



Reservation in Services

Constitutional Provisions

Institute of Secretariat Training & Management
Department of Personnel & Training
Government of India



Constitutional Provisions



Article 16

Equality of opportunity in matters of public employment

Clause (1) – There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

Clause (2) – No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them , be ineligible for, or discriminated against in respect or, any employment or office under the State



Contd.

Clause (3) – Nothing in this article shall prevent the Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as **to residence within that State or Union territory** prior to such employment or appointment



Contd.

Clause (4) – 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



INDIRA SAWHNEY VS UOI – (AIR 1993)

- Against the GOI orders dated 13.08.1990 for reservation for OBC at 27 %
- Hon'ble Supreme Court upheld the reservation for OBC in services
- 27 % in Direct Recruitment
- Exclusion of creamy layer
- List of castes and communities notified.
- 50% ceiling on reservation
- Reservation under Art.16(4) cannot be made in promotions

[DOPT OM No. 36012/22/93-Estt.(SCT) dated 8th September 1993]



Contd.

Clause (4-A) – Nothing in this article shall prevent the State from making any provision for **reservation in matters of promotion** *[with consequential seniority]* to any class or classes of posts in the services under the State **in favour of the Scheduled Castes and the Scheduled Tribes**, which in the opinion of the State are not adequately represented in the services under the State

*[77th amendment Act 1995 w.e.f. 17//6/1995;
85th Amendment Act 2001 w.e.f. 17//6/1995]*



Contd.

Clause (4-B)- Nothing in this article shall prevent the State from considering **any unfilled vacancies of a year** which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or Clause (4-A) **as a separate class of vacancies to be filled up in any succeeding year or years** and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year

(Constitution 81st Amendment Act, 2000 w.e.f. 9/6/2000)



Contd.

Clause (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination



Contd...

Clause (6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any **economically weaker sections** of citizens **other than the classes mentioned in clause (4)**, in addition to the existing reservation and subject to a maximum of **ten percent** of the posts in each category.

(The Constitution 103rd Amendment Act, 2019)



Article 46

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation



Article 335

The claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union or of the State



Proviso under Art. 335

Provided that nothing in this article shall prevent in making of any provisions in favour of the members of the scheduled Castes and Schedules Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

(82nd amendment Act 2000 w.e.f. 8.9.2000)



National Commission for SC/ST/OBC

- Art. 338 - National Commission for the Scheduled Castes
- Art. 338 A - National Commission for the Scheduled Tribes

[inserted vide 89th amendment Act -2003 w.e.f. 19.2.2004]

- Art. 338 B – National Commission for Backward Classes

[inserted vide 102nd amendment Act, 2018 w.e.f. 11.08.2018]



Article 341

- **Clause (1)** – The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be
- **Clause (2)** – Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any castes, race or tribe or parts of or groups within castes, races or tribes but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification



Article 342

- **Clause (1)** – The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribe or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be
- **Clause (2)** – Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal communities but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification



Article 342 A

- **Clause (1)** – The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purpose of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be
- **Clause (2)** – Parliament may by law include in or exclude from the Central list of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

Constitution (One Hundred and Second Amendment) Act, 2018



Art.342A- Socially and educationally backward classes

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the “**socially and educationally backward classes in the Central List which shall for the purposes of the Central Government**” be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.



.....Art.342A

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

‘Explanation.— For the purposes of clauses (1) and (2), the expression “Central List” means the list of socially and educationally backward classes prepared and maintained by and for the Central Government.’



.....Art.342A

(3) Notwithstanding anything contained in clauses (1) and (2), **every State or Union territory** may, by law, prepare and maintain, for **its own purposes**, a list of socially and educationally backward classes, entries in which **may be different from the Central List.**

Constitution (One Hundred and Fifth Amendment) Act, 2021



Scope & Applicability



Scope of Reservation

- All Posts/Grades belonging to Groups 'A', 'B', & 'C' under the Central Govt.
- Posts of Industrial Workers
- Work-charged posts (except those required for emergencies like flood relief, accident restoration & relief, etc)
- Daily rated staff [not practical to apply reservation; but overall representation not to go below the prescribed percentage]
- Casual workers to regular posts



Scope of Reservation

contd...

- **CPSEs:** DPE may arrange issue of suitable directive by Ministry concerned
- **Autonomous bodies & statutory bodies:** Ministry concerned to issue suitable instructions
- **Voluntary agencies:** Pre-condition for receipt of grants to provide reservation if employee >20 employees; and at least 50% of recurring expenditure met from the grants, and the annual grant is > Rs. 2 lakh



Scientific & Technical Posts

- Reservation upto & including the lowest rung of Group A
- S & T Group A (above lowest rung) posts exempted if classified as S & T
- Use knowledge for 'conducting', 'organizing, guiding & directing' research
- Approval of the Administrative Minister concerned



Scope of Reservation

contd...

Scheme of Reservation does not apply to:

- Temporary appointments for < 45 days
- Work charged posts for the emergencies like flood relief, accident restoration & relief etc.
- Promotion by selection from a Group A to another Group A post
- Scientific and Technical posts which are above the lowest rung of Group A
- Single post cadres



Applicability

Direct Recruitment	Yes
Promotion	Yes
Deputation	No
Permanent absorption	No
Short term contract	No
Re-employment	No



Applicability Of Reservation

Central Govt.-

All Regular posts filled through **Direct Recruitment** and **Promotion** -

- (i) Ministries/Departments/**
- (ii) Attached Offices/Subordinate Offices**
- (iii) Autonomous Bodies / Statutory Bodies** - Ministry concerned to issue suitable instructions
- (iv) CPSEs:** DPE may arrange issue of suitable directive by Ministry concerned



Non-applicability of Reservation

- Temporary appointments of less than 45 days duration;
- Work-charged posts which are required for emergencies like flood relief work, accident restoration and relief etc.
- Promotions by selection method from a Group 'A' post to another Group 'A' post
- Appointments to Scientific and Technical posts which are above the lowest rung of Group 'A'
- Deputation/Absorption
- Single post cadres
- Promotion Where DR Element Exceeds 75%
- Personal Staff of President and Ministers
- Armed Forces



Percentages of Reservation



Direct Recruitment

Vertical Reservation (Post based roster)

Method of recruitment	SC	ST	OBC	EWS
On all India basis by open competition	15%	7.5%	27%	10 %
On all India basis otherwise than by open competition	16.66%	7.5%	25.84%	10 %
In Group C posts attracting candidates from a locality or a region,	percentage of reservation based on the population of SC/ST/OBC in the respective State/UT			10 %



Direct Recruitment and Promotion

Horizontal Reservation (Vacancy Based Roster)

	BENCHMARK DISABILITY	% of Reservation
(a)	Blindness and Low Vision	1
(b)	Deaf and Hard of Hearing	1
(c)	Locomotor Disability including Cerebral Palsy, Leprosy Cured, Dwarfism, Acid Attack Victims And Muscular Dystrophy	1
(d)	Autism, Intellectual Disability, Specific Learning Disability and Mental Illness	1
(e)	Multiple Disabilities From Amongst Persons Under Clauses (a) To (d) Including Deaf-Blindness	



Direct Recruitment

Horizontal Reservation (Vacancy Based Roster)

	EX-SERVICEMEN	% OF RESERVATION
(a)	Vacancies in the Posts upto of the level of the Assistant Commandant in all Para-Military forces	10
(b)	Vacancies in Group C Posts	10
(c)	Vacancies in Group D Posts	20



Promotion

Vertical Reservation (Post based Roster)

Method	SC	ST	OBC	EWS
Through LDCE in Group B & C	15%	7.5%	NIL	NIL
By selection in Group B & C posts and from Group B to a Group A post	15%	7.5%	NIL	NIL
By Non-Selection in Group A, B & C	15%	7.5%	NIL	NIL



Ceiling

- **Ceiling - 50% of the vacancies in a Year**
- **Single Vacancy –**
 - **No reservation in that year**
 - **Carry forward the reservation**
 - **Next year, fill the post by reserved category, even if one vacancy**
- **Reserved Category Candidates selected on Own Merit will be adjusted against UR Posts/Vacancies**



Caste Certificate for SCs/STs/OBC/EWS

- Caste certificate in the prescribed format
- Issued by one of the authorities empowered to issue such certificate

Authorities empowered to issue certificate

- District Magistrate /Additional District Magistrate/Collector/Deputy Commissioner/Additional Deputy Commissioner /Deputy Collector /1st Class Stipendiary Magistrate/Sub-Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Presidency Magistrate
- Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate
- Revenue Officer not below the rank of Tehsildar
- Sub-Divisional Officer of the area where the candidate and/or his/her family normally resides
- Administrator/Secretary to Administrator/Development Officer (Lakshadweep Islands)



Contents of the Caste Certificate

- Name of the Person
- Father's Name
- Permanent Place of Residence
- Caste/Tribe/Community
- Constitutional Order (for SC/ST)
- GOI Notification No. and date
- Non-Creamy layer(for OBC)
- Should bear sign, designation with Seal, place and date of issue



Form of Caste Certificate for SC/ST

This is to certify that Shri / Shrimathi / Kumari..... Son/daughter ofof village/town.....in the District / Divisionof the State / Union Territory belongs to theCaste/Tribe which is recognized as a Scheduled Caste/Scheduled Tribe under:

2#. This certificate is issued on the basis of the Scheduled Castes/Scheduled Tribes Certificate issued to Shri/Shrimathi.....father/mother in District/Division.....of the State/Union Territory.....Who belong to the Caste/Tribe which is recognised as a Scheduled Castes/Scheduled Tribes in the State/UT.....issued by the, dated....

3. Shri /Shrimathi/ Kumariand/or his/her family ordinarily reside(s) in village/town ofDistrict/Division of the State/Union Territory of

Signature.....

Designation.....

(with seal of the office)

Place.....

State/UT

Date.....

(the term “Ordinarily resides” used here will have the same meaning as in Section 20 of the Representation of the Peoples Act, 1950)

(# the para 2 is applicable only in those cases when the certificate has been issued by the competent authority in the State/UT in which the applicant is residing after migration)



Form of Caste Certificate for OBC

This is to certify that Shri/Smt./KumariSon/daughter ofof village/town.....in the District / Divisionin the State/Union Territory belongs to theCommunity which is recognized as Backward Class under the Government of India , Ministry of Social Justice and Empowerment's Resolution No..... dated*. Shri/Smt./Kumariand/or his/her family ordinarily reside(s) inDistrict/Division of theState/Union Territory. This is also to certify that he/she does not belong to the persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel and training O.M. No. 36012/22/93-Estt.(SCT), dated 8.9.1993 **.

District Magistrate
Deputy Commissioner, etc.

Dated

SEAL

(the term “Ordinarily” used here will have the same meaning as in Section 20 of the Representation of the Peoples Act, 1950)



Verification of Caste Certificate

- The person and parents actually belong to that community
- The community is included in Presidential orders for SC/ST for that State
- The person belongs to that State and the area in respect of which the community has been scheduled
- **SC**- should profess either Hindu or Sikh or Buddhist religion
- **ST** – may profess any religion
- **OBC** – should belong to the castes notified by Govt. and should be in non creamy layer



Effects on the status of SC/ST/OBC

- **Marriage** – does not change the status of SC/ST/OBC
- **Migration** – SC/ST/OBC status only in respect to the State to which originally belongs
- **Adoption** – Adoptee acquires the status of the adopter
- **Conversion** – forfeiture of claim to SC on conversion to religion other than Hindu, Sikh, Buddhism; no bar in respect of ST
- **Re-conversion** – deemed to have reverted to original SC, if accepted by the members of that particular caste as one among them



Relaxations and Concessions



Relaxation & Concession

- **Concession in Fee /Reimbursement of TA-**
 - Benchmark Disability/SC/ST

- **Relaxation –**
 - Age / Experience Qualification / Standard/No. of Attempts

- **No Relaxation in Educational Qualification**



Monitoring Agencies

- Liaison Officers: (for SC/ST, OBC, PwD and EWS)
- National Commissions for SC /ST/OBC
- Parliamentary Committee



De-reservation in Direct Recruitment

- Ban on De-reservation in Direct Recruitment.
- Only allowed in exceptional cases in Group A posts.
- Unfilled reserved points (for SC/ST/OBC) will be carried forward to subsequent Recruitment Years.
- Consult the concerned Commission
- Committee of Secretaries (DOP&T, SJ&E, administrative Ministry)
- Approval of Minister-in-charge of DOP&T



De-reservation in promotion

Conscious decision to be taken by the Appointing Authority i.e. either

- **Post may be kept vacant** or
- **Diversion** to fill the post for which SC/ST candidates are not available by promotion, by DR method, if provision is available in RRs, or
- **De-reservation**



De-reservation in Promotion

- Fill up the prescribed format for de-reservation applicable
- Concurrence of LO (SC/ST)
- Submit case to Administrative Ministry for approval
- Forward duly filled and signed format to DOP&T and NCSC or NCST, as applicable,
- Wait for 2 weeks
- Submit case for approval of JS in the Admn Ministry
- Fill the post by persons recommended by DPC
- Carry forward the reserved point (SC/ST) to subsequent years



Exchange

- No Exchange between SC and ST
- SC or ST or OBC quota will be filled by the respective category only



Thanks for your attention.

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