estt. (SCT) Dated 07/06/1977 (p. 283 Brochure)

5. In case of disagreement between Liaison Officer and Appointing Authority, advice of Department of personnel should be sought.

5.5 National Commission for Scheduled Castes And Scheduled Tribes

The Government of India has appointed a Commission to investigate all matters relating to SC/ST.

The Commission has been appointed as per provision of Article 338 of Constitution providing appointment of Special Officer for SC/ST etc. The Commissioner can call for records/ information matter regarding appointments/Promotions etc. of Central Government Employees.

The Instructions of copy forwarded to the Commission of SC/ST regarding de-reservation and it any proposed expressed by the Commissioner for de-reservation of reserved vacancies should be taken into account before approval of de-reservation proposals.

The Commissioner also undertakes inspection to roster maintain by the Individual Ministries/Department Central Government Offices etc.

Instructions issued recently require by the Ministries/Department to send action reports taken on the suggestions/recommendations made by the Commissioner, as possible within six (6) months¹¹⁸.

¹¹⁸ Department of Personnel & Administrative Reform OM No. 36024/1/78 Estt. (SCT) Dated 20/02/7199 (p. 293 Brochure)

5.5.1 Functions

The functions of the Commission have been laid down in clauses (5), (8), (9) and (10) of the amended Article 338 of the Constitution. These functions are briefly discussed here.

5.5.2 Investigation into and Monitoring of Safeguards Provided Under the Constitution, Law and Orders.

The Commission is required to investigate and monitor all matters relating to the safeguards provided for SCs and STs under the Constitution or under any law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

5.5.3 Inquiry in to Specific Complaints

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of SCs and STs.

In order to enable the Commission to perform this function within manageable limits the Commission would like to appeal to the members of SCs and STs that before submitting any specific complaints to the Commission for redressal of their grievances, they should clearly state if and how there has been a violation of their rights and safeguards.

The Commission would not like to be burdened with flimsy or irrelevant complaints. A large number of representations are regularly received from SC and ST employees working in

Government Departments, Public Sector Undertaking and autonomous bodies.

The Commission would like them to understand that it will be in a position to inquire into their grievances only if there has been a violation of any provision of the State Acts governing reservation in services and posts for SC and ST (The State Governments of Manipur, Orissa and West Bengal have passed such legislations) or, in the case of the Government of India, of the orders contained in the "Brochure" relating to reservation matters issued by Ministry of Personnel, the DPE/Administrative Ministries in relation to the Public Sector undertaking under them, the Ministry of Railways and Banking Division etc.

The Commission would not like to interfere in vigilance cases, disciplinary cases, criminal cases before a court of law, merits or otherwise of adverse remarks in annual confidential reports and the like. In addition, the following guidelines are laid down for submission of specific complaints:

1. The complaints should be addressed to the Chairman, National Commission for SCs and STs, or the heads of its field offices. No action will be taken on representations which are addressed to other authorities with only an endorsement to the Commission.
2. The Complainant should disclose his full identity indicate his full address. No action will be taken on an unsigned complaint.
3. Complaints should be legibly written and wherever necessary supported by authenticated documents.

4. No action will be taken on matters which are sub-judice.
5. Cases in which a court has already given its final verdict shall not be taken up afresh by the Commission.

5.5.4 Socio-Economic Development

The Commission is required to participate in an advice on the planning process of socio-economic development of SCs and STs and evaluate the progress of their development under the Union or any State. The role of the Commission in these areas will be at various levels i.e. the Planning, Commission, the Central Ministries and the State Governments.

The Commission and its Offices both at the Headquarters and in the field offices would be involved with the formulation of policies and development programmed for SCs and STs including the Special Competent Plan for SCs and the Tribal Sub Plan for STs. The Commission would evolve the necessary procedures for such participation and evaluation work.

The Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards provided for SCs and STs under the Constitution, various laws and orders. These reports shall contain recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of SCs and STs.

The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of any such recommendations.

Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for non-acceptance, if any, of any of such recommendations.

While investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), the Commission shall have the powers of a Civil Court trying a suit and in particular in respect of the following matters:

The Constitution has made it mandatory for the Union and every State Government to consult the Commission on all major policy matters affecting SCs and STs. This is a very important function of the Commission which helps it to keep track of all the major policy decisions taken by the Government of India or any other State Government. These decisions could be legislative or executive.

Obviously it is not possible for the Commission alone to find out what all policy decisions have been or are being taken by the Government. Therefore, the Commission would welcome information about this matter from all quarters so that the interests of SCs and STs are not affected adversely or by default.

Whenever information is received by the Commission about any incident of atrocity on a person belonging to SCs or STs, the Commission would inquire into it and determine the circumstances that led to the occurrence of the incident and to see if the law and order and other State Machinery have taken proper action including distribution of relief to the affected persons or their families.

The Commission would lay down detailed procedure for conducting such inquiries at different levels. Such inquiries may be conducted by a Member of the Commission or through the investigating teams from the Headquarters Office of the Commission or field offices of the Commission.

All the concerned authorities at the Centre or in the States concerned would be expected to render necessary assistance to the Commission in such inquiries.

While Article 338 of the Constitution refers to the National Commission for Scheduled Castes and Scheduled Tribes, Clause (10) thereof says that "In the Article, reference to Scheduled Castes and Scheduled Tribes shall be construed as including reference to such other backward classes as the President may, on receipt of a report of a Commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian Community."¹¹⁹

The office of the Commission is located in Loknayak Bhavan (Floor V), Khan Market, New Delhi-110 003. Its Head of Department is Secretary to the Commission, an officer of the rank of Secretary to the Government of India. The Commission have a number of wings which perform various functions laid down in the Constitution.

119 Diwan Paras Dr. Constitution of India: First Edition: Allahabad: Allahabad Law Agency; 1998

5.5.5 Powers of the Commission to Act as A Civil Court

1. Summoning and enforcing the attendance of any person from any part of India and examining him on oath,
2. requiring the discovery and production of any document,
3. receiving evidence on affidavits,
4. requisitioning any public record or copy thereof from any court or office,
5. Issuing commissions for the examination of witnesses and documents, and
6. Any other matter which the President may, by rule, determine.

The Commission hopes that with the necessary cooperation from the Government and ready response from the public in general and members of SCs and STs in particular, it will be able to carry out its onerous tasks and responsibility faithfully and effectively.

Article 46 of the Constitution ensures special care for SCs/STs and protection from social injustice and all forms of exploitation. To ensure safeguarding their interests while in service so that there is no discrimination with them, a number of instructions have been

issued by the Government of India in regard to their postings and transfers. It has also to be ensured that the SCs/STs are not posted only at insignificant or unimportant position.

In the case of transfers also Government instruction provides that the SCs/ d STs are not transferred to far off places as a matter of punishment in violation of the transfer policy. The instructions also provide that the officers found guilty of deliberate negligence and lapses in observation of reservation policy and the discriminatory attitude towards the SCs/STs would be liable for departmental action against them.¹²⁰

5.6.2 Safeguards against Super-session

If posts filled by promotion, whether by selection or based on seniority-cum-fitness, both against reserved and unreserved posts, the following procedure should be observed in regard to the cases of super session of SCs/STs by their juniors:

1. In promotion to Group 'A' and within Group 'A' posts and to Group 'B' and within Group 'B' posts, the cases of super session should be submitted to the Board of Directors for approval.
2. In promotion to and within Group 'C' and 'D' posts, the cases should be submitted to the Managing Director for approval.¹²¹

120 Department of Personnel & Administrative Reform OM No. 36026/3/85 Estt. (SCT) Dated 24/06/1985 (p. 287 Brochure)

121 Department of Personnel & Administrative Reform OM No. 36012/3/75 Estt. (SCT) Dated 06/10/1976 (p. 138 Brochure) and Department of Personnel & Administrative Reform OM No. 36013/6/80 Estt. Dated 28/01/1982 (p. 145 Brochure)

5.7 District Welfare Officer, Liaison Officers and the National Commission for SC/ST

Each Project/Station/Office shall nominate one senior executive from Personnel and Administration Department preferably from SC/ST category, as Liaison Officer in respect of matters relating to reservation in employment of SC/ST/OBC/PH persons.

He will also be nodal officer on matters relating to representation of minority communities.

The Liaison Officer will specifically be responsible for:

1. ensuring due compliance with the orders and instructions pertaining to the reservation in favour of Scheduled Casts, Scheduled Tribes, OBCs and PH persons and other benefits admissible to them under the Presidential Directives/ Instructions.
2. Collecting, consolidating and dispatching the periodical returns/reports in respect of Scheduled Castes and Scheduled Tribes, OBCs and PH persons, Ex-Serviceman and Minority Communities, etc. as per schedule as and when called for.
3. Proper Liaison between the Company and the Ministry concerned for supply of other information, answering questions and queries and clearing doubts in regard to matters connected with these orders.
4. Conducting annual inspection of the rosters maintained in the Company with a view to ensuring proper implementation of

reservation orders. The Performa for inspection of the SC/ST rosters is given in Appendix-VIV to Presidential Directives on reservation for SCs/STs.

5. Ensuring that the normal administrative inspections are carried out periodically, giving assessment of the performance of the company in the matter of strict observance of orders regarding reservation for Scheduled Castes and Scheduled Tribes, etc. and in filling up vacancies reserved for these communities. The form of administrative inspection prescribed, if any, may also include columns for giving assessment of the performance of the company in the manner referred to above, and
6. Ensuring extension of necessary assistance to the National Commission for Scheduled Castes and Scheduled Tribes in the investigation of complaints received by them in regard to service matters and collection of the information for the annual report.

5.7.1 SC/ST Cell

Under the control of Liaison Officer, a cell consisting of suitable number of assistance should also be constituted to ensure prompt disposal of grievances and representations from the Scheduled Castes and Scheduled Tribes employees. The cell would mainly assist the Liaison Officer to discharge his duties effectively. If the Liaison Officer himself is not from SC/ST, efforts will be made to post an SC/ST person in the cell.

5.7.2 Interaction with the Commission

With the increasing awareness among the SCs/STs about their rights and privileges, the service associations of SC/ST employees have become quite vocal. They are always eager to discuss their problems with the management at various levels. Since the Liaison Officers are expected to be available to SC/ST employees occasionally, their role has become difficult to get proper redressal of their grievances. Being part of the management, they usually tend to ignore the interests of SCs/STs, in order to safeguard their own interests within the organization.

In view of this, there is increasing pressure on the National Commission for SCs and STs to peruse the grievances of SC and ST employees. To sort out the problems of SCs and STs, the National Commission convened conferences of the Liaison Officers for interaction with them at various levels. The Commission proposed for "Grievances Redressal Machinery" within the organization under the Liaison Officer.

Commission expected better co-operation from them. This could be achieved through mutual consultations between the Liaison Officer and the National Commission for SC and ST. This is bound to quicken the process of redressal of grievances as also lead to better appreciation of the efforts made by the Government through the Commission.

5.8 Committee of Parliament on Welfare of SC/ST

Besides above mentioned Government bodies, there is also a Committee of Parliament on welfare of SC/ST. The Committee

examines the position regarding representation of SC/ST in the services under the various Ministries suitable recommendations for bringing about improvement therein and removing bottlenecks detected by it during the course of study.

5.8.1 The Recruitment Process

It is also come to notice that the some of the Appointing Authorities do not follow the procedure of recruitment in direct recruitment or promotion. In order to follow the prescribed procedure for Appointing Authorities, the various procedures have been performed for getting SC/ST candidates personnel. This statement gives a bird's eye view of process to be followed in case of direct recruitment and it also describes the procedure required to be followed in cases of promotion.

5.8.2 Setting-up of Cell for Enforcement of Reservation Orders

Formerly the Deputy Secretary was required to appoint as a Liaison Officers for work relating to reservation of SC and ST in services. Following the recommendation of the Commission for SC and ST in his report of the year 1965-66, it was decided that the system of Liaison Officers should be extended to Heads of Departments also.

The matter was again considered by the High level Committee set up under Chairmanship of the Home Minister to review the performance in the matter of recruitment of SC and ST in services/posts under the Government of India. It is felt that it would be desirable to have a small cell functioning within each Ministry to ensure due compliance of the orders of reservation issued from time

to time. The speedy disposal of grievances of the employees of the classes and to scrutinize and consolidate the statistically data under their control.

The main function of Cell is to assist the Liaison Officers to discharge his duties effectively.

The Ministers of Finance etc. were requested to set up a cell within the Ministry under the direct control of the Liaison Officer already appointed or to be appointed by them.

5.8.3 Follow-up Action on Complaints Received by the Commission for SC/ST

Department of Personnel has issued specific instruction about the follow up action required to be taken in the matter of:

1. Special Studies of Offices and Organization.
2. Complaints received by the Commissioner SC/ST in Service matters.

It was emphasized that the Liaison Officer nominated by the Ministry under the Heads of Department for work relation to representation of SC and ST should ensure extension of necessary assistance to the Commissioner for SC and ST in the investigation of complaints received by the letter in regard to service matters.

Whenever any cases of individual representation relating to services matters are referred by the Commissioner for SC and

ST to them calling for facts, comments etc. necessary action is taken to send reply/report to the commissioner for SC and ST as expeditiously as possible.

Special studies of rosters maintained and its implementation of other order regarding reservation for SC and ST in certain offices/organization was undertaken by the organization of the Commissioner for SC and ST from time to time.

Ministries /Departments were directed to extend assistance to the Commissioner when such studies are made and also take follow up action on study reports, as speedy as possible. Action taken on the reports should also be intimated to the Commissioner for SC and ST whenever required by them.

5.8.4 Inspection of Rosters by Liaison officer

Officers of the rank of Deputy Secretary are required to be nominated as Liaison officers by the ministries for the compliance of the orders of reservation for SC and ST by all appointing authorities under the Ministry/Department. Liaison officers are also required to be nominated under the Heads of Department.

Instances have however come to notice where roster were not properly maintain or the reservation orders were fully maintained cases of negligence in the matter of following the reservation and other orders relating to SC and ST coming to light through the inspections carried out by the Liaison officers or otherwise should be submitted to the Secretary/Additional Secretary to the Government

in the respective Ministries/Departments and to the Head of the Department in respect of officers under a Head of Department.

Necessary action should be taken as directed by the Secretary/ Additional Secretary/Head of Department on such reports to ensure strict compliance of these orders by the appointing authority concerned.

The Ministry of Home Affairs and Department of Personnel and Administrative Reforms have prescribed percentage of reservation in favour of SC and ST in filling vacancies in various States/Union Territories from time to time. But in order to obviate difficulties likely to be caused due to fractions etc. in calculations to number of reserved vacancies according to percentage, special rosters have been prescribed by the Government and they have been designed to give exact percentage of reservations.

Proper maintenance of roster is essential for giving effect to the reservations prescribed for SC and ST. Department of Personnel has issued necessary instructions for inspection of rosters for providing reservations in services. Liaison officers shall conduct annual inspection of the roster maintained in the ministries departments/offices of the Heads of the Departments with a view to ensuring proper implementation of the orders providing reservations for SC and ST.

To facilitate the effective and complete scrutiny of the rosters, a Performa for the inspection of the rosters has been drawn up. The Liaison officer shall utilize the Performa in making their inspection effective steps are to be taken to remedy the defects, if any pointed out in the inspection reports.

Performa for conducting inspection of rosters maintained for providing reservations for SC and ST in services as under:

5.8.5 Name of Offices

1. Whether separate roster are maintained for each grade or group of posts for (1) direct recruitment (2) for posts filled by promotion and whether all appointments made during period covered by the inspection are shown in the rosters.
2. Whether the appropriate model viz. The one prescribed for (1) Direct recruitment on all India bases by open competition (2) Direct recruitment on all India bases otherwise than by open competition. (3) Direct recruitment on a local or regional basis or (4) Promotion as the case may is being followed.
3. Whether rosters are being maintained separately for (1) Permanent appointments and temporary appointments likely to become permanent or to continue indefinitely and (2) Purely temporary appointments of 45 days or more duration.
4. Whether the points have been earmarked in the roster for SC and ST correctly according to the prescribed model roster for the particular type of recruitment.
5. Whether any gap is left in the roster.
6. Whether the roster is being maintained in the form of running account from year to year.

7. Whether before appointing a general candidate against reserved vacancy (1) Prior approval of the Department of Personnel was obtained in the case of vacancies included in the roster for permanent appointments and temporary appointments likely to become permanent or to continue indefinitely. (2) Whether the steps prescribed in various notifications to secure SC/ST candidates were taken in the case of vacancies included in the roster for purely temporary appointments.
8. Whether the reservation in confirmation in posts filled by direct recruitment has been correctly determined.
9. Whether an abstract is given after the last entry is a recruitment year, showing the number of reservations carried forward to the following year separately for SC and ST.
10. Whether the reservations have been shown as brought forward at the beginning of the roster for the following year.
11. Whether reservations have been carried forward to three subsequent year and exchange of reservations made between SC and ST.

5.9 Complaints Sent to Commissioner by SC/ST Employees in Service matters

Officer of Commissioner for SC and ST has been set up under Article 338 of the Constitution to investigate all matters relating to the safeguards provided for SC/ST under the Constitution and report to the President upon working of those safeguards. Therefore, it is

obvious to ensure that the Commissioner for SC/ST has to discharge a Constitutional obligation to investigate and report matters relating to safeguards provided for SC/ST under the Constitution to the President.

It thus becomes the duty of the Ministry /Department also to furnish necessary assistance to Commissioner for SC/ST by way of replying to his references. Apart from this the officer of the Commissioner for SC/ST is one of the most important institutional safeguards in the entire reservation scheme of the Government of India to whom a SC/ST employee can go direct regarding his grievance in the service matter. It will therefore, be unfortunate if the Ministries/Departments do not furnish comments or facts to the Commissioner's office even within a time limit of six (6) months which the Department of Personnel considers to be an easily attainable time target in any case. Efforts should be made to complete the reply within the set time limit rather earlier than later.

It is therefore, essential that as soon as reference is received from the Commissioner's office, it should be given due attention and steps be taken immediately to apprise the Commissioner of the actual position of the case. It is also desired that if some genuine reasons, it is not possible to send a report within six months then an interim reply should be sent to the Commissioner for SC/ST explaining to him the reasons as to why a full reply can not be sent.

Necessary follow up action should be completed and action taken be reported to the commissioner within time, if it is not possible to adhere to the time scheduled, the reasons for the same should be communicated to the commissioner indicating the details of the action already taken and also the probable time that would be further needed to send final report.