

RESERVATION AS A WELFARE MEASURE

Introduction

1.1. The spirit of equality pervades the provisions of the Constitution of India, as the main aim of the founders of the Constitution was to create an egalitarian society wherein social, economic and political justice prevailed and equality of status and opportunity are made available to all. However, owing to historical and traditional reasons, certain classes of Indian citizens are under severe social and economic disabilities [so] that they cannot effectively enjoy either equality of status or of opportunity. Therefore the Constitution accords to these weaker sections of society protective discrimination in various articles, including Article 15(4). This clause empowers the state, notwithstanding anything to the contrary in Articles 15(1) and 29(2), to make special reservation for the advancement of any socially and educationally backward classes of citizens or for scheduled castes and scheduled tribes.

1.2. Reservation is an affirmative action taken by the state to remove the persistent or present and continuing effects of past discrimination on particular segments of the society to:

- (i) lift the 'limitation on access to equal opportunities';
- (ii) grant opportunity for full participation in the governance of the society;
- (iii) overcome substantial chronic underrepresentation of a social group; and
- (iv) serve/achieve the important constitutional/governmental objectives.

Historical background of reservation

Reservation during pre-independence period

2.1. Policies involving reservation of seats for the marginalised section of the population have been in existence in the country for a long period of time. In the late 19th century, after the "first war of independence", the British began to view the Indian population as a heterogeneous group. They initiated a range of policies for specific categories of the subject population – religious minorities as well as those belonging to lower castes. By the late 19th century the British had started preparing a list of "depressed classes" and they set up scholarships, special schools and other programmes for their betterment. Also, with a view to assuaging the sentiments of the growing movements against the Brahmin domination in the government and administration, the British introduced some form of reservations. In Bombay, seats were reserved for all except Brahmins, Marwaris, Baniyas,

Parsis and Christians. In 1927 in Madras presidency, government reserved five of every 12 jobs for non-Brahmin Hindus, two each for Brahmins, Christians and Muslims and one for others. A few princely states like Baroda, Travancore and Kolhapur also introduced similar provisions. In Kolhapur (Maharashtra), Sahuji Maharaj reserved 50 per cent of the vacant seats in his administration for non-Brahmins.

2.2. Subsequently, the efforts of Dr BR Ambedkar in particular and the all-India depressed classes in general eventually helped to expand the net of reservations. While the British had earlier reserved seats only in legislative bodies, in 1943, reservations in services came into effect. Accordingly, 8.33 per cent posts against direct recruitment made through open competition were reserved for scheduled castes. These instructions issued in 1943 can be called as origin of reservation in government services.

Reservations during post-independence period

Reservation in services in favour of SCs and STs

2.3. At the time of independence, instructions were issued on September 21, 1947 to provide reservations of 12.5 per cent for scheduled castes in respect of vacancies arising in recruitment made through open competition. However, for recruitments made otherwise than open competition, reservation of 16.66 per cent was fixed. After the Constitution was promulgated, the then ministry of home affairs in its resolution of September 13, 1950 provided five per cent reservation for scheduled tribes apart from the reservation that was already in effect for the scheduled castes. According to the population ratio of these communities, based on the 1961 Census, government on March 25, 1970 increased the seats reserved for SCs and STs from 12.5 per cent and five per cent to 15 per cent and 7.5 per cent respectively. SC reservation is also available to Sikhs and Buddhists and ST to all minorities, as ST identity is caste/religion-neutral.

2.4. In 1974, reservations in promotion by selection from Group C to Group B, within Group B and from Group B to the lowest rung of Group A was introduced provided that the element of direct recruitment did not exceed 50 per cent. This limitation of direct recruitment not exceeding 50 per cent was raised to 66.66 per cent in 1976 and to 75 per cent in 1989. At this stage, the Supreme Court intervened and ruled against reservations in promotions. However, the government amended the Constitution to incorporate Article 16(4A) and following this amendment, government is-

sued instructions on August 13, 1997 to continue the reservations in promotion for the SCs and STs till such time as the representation of each of these categories in each cadre reaches the prescribed percentages.

2.5. To facilitate the fulfilment of the reservation quota, certain concessions are also given to SC and ST candidates in the form of relaxation of the maximum age limit prescribed for direct recruitment, exemption from payment of fees prescribed for recruitment/selection, relaxation of standards, including relaxation of experience, etc.

Reservations in services in favour of other backward classes (OBCs)

2.6. The princely state of Mysore instituted a system in which all communities other than Brahmins were denominated "backward classes" from 1918 and places were reserved for them in colleges and state services. In independent India, several states implemented the reservation in services and admissions in educational institutions in favour of backward classes much earlier than the Government of India.

By the late 19th century the British had started preparing a list of "depressed classes" and they set up scholarships, special schools and other programmes for their betterment

eventually used the criterion of caste to identify socially and educationally backward classes. The commission listed 2,399 castes as socially and educationally backward and recommended various welfare measures for OBCs, including reservation in government services and educational institutions. The central government did not accept its recommendations because the caste-based reservations were considered a retrograde step.

2.8. In 1979 the second Backward Classes Commission, popularly known as Mandal

Commission, was constituted under Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes and to determine the criteria for defining the socially and educationally backward classes and to examine the desirability or otherwise of making provision for the reservation in favour of such backward classes. The commission submitted its report to the government on December 31, 1980. The commission used 1931 Census data and 11 indicators, grouped under social, educational and economic criteria, for identifying backward classes. This commission estimated the population of other backward classes (OBCs) at 52 per cent of the total population. Recommendations of the second Backward Classes Commission (Mandal

report) were implemented by the Government of India on August 13, 1990, providing inter alia reservation of 27 per cent of the vacancies in civil posts and services under the central government filled through direct recruitment for socially and educationally backward classes with effect from August 7, 1990. However, reservation for OBCs in promotion has not been provided. The reservation rule also applies to public sector undertakings, financial institutions, including banks, autonomous bodies, statutory and semi-government bodies and voluntary agencies receiving grants from the government. Pursuant to the Supreme Court judgement in *Indira Sawhney & Ors vs Union of India* on November 16, 1992, the central government constituted a committee under Justice RP Prasad to determine the criteria for identification of the socially advanced persons/sections for exclusion of the 'creamy layer' from OBCs and the criteria suggested by the committee was accepted by the Government of India.

2.9. The provisions for reservation in services in favour of SCs/STs and OBCs also include minorities although in the absence of data it is not possible to assess the impact of such a reservation on religious minorities.

Reservation in admissions in educational institutions

2.10. Education was the first and foremost commandment of Dr BR Ambedkar and he called it the "milk of the lioness". Education is also one of the most important criteria to measure the forwardness or backwardness of any group of persons. Many social reformers and princely states of Kolhapur, Baroda and Mysore realised the need for education and they rendered their contribution in providing educational facilities to the untouchables and other backward classes. Mahatma Jyoti Rao Phule was the first person in India who started a school for the untouchables in Pune in 1848. Sahuji Maharaj Bhonsle encouraged the non-brahmanical classes in every possible way. He provided free education with lodging, boarding and scholarship to the students belonging to these communities. At the official level, the step was taken by the Madras government by framing the Grant-in-Aid Code in 1885 so as to regulate financial aid to the educational institutions providing special facilities to the students of depressed classes. Under British India, the provision for extension of education to the "depressed classes" was made much later.

2.11. In 1944 the then ministry of education prepared a scheme of post-matric scholarship for the students belonging to scheduled castes and it was extended to the scheduled tribes in 1948. Though after independence, specific guidelines to the states to take special care of the educational and economic conditions of the weaker sections, particularly those belonging to the scheduled castes and scheduled tribes, were given under Article 46, yet there was no provision to provide reservation in admissions in educational institutions under the Constitution in the beginning. The government of Madras made rules for reserving seats for the scheduled castes, scheduled tribes and other backward classes. However, the validity of the said rule was challenged in *State of Madras vs Smt Champakam Dorairajan* (AIR 1951 SC

525; 1951 SCR 525) and the Supreme Court declared such rule as unconstitutional. To overcome the situation arisen after the court judgement, the Constitution (1st Amendment) Act 1951 was passed by inserting clause (4) in Article 15. It empowered the state to make special provision for the advancement of socially and educationally backward classes, scheduled castes and scheduled tribes.

2.12. The then ministry of education, now ministry of human resource development, for the first time in 1954 wrote to the state governments suggesting that 20 per cent seats should be reserved for scheduled castes and scheduled tribes in admissions in educational institutions with a provision of five per cent relaxation in minimum qualifying marks wherever required. Subsequently, this was modified in April 1964 by bifurcating the existing percentage as 15 per cent for scheduled castes and five per cent for scheduled tribes with interchangeable provision in the event of non-fulfilment of seats according to quota. Similar action was taken by the ministry of health and family welfare in respect of reservation of seats in the universities having medical education facilities and medical and dental colleges for admission to all postgraduate courses. University Grants Commission, which was constituted in 1956, made provision towards reservation in admission in the undergraduate and postgraduate levels in favour of scheduled castes and scheduled tribes with due relaxation and concession. The percentage of reservation was revised in 1982 as 15 per cent for scheduled castes and 7.5 per cent for scheduled tribes. Presently, reservations are available to scheduled castes and scheduled tribes in admissions to the various undergraduate and postgraduate general, technical, medical and other professional courses in the universities and colleges. In addition to the reservation facility in admissions, provisions have also been made for freeship, scholarship, coaching and hostel facilities with a view to strengthening the educational base of scheduled castes and scheduled tribes.

Constitutional provisions and reservation policy

3. The Constitution adopted a two-fold strategy for ensuring equality for the "depressed classes". On one hand it provided equality before the law, ensuring that everyone, irrespective of their caste, will receive equal protection of the law and be treated alike; on the other hand it empowered the state to make special provisions to promote the educational and economic interest of the SCs, STs, OBCs and minorities to provide legal and other safeguards against discrimination in multiple spheres. The different provisions relating to reservations enshrined in the Constitution are as under:

(I) *Article 14 – Right to equality*: requires "the state not to deny any person equality before the law or the equal protection of the laws within the territory of India". Thus Article 14 uses the following two expressions:

- (i) Equality before law, and
- (ii) Equal protection of laws.

The objective of these expressions is to establish 'equality of status' as mentioned in the preamble to the Constitution. This right to equality provides access to public resources, such as drinking water, well, roads, etc. Thus the

Constitution gave the right to equality and made it a central component of the fundamental rights.

(II) *Article 15 – Prohibition against discrimination*: prohibits discrimination on the ground of religion, race, caste, sex or place of birth.

Article 15 was amended by the Constitution (1st Amendment) Act 1951 and a new clause, (4), was inserted under Article 15 to undo the effect of the Supreme Court decision in *State of Madras vs Smt Champakam Dorairajan*, according to which reservation of seats for different communities on the basis of caste and religion was held invalid. Article 15(4) empowers the state to make any special provision for the advancement of any socially and educationally backward class of citizen or the scheduled castes and scheduled tribes.

(III) *Article 16 – Equality of opportunity in public employment*: stipulates the rule of equality of opportunities in matters of public employment. According to clauses (1), (2) and (3) of Article 16, no discrimination shall be made only on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them in respect of any employment or appointment under the state. However, the principle of equality permitted a few exceptions. Among other things, it allowed under Article 16(4) reservation of seats for backward classes of citizens. It states: "Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens, which, in the opinion of the state, is not adequately represented in the services under the state."

Article 16(4) was an enabling provision. It was included as an exception to the general principle of equality of opportunity (Article 16). It did not mandate but certainly permitted the state to reserve seats for backward classes of citizens in public service. Thus Article 16(4) spoke of backward classes, not castes, and did not spell out just who constituted these backward classes. Subsequently, Articles 16(4A) and 16(4B) were also inserted by making amendments in the Constitution [through the] 81st Amendment Act in 2000 and 85th Amendment Act in 2001 respectively. These clauses were inserted with a view to overcoming the decision of the hon'ble Supreme Court of India in *Indira Sawhney vs Union of India*. While Article 16(4A) empowers the state to make provision for reservation in matters of promotion under the state in favour of SCs and STs which, in the opinion of the state, are not adequately represented in the services under the state, Article 16(4B) empowers the state to make provision to fill up the unfilled reserved vacancies which were determined in accordance with clauses (4) or (4A) of Article 16 by launching a special drive.

The central govt did not accept the recommendations (of the first Backward Classes Commission, also known as Kaka Kalelkar Commission) because the caste-based reservations were considered a retrograde step

Extent to which posts can be reserved for scheduled castes and scheduled tribes/backward classes

The Constitution does not lay down any limit or specific percentage for reservation in favour of scheduled castes, scheduled tribes and backward classes. Successive decisions of the Supreme Court beginning with *Balaji vs State of Mysore* (1963) have fixed a general ceiling of 50 per cent for all reservations taken together. Judicial pronouncements on this question have a chequered history. In *Balaji vs State of Mysore*, the Constitution bench of the Supreme Court had rejected the argument that in the absence of a limitation contained in clause (4) of Article 15 no limit could be prescribed by the court on the extent of reservation and held:

"...If a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unrealistic to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the backward classes or scheduled castes or tribes was concerned, the fundamental rights

of the citizens constituting the rest of the society were to be absolutely ignored... Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent would depend on the relevant prevailing circumstances in each case."

In *Devadasan vs Union of India* (1985), the aforesaid rule of 50 per cent was applied to a case arising under Article 16(4) and on that basis the carry-forward rule (resulting in reservation in excess of 50 per cent vacancies in any recruitment year) was

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struck down. Earlier, in *State of Kerala vs NM Thomas* (1976), the correctness of this principle was seriously questioned. Fazal Ali, J observed: "...Clause (4) of Article 16 does not fix any limit on the power of the government to make reservation. Since clause (4) is a part of Article 16 of the Constitution, it is manifest that the state cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend on the facts and circumstances of each case and no hard and fast rule can be laid down nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this court have no doubt laid down that the percentage of reservation should not exceed 50 per cent. As I read the authorities, this is however a rule of caution and does not exhaust all categories... The dominant object of this provision is to take steps to make inadequate representation adequate."

(IV) *Articles 29 and 30 – Minorities interests and educational institutions*: These two articles protect the cultural and educational rights of minorities (based on religion and language) which are summarised below:

(i) Minorities have rights to conserve their distinct language, script or culture;

(ii) They have the right to establish and administer educational institutions;

(iii) The state has to take certain precautions in case of compulsory acquisition of property of such minority educational institutions;

(iv) The state shall not discriminate such educational institutions while granting aid; and

(v) Article 29(2) imposes restriction on all educational institutions maintained by the state or receiving aid out of state funds so as not to deny admission to any citizen on the ground only of religion, race, caste, language or any of them.

Here the underlying objective is to equip each member of the weaker sections with the ability to compete with other citizens with dignity on a level playing field.

(V) *Article 46 – Promotion of educational and economic interests of SCs, STs and other weaker sections*: Being the most important article under Part IV of the Constitution (Directive Principles of State Policy), it stipulates that "the state shall promote with special care the educational and economic interests of weaker sections of the people and in particular of scheduled castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation." The phrase "weaker sections of the society" has not been defined under the Constitution. Hon'ble Supreme Court, in the case of *Shantistar Builders vs Narayan Khimalal Totame*, directed the central government to lay down appropriate guidelines regarding the expression "weaker sections of the society". Further, hon'ble Supreme Court, in the *Indira Sawhney* case, differentiated the phrase "backward class of citizens" mentioned under Article 16(4) from "weaker sections of the people" of Article 46. According to the apex court, the expression "weaker sections of the people" is wider than the expression "backward class of citizens" or SEBCs or SCs or STs. It connotes all sections of the society who are rendered weak due to various causes, including poverty and natural and physical handicaps.

(VI) *Article 335 – Claims of scheduled castes and scheduled tribes to services and posts and maintenance of efficiency of administration*: While Article 16(4) enables the state to make provision for reservations in favour of SCs, STs and OBCs, Article 335 imposes responsibility on the state to ensure the maintenance of efficiency of administration. Accordingly, a proviso to Article 335 has been inserted by the Constitution (82nd Amendment Act) 2000 so as to overcome the crisis arising after the Supreme Court decision in *S. Vinod Kumar vs Union of India*. It empowers the state to make any provision in favour of SCs and STs for the relaxation of marks or lowering of standards for reservation in promotions.

Institutional arrangements to implement and monitor the reservation policy

4.1. The central government has developed administrative mechanisms for regulating, monitoring and implementing the reservation policy and other programmes. At the national level there are the ministry of social justice and empowerment, ministry of tribal affairs, ministry of minority affairs and Planning Commission (Backward Caste Division) as

the nodal set-up for policy formulation, finalisation and implementation of the programmes for the development of scheduled castes, scheduled tribes, other backward classes and minorities and overseeing their overall development. These ministries and the Planning Commission also carry out evaluation and monitoring of the various educational and welfare schemes/programmes meant for the SCs, STs, OBCs and minorities.

4.2. Besides, the department of personnel and training (DOP&T) in the ministry of personnel, public grievances and pensions (Government of India) regulates and monitors the reservation policy in public services. Its primary responsibilities are to enforce the rules and make changes thereof whenever warranted and also monitor the fulfilment of the reserved quotas. As regards reservation policy in admissions in educational institutions, the ministry of human resource development (dept of secondary and higher education) is the nodal authority. Further, in each ministry/department and government-funded organisation, there are separate administrative units for scheduled castes, scheduled tribes and OBCs with liaison officers who are responsible for ensuring that instructions issued by the government on reservations for SCs, STs or OBCs are strictly complied with. The department of personnel and training, through administrative heads of the ministries and organisations, monitors and regulates reservations at the national level.

4.3. In addition, there are the undermentioned independent institutions at the field level to ensure proper implementation of the reservation policy as approved by the government as also to monitor the impact of various schemes/programmes for the welfare and development of SCs, STs, OBCs and minorities:

(i) *National Commission for Scheduled Castes*: set up under Article 338 of the Constitution as a high-level independent constitutional body to investigate and monitor all matters relating to the safeguards provided for the scheduled castes under the Constitution or under any other law for the time being in force or under any order of the government and to evaluate the working of such safeguards

(ii) *National Commission for Scheduled Tribes*: set up under Article 338A of the Constitution as a high-level independent constitutional body to investigate and monitor all matters relating to the safeguards provided for the scheduled tribes under the Constitution or under any other law for the time being in force or under any order of the government and to evaluate the working of such safeguards.

(iii) *National Commission for Backward Classes*: In pursuance of the direction of the Supreme Court, the Government of India enacted the National Commission for Backward Classes Act 1993 (Act No. 27 of 1993) and set up the National Commission for Backward Classes at the centre. Section 9(1) of the act provides that it shall "examine the requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the central government as it deems appropriate." Under Section 9(2) of the act, the advice of the commission shall ordinarily be binding upon the central government. Section 11 provides for periodic revision of lists by the central government.

(iv) *National Commission for Minorities*: set up to perform its statutory functions and to safeguard the interest of five religious minority communities i.e. Muslims, Sikhs, Christians, Buddhists and Parsis which are notified under the National Commission for Minorities Act 1992 and also to monitor and evaluate the development of minorities under the union and states as well as monitor the working of the safeguards provided in the Constitution and laws enacted by Parliament and the state legislatures besides making recommendations for the effective implementation of safeguards for the protection of the interest of minorities by the central government or the state governments.

Reservations available to socially and economically backwards

5.1. As stated in the previous paragraphs, reservations in employment are available to scheduled castes, scheduled tribes and other backward classes. Similarly, reservations in educational institutions are available to the scheduled castes and scheduled tribes. However, Moily Committee recommended reservations to other backward classes in educational institutions, which has been accepted by the government. No separate reservations are available to the religious and linguistic minorities excepting those included in the lists of Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Reservations in employment under the central government

5.2. While reservation for scheduled castes and scheduled tribes is generally fixed in proportion to the population of SCs and STs in the respective state/UT, for OBCs it is fixed taking into account the proportion of their population in the concerned state/UT subject to a maximum of 27 per cent and the fact that total reservations for SCs, STs and OBCs should not exceed the limit of 50 per cent. Direct recruitment in Group C and D posts normally attracts candidates from the locality or region. Reservation is not applicable in certain categories of posts in departments of space and atomic energy, scientific and technical personnel, defence, higher judiciary, etc.

5.5. Pursuant to the Supreme Court orders in *Indira Sawhney & Ors vs Union of India & Ors* [writ petition (civil) No. 930 of 1990], the Government of India appointed an Expert Committee to recommend criteria for exclusion of the socially advanced persons/sections (creamy layer) from the benefits of reservation for other backward classes in civil posts and services under the Government of India. On the recommendations of the Expert Committee, Government of India, vide DOP&T, OM No. 36012/22/93-Estt (SCT) dated September 8,

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1993, provided reservation for socially and educationally backward classes as under:

(i) Twenty-seven per cent of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the other backward classes;

(ii) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27 per cent;

(iii) The aforesaid reservation shall not apply to other backward classes belonging to the creamy layer;

(iv) The OBCs, for the purpose of the aforesaid reservation, would comprise the castes and communities which are common to both the lists in the report of the Mandal Commission and the state governments' lists;

(v) The reservations provided to SCs, STs and OBCs put together do not exceed 50 per cent of vacancies arising in a year;

(vi) No reservation for OBCs in promotion;

(vii) In respect of written examinations and interviews, in order to fulfil the quota earmarked to OBCs, relaxation of standards be provided to OBC candidates as in the case of SC/ST candidates;

(viii) Relaxation of marks for grant of non-technical scholarships/book awards to OBCs; and

(ix) Three-year age relaxation would be given to the candidates of other backward classes for direct recruitment over and above the prescribed age limit. The above instructions relating to reservations for OBCs have been extended

to autonomous bodies, statutory and semi-government bodies and voluntary agencies receiving grants from government.

5.6. To facilitate the fulfilment of the reservation quota, further concessions are given to scheduled caste and scheduled tribe candidates in the form of relaxation of the maximum age limit prescribed for recruitment/selection, and relaxation of standards, including relaxation of experience. Many of these concessions/relaxation provided for direct recruitment are also now extended to promotions.

Employment status of scheduled castes, scheduled tribes and OBCs in public services

Employment status of scheduled castes, scheduled tribes and other backward classes in the government organisations

6.2. Employment opportunities in the government have stagnated in 1994 and shown a decline thereafter. The reasons for decline in the total employment could be:

(i) non-expansion of governmental activities particularly pertaining to the public sector compared to the socialistic approach of the 1960s; and/or

(ii) the financial constraints, as the requirement of funds towards salary, wages and pensions have been on the increase and a major share of the budget.

Consequently, the opportunity for employment in the government organisations has significantly reduced and it might have in turn affected employment of SCs, STs and OBCs also.

Even in this situation, the representation of scheduled castes and scheduled tribes has been on the increase and reached very near to their proportion in the total population.

6.3. While reservations for scheduled castes and scheduled tribes have been in effect from 1947 and 1950 respectively, reservations for other backward classes in the central government were allowed from 1993. Representation of scheduled castes and scheduled tribes has increased in all the groups, viz A, B, C and D, during the last five decades. While in central services Groups A and B, scheduled castes constitute between 12-15 per cent, in Group C their representation is about 17 per cent and in Group D (excluding sweepers) they are present in a larger number than their percentage in the population. Similarly, there has been an appreciable increase in the representation of scheduled tribes in all groups of central services. Data regarding representation of other backward classes in the central services is for the year 2004 and this does not give the true picture regarding their representation in central government services. For a true picture to emerge, annual recruitment of OBCs has to be assessed against the total vacancies for the year, which is not easily available.

6.4. However, in All India Services like the Indian Administrative Service, Indian Police Service and Indian Foreign Service and central services Groups A and B, for which recruitment is made through the Civil Services Examination of the Union Public Service Commission, representation of scheduled castes, scheduled tribes and other backward castes has been more or less equal to their share [in the population]. While vacancies reserved for OBCs are being filled fully in the All India Services like Indian Administrative Service, All India Police Service and Indian Foreign Service and central services Groups A and B, the same cannot be said for recruitment of other backward classes to other categories of posts in the absence of data. While religious minorities are a part of SCs (Buddhists and Sikhs included) and of STs and OBCs (all religious minorities included), the data is not maintained religion-wise and therefore the representation of minorities is not clear.

Employment status of scheduled castes, scheduled tribes and other backward classes in central public sector undertakings

6.5. As on January 1, 2005, in central public sector undertakings, in Groups A and B, the representation of scheduled castes was around 13 per cent and that of scheduled tribes was between four to six per cent which is a little less than their share in the population. As against this, representation of other backward classes was between six to 8.5 per cent. In Groups C and D, both scheduled castes and scheduled tribes were far in excess of their share and representation of other backward classes was between 17 to 22.60 per cent.

Employment status of scheduled castes and scheduled tribes in the public sector banks and insurance sector

6.6. While the representation of scheduled castes in public sector banks in all categories has exceeded their share in population, representation of scheduled tribes is lagging behind in all the cadres. The representation of scheduled castes has been far in excess of their share in the category of subordinate staff. However, representation of other backward classes in the category of officers and clerks is much below the reserved quota of 27 per cent.

6.7. The representation of scheduled castes in Group A services of General Insurance Company and scheduled tribes in all the insurance companies is lagging behind. In Group B services, the representation of scheduled castes and scheduled tribes has not reached the prescribed limit of 15 per cent for SCs and 7.5 per cent for STs. Further, in Group C and Group D services (excluding sweepers), the representation of scheduled castes has exceeded the prescribed target. The representation of scheduled tribes in Group D services (excluding sweepers) is nearing this target but in Group C services, excepting Life Insurance Corporation, other companies are lagging behind.

Employment status of scheduled castes and scheduled tribes in the Indian Railways during 2004-05

6.8. The representation of scheduled castes in all groups has reached the level of their proportion in the total population. However, the representation of scheduled tribes is yet to reach their percentage share in the population.

Representation of OBCs in different sectors of the economy

6.9. Data provided by NSSO in its 1999-2000 survey results show that other backward classes have a much higher percentage of representation in different sectors of the economy vis-à-vis their share of 27 per cent agreed to. Further, comparing the share in jobs of other communities with SCs, STs, OBCs, it is seen that excepting in professional and managerial jobs where OBCs have a share which is close to the percentage of reservation agreed to for them, in other categories of jobs such as services and production, OBCs have a higher percentage share than the Hindus. In fact, in almost all major jobs, OBCs are present in reasonable numbers:

Literacy and educational status of scheduled castes, scheduled tribes and other backward classes

7.1. Framers of our Constitution were aware of the need for the state to promote education amongst all and especially amongst weaker sections of the population. Hence a number of safeguards have been provided in the Constitution under Article 15(4), Article 29(1), Article 46, for educational development of the weaker sections of society. The Supreme Court of India in its judgement in the *Unnikrishnan* case (1993) held that all citizens have a fundamental right to education up to 14 years of age. Accordingly, the Constitution was amended to make education a fundamental right of all children between six-14 years.

7.2. Recent estimates of literacy at the national level have shown a significant increase from 52 per cent in 1991 to 64.8 per cent in 2001. The increase has been significant

amongst educationally backward states. Large-scale expansion of formal primary education in the early 1990s and the innovative strategies of primary educational development projects like DPEP (District Primary Education Programme) have contributed substantially to this increase. Though female literacy has also grown during this period, yet female literacy among scheduled castes, scheduled tribes and Muslims is 41.90 per cent, 34.76 per cent and 50.1 per cent respectively against the national average of 53.7 per cent. Among minorities, the lowest literacy rate is in the Muslim communities, which is 59.1 per cent against the national average of 64.8 per cent. However, the literacy rate among Muslims is higher than the literacy rate of scheduled castes and scheduled tribes. Though the participation of the Dalits, tribals, women and minorities has improved in the last five decades, the unequal development in the hierarchical social order continues to be reflected in the indicators of educational status of various communities.

7.3. With the improvement in the literacy rate, enrolment of the students at the primary stage has also gone up. The enrolment of scheduled caste and scheduled tribe students has been progressively higher than their proportion in the population.

7.4. Though there has been overall improvement in the literacy rate and enrolment at the primary stage, there are still wide gaps in the educational levels of religious minorities. The relative position of different religious communities with regard to their educational level varies vis-à-vis the national average. Muslims (65.31 per cent) are better off at the primary level of education but their proportion slides down at the senior secondary (4.53 per cent) and graduation level (3.60 per cent). As against this, while Christians at the primary level (45.79 per cent) are lower than the national average, their share increases at the senior secondary (8.70 per cent) and graduation (8.71 per cent) level. Other religions follow almost the national average level.

7.5. The reasons for the wide variation in the educational levels of different communities could be low enrolment and/or low female literacy rate and/or high dropout rates at the primary and secondary stages. Further, among those remaining in school, the majority of them barely attain the educational standard expected of them due to the lack of infrastructure facilities in the schools and/or poor quality of education available, particularly in rural and hilly and backward areas. In such a situation, children belonging to the socially and economically poor families suffer most and remain at a disadvantageous position vis-à-vis those attaining proper educational standards within their communities.

7.6. In institutions of higher education, the scheduled castes and scheduled tribes are not present in proportion to

Data provided by NSSO in its 1999-2000 survey results show that other backward classes have a much higher percentage of representation in different sectors of the economy vis-à-vis their share of 27 per cent agreed to

their population. While the increasing share of scheduled castes and scheduled tribes in public services shows that reservations in government posts and public services have enabled these communities to be more adequately represented, it also means that there is a much smaller pool of candidates from among whom these positions are being filled. In other words, against 10 per cent scheduled caste graduates, about 14 per cent of officers in Groups A and B are coming from this group. Similar may be the situation with the other backward classes and minorities. This shows that there is an urgent need to increase the pool of students – receiving quality education and then opting for and qualifying for graduation and postgraduation programmes amongst the socially and economically backward irrespective of caste or religion.

Impact of reservation policy on employment and education

8.1. As may be evident from the details in the preceding paragraphs, the policy of reservation had a salutary effect in terms of induction of scheduled castes, scheduled tribes and other backward classes into public sector employment and

Reservation did not provide equal opportunities within each group/ community to all beneficiaries. Consequently, different castes and tribes within a group/ community have not benefited from reservation equally

in educational institutions. However, their existing share in employment and educational institutions still falls short of the target in certain categories of jobs and higher education. The target in the case of Groups D and C are close to the population mark of 15 per cent for scheduled castes and 7.5 per cent for scheduled tribes but fall short in Groups A and B. As against this, the true position regarding the representation of other backward classes in central services is not available.

However, as stated in para 6.4, in the All India Services and central services for which recruitment is made through the Union Public Service Commission, representation of other backward classes is very near to their share. With the growth in the share of scheduled castes and scheduled tribes in public services, it had positive multiple effects on the social and economic situation of these two disadvantaged groups. The data provided by the ministry of personnel indicates that in recent years the vacancies reserved for the scheduled castes, scheduled tribes and other backward classes are being filled fully even in the 'elite' services at the centre.

8.3. Reservation did not provide equal opportunities within each group/community to all beneficiaries. Consequently, different castes and tribes within a group/community have not benefited from reservation equally. Almost in all categories of beneficiaries among scheduled castes, scheduled tribes or other backward classes and minorities, there is a growing sense of deprivation amongst different categories, which is leading to internal dissension. For example*,

in Punjab, the Valmiki Samaj is asking for a separate quota of reservations on the ground that Ramadasis and Mazbis have cornered the benefits. Likewise, Chamars in Uttar Pradesh and Mahars in Maharashtra are said to have benefited from the reservations more than other castes identified in the schedule from these regions. Similar accusations have been made against the Meena community by other scheduled tribes. Problems of this kind are manifold in the case of other backward classes, as in each state there are dominant groups, usually with economic and political clout, who reap the benefits of reservations. There are Ezhavas in Kerala, Nadars and Thevars in Tamil Nadu, Vokkalligas and Lingayats in Karnataka, Lodhs and Koeris in Central India, Yadavs and Kurmis in Bihar and Uttar Pradesh and Jats in Rajasthan, which, despite their dominant status, have been clubbed as backward classes eligible for benefits under reservations. For these reasons, reservation has become a contentious issue today, more so when it is applied to other backward classes.

[* Report on Workshop, 'Assessment of the impact of reservation policy', organised by JNU, New Delhi.]

8.4. Reservation for minorities has been provided by the state governments of Kerala and Karnataka. [Kerala provides 10 per cent reservation in educational institutions and 12 per cent reservation in employment for Muslims as well as two per cent reservation in educational institutions and four per cent reservation in employment for Christians/LCs/Anglo-Indians. Karnataka provides four per cent reservation in educational institutions and four per cent reservation in employment for Muslims.]

The government of Andhra Pradesh also passed an act providing five per cent reservation for Muslims. However, this has been turned down by the apex court for want of specific recommendations by the state Backward Classes Commission. [On March 25, 2010 the Supreme Court gave an interim order upholding the validity of four per cent reservation provided to backward members of the Muslim community in the state. A bench comprising Chief Justice KG Balakrishnan and Justices JM Panchal and BS Chauhan however referred the issue to a Constitution bench to examine the validity of the impugned act, since it involved important issues of the Constitution.]

Views of the state/UT governments on reservations

11. During the visits of the commission to the states/UTs the commission, in addition to the official meetings, had inter alia interactions with the chief ministers and governors of certain states and the views expressed on the issue of reservation during these visits are as under:

(i) Education is the only means to address the problem of reservation in services and those who are economically poor should be provided with scholarships and other facilities to enable them to continue their education, etc.

(ii) Quality of education should be improved right from the school stage.

(iii) Exclusion of communities from the Scheduled lists should be a continuous process and decadal surveys should be carried out regularly to review these lists to avoid misuse of reservation policy.

(iv) Reservations to the deprived sections of society should be restricted to one generation only.

(v) Concept of the creamy layer may be introduced for SCs and STs on the pattern of OBCs so as to ensure that the most backward among them could also derive benefits from the reservations earmarked.

(vi) Reservation should be extended to the poorest in society irrespective of the religion one pursues.

(vii) Teaching in modern subjects besides Urdu and religious education should be introduced in madrassas; and

(viii) There is need for reservation in the private sector.

13. Reservation as a policy has been a matter of debate since we achieved independence. Reservation as a tool for socio-economic upliftment was adopted as a short-term measure for specific categories of people who for various reasons were discriminated and deprived. In this context, Pandit Jawaharlal Nehru in his communication addressed to the chief ministers dated June 27, 1961 *inter alia* observed as under:

“I have referred above to efficiency and to our getting out of our traditional ruts. This necessitates our getting out of the old habits of reservations and particular privileges being given to this caste or that group... It is true that we are tied up with certain rules and conventions about helping the scheduled castes and tribes. They deserve help but, even so, I dislike any kind of reservation, more particularly in services. I react strongly against anything which leads to inefficiency and second-rate standards. I want my country to be a first-class country in everything. The moment we encourage the second-rate, we are lost.” He also observed: “If we go in for reservations on communal and caste bases, we swamp the bright and able people and remain second-rate or third-rate. I am grieved to learn of how far this business of reservation has gone based on communal considerations. It has amazed me to learn that even promotions are based sometimes on communal or caste considerations. This way lies not only folly but disaster. Let us help the backward groups by all means but never at the cost of efficiency.”

14. In view of the foregoing, the commission has considered the following viewpoints:

14.1 The basic criteria for reservation should be socio-economic backwardness with a foolproof arrangement for issue of certificates. In fact, religion or caste should not be the basis of reservation. Also, Article 16(4) should be the basis for providing reservation benefits to minority groups who are a socio-economically backward class of citizens.

14.2. The policy of reservation must be consistent with the objective of reservation so that the same does not outlast its constitutional object and allow a vested interest to develop and perpetuate itself. There should be no need for reservation or preferential treatment once equality is achieved. In fact, it should be temporary in concept, limited in duration, conditional in application and specific in object. Any attempt to perpetuate reservation and upset the constitutional mandate of equality is destructive of liberty and fraternity and all the basic values enshrined in the Constitution. A balance has therefore to be maintained between the competing values and the rival claims and interests so as to achieve equality and freedom for all.

14.3. The concept of reservation is an exception and therefore it should aim at the achievement of self-abolition i.e.

by way of the elimination of backwardness and bringing the backwards economically and socially upward. The sooner the need for reservation is brought to an end, the better it would be for the nation as a whole. The sooner we redress all disabilities and wipe out all traces of historical discrimination, and stop identifying classes of citizens by the stereotyped, stigmatised and ignominious label of backwardness, the stronger, healthier and better united we will emerge as a nation founded on diverse customs, practices, religions and languages but knitted together by innumerable binding strands of common culture and tradition.

14.4. Reservation was adopted as the means to provide opportunities in employment. While the weaker sections should be given due opportunity, it is necessary to break the vicious circle of limited sections cornering the opportunities. Presently, the concept of the creamy layer in employment is applicable in case of other backward castes and not for scheduled castes and scheduled tribes. This anomaly needs rectification, as while the sections of minorities belonging to SCs/STs are availing of the reservation facility irrespective of their economic status, the minorities included in the list of the Other Backward Castes do not get this facility. Therefore there is need to have a uniform approach in this regard by excluding the creamy layer from the purview of reservation in all cases, including scheduled castes and scheduled tribes. Further, if an individual has benefited from reservation in the matter of employment, it may be worthwhile to consider his next generation for educational benefits only. After 60 years of independence and 10 five-year plans which have focused on special incentives and programmes based on the policy of positive discrimination, it is necessary to step forward, remove the differential approach based on caste, class, religion, and to adopt uniform strategies for the socially, economically and educationally poor. Reservation should be limited to them.

14.5. Similarly, reservation on promotion is admissible to the scheduled castes and scheduled tribes and not to other backward castes. Since sections of the minorities are included in the lists of Scheduled Castes and Scheduled Tribes on one hand and Other Backward Castes on the other, this has resulted in some anomaly. It is necessary that the position is reviewed and a uniform approach in reservation is adopted, limited to entry point only and not promotions.

14.6. Since the existing lists of Scheduled Castes, Scheduled Tribes, Other Backward Classes, have not been scientifically prepared with proper survey and data on the socio-economic status of a particular caste or class, the entire system of reservation as also of the SC, ST, OBC lists needs to be overhauled. Since Below Poverty Line (BPL) lists are being prepared on the

Since the existing lists of SCs, STs, OBCs, have not been scientifically prepared with proper survey and data on the socio-economic status of a particular caste or class, the entire system of reservation needs to be overhauled

basis of social/educational and economic criteria, these are more scientific. Changes/revisions are possible periodically in this, as they are prepared after a regular survey which is not the case with SC, ST, OBC categories. This should be taken into account for making any recommendations regarding criteria/reservation benefits for backward sections.

14.7. In India, where there is still competition for admission to schools at the primary level and quality education is a distant dream, the limited resources and facilities that are available must be distributed fairly. There is need to provide greater opportunities for quality education at the primary and secondary level (including coaching classes) to equip the weaker sections for competing on merit along with others in recruitment to public employment. Universal Elementary Education (UEE) and Sarva Shiksha Abhiyan (SSA) should make this possible.

14.8. There are multiple sources of deprivation and inequality. The deprived sections are deeply affected by the poor delivery of basic education. In such a situation, how the multiple sources of inequality in society should be addressed, ensuring that benefits reach the most marginalised members of society, is an important issue. Individual states/UTs may have to experiment with a range of models for delivering basic education and monitoring the implementation of schemes to ensure that the schemes do not remain on paper only. Viewed in this background, many scholars today favour a system of weightages rather than fixing quotas and earmarking seats for some groups. The understanding being that reservations tend to create intercommunity conflicts and enhance particular identities. They also imply a deviation from the norm of open competition and filling of seats on the basis of opportunities being given equally to all. Weightages, on the other hand, do not compromise the principle of open competition while taking note of the fact that competition is not always fair. To make the competition fair, some special consideration is given to the relatively marginalised groups by way of extra weightage.

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14.9. During the workshop organised by the Delhi School of Economics (University of Delhi) on August 29-30, 2006 it was inter alia felt that instead of quota, a handicap approach wherein individuals or household attributes should assume importance without excluding group characteristics may be relevant. The model is intended to be evidence-based

and it addresses four main dimensions of group disadvantages – caste/community, gender, region and sector of residence (i.e. rural or urban). There should be separate evaluation of urban and rural candidates based on the location of the school where the Class X examination was taken. Also, during the workshop it was also felt that the creamy layer among the backward classes should be skimmed off failing which the concession granted by the reservation policy will only be grabbed by the creamy layer and not reach the truly weaker sections of society as has been the case so far.

14.10. Jawaharlal Nehru University has devised a unique admission policy which combines constitutionally mandated reservations with a system of weightages for other marginalised communities. The objective of the university's admission policy is to ensure that an adequate number of students from the underprivileged and socially handicapped sections of our society are admitted to the university and to maintain the all-India character of the university by having students from different regions of the country, especially the backward areas. Such a system of weightages may be better suited for the development of the socially and economically backward sections of society.

14.11. Prof André Bételle, chairman, Indian Council of Social Science Research, while discussing the matter of 'Right and Policy', has opined that the private sector can be more actively engaged in affirmative action. But that may not happen so long as affirmative action continues to be equated with mandatory numerical quotas administered under strict bureaucratic supervision. Privatisation, liberalisation and globalisation require an employment policy that is radically different from one governed by mandatory quotas based on caste and community. Hence the imposition of mandatory quotas on private companies may not help in addressing the problem of inequalities in the conditions of competition. Instead, the government may encourage private companies to devise their own programmes of affirmative action by giving tax concessions to companies, etc that diversify the social composition of their employees and make investments in education and training. It will be in the long-term interest of the companies, and not just in the public interest, to adopt active measures to seek out, stimulate and nourish the vast reservoir of unutilised talent that exists in the socially and educationally backward communities.

14.12. The policy of reservations in the field of employment and education has a long and complex history in India. There is a range of reservation policies. While there is a single central policy on reservation, different states in India have devised their own policies and many of these differ significantly from the central policy. To ensure proper implementation of the reservation system, constitution of a separate body – a high-powered commission – is recommended.

