

# PARLIAMENT OF INDIA

## RAJYA SABHA

### DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

#### EIGHTH REPORT

#### ON

### THE SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER BACKWARD CLASSES (RESERVATION IN POSTS AND SERVICES) BILL, 2004

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 29<sup>TH</sup> JUNE, 2005)

(FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON 29<sup>TH</sup> JUNE, 2005)

(PRESENTED TO THE RAJYA SABHA ON 26<sup>TH</sup> JULY, 2005)

(LAID ON THE TABLE OF THE LOK SABHA ON 26<sup>TH</sup> JULY, 2005)

RAJYA SABHA SECRETARIAT

NEW DELHI

JUNE, 2005/ ASADHA, 1927 (SAKA)

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## CONTENTS

### [1. Composition of the Committee](#)

### [2. INTRODUCTION](#)

### [3. Report](#)

### 4. RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE AT A GLANCE

### 5. MINUTES OF DISSENT SUBMITTED BY SHRI P.C. ALEXANDER, MP & DR. RADHAKANT NAYAK, MP

### \*6. RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE

### \*7. Annexures:

(i) The Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation in Posts and Services) Bill, 2004

(As introduced in Lok Sabha);

(ii) List of the witnesses who appeared before the Committee;

(iii) Views/suggestions of individuals/organisations on the Scheduled Castes, Scheduled Tribes and other Backward Classes

(Reservation in Posts and Services) Bill, 2004 and comments of Government thereon.

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\* To be appended at printing stage.

## COMPOSITION OF THE COMMITTEE (2004-05)

1. Shri E.M. Sudarsana Natchiappan — *Chairman*

### RAJYA SABHA

2. Dr. Radhakant Nayak
3. Shri Balavantalias Bal Apte
4. Shri Ram Nath Kovind
5. Shri Ram Jethmalani
6. Dr. P.C. Alexander
7. Shri Tariq Anwar
8. Shri Raashid Alvi
9. Vacant
10. Vacant

### LOK SABHA

11. Dr. Shafiqurrahman Barq
12. Smt. Bhavani Rajenthiran
13. Shri Chhatar Singh Darbar
14. Justice (Retd.) N.Y. Hanumanthappa
15. Shri Shailendra Kumar
16. Smt. Kiran Maheshwari
17. Shri Dahyabhai V. Patel
18. Shri Brajesh Pathak
19. Shri Harin Pathak
20. Shri V. Radhakrishnan
21. Shri Vishwendra Singh
22. Shri Bhupendrasinh Solanki
23. Prof. Vijaya Kumar Malhotra
24. Kumari Mamata Banerjee
25. Shri S.K. Kharventhan
26. Shri Shriniwas D. Patil
27. Shri A.K. Moorthy
28. Shri Ramchandra Paswan
29. Vacant
30. Vacant
31. Vacant

### SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary  
Shri Surinder Kumar Watts, Deputy Secretary  
Smt. Sunita Sekaran, Under Secretary  
Shri Vinoy Kumar Pathak, Committee Officer

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## INTRODUCTION

I, The Chairman of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice having been authorized by the Committee to present the Report on its behalf, do hereby present this Eighth Report on the Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred\* the Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004 as introduced in the Rajya Sabha on 22<sup>nd</sup> December, 2004 to the Committee for examination and report.
3. The Committee in its meeting held on the 3<sup>rd</sup> February, 2005 held preliminary discussion on the Bill and heard the Secretary, Ministry of Personnel, Public Grievances and Pensions. The Committee decided to issue a press communiqué in national/regional dailies for eliciting views of cross sections of people on the various provisions of the Bill.
4. In response to the said press release, the Committee received 182 memoranda containing views/suggestions on the Bill from individuals/groups/organisations representing interests of SCs, STs and OBCs.
5. The Committee heard oral evidence of the witnesses who appeared before it in its meetings held on the 17<sup>th</sup> February, 10<sup>th</sup> March, 19<sup>th</sup> and 20<sup>th</sup> April, 2005.
6. The Committee took up clause-by clause consideration of the Bill in its meetings held on the 2<sup>nd</sup> and 3<sup>rd</sup> May, 2005.
7. In its sitting held on the 7<sup>th</sup> June, 2005 the Committee considered the draft report on the Bill and adopted the same.

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\*Referred vide Parliamentary Bulletin N0.41889 dated 31 December 2004.

(ii)

8. In the course of its deliberations, the Committee has made use of the background note on the Bill received from the Ministry of Personnel, Public Grievances and Pensions; suggestions received from individuals/organizations/experts; comments of the Ministry on the views received from organizations/experts and queries raised by the Members on the Bill in the meetings.
9. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.
10. On behalf of the Committee, I would like to acknowledge with thanks the contributions made by experts/organizations who deposed before the Committee and submitted their valuable suggestions on the Bill.

**NEW DELHI:**  
**June 7 , 2005**

**E.M. SUDARSANA NATCHIAPPAN**  
**Chairman**  
***Committee on Personnel, Public Grievances, Law and Justice***

## REPORT

### RESERVATION IN PUBLIC SERVICES FOR THE SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER BACKWARD CLASSES – HISTORIC PROCESS

1. It is a historic fact that the Scheduled Castes had been under cruel subjugation and they had to bear the shock of inequality and untouchability for a pretty long time. Social stigma attached to the people belonging to the lower strata of the society, their deprivation of the facilities and privileges enjoyed by the upper castes and their continued exploitation and suppression led to an unending and relentless struggle for emancipation from the thralldom of the social evils. It was the craving to live the life gracefully with recognition and social status that several saints, social reformers and political leaders from both the Scheduled Castes and Non-Scheduled Castes had tried their best for the eradication of untouchability and evils of casteism from the social fabric. The liberation movements for the oppressed were indicative of the fact that no community would be willing to remain under oppression forever, and no society would sustain the shock of inequality and disunity.

1.1. With the advent of the Britishers the gulf between the classes and the masses widened further and the social discrimination against the lower castes became more pronounced. The lower castes liberation movement got an impetus during the British period. With the dawn of democratic institutions in India, the liberation movement steadily became more vocal, assertive and effective. From 1857 to 1956 the movement was led by several leaders throughout India. It was the period when Mahatma Gandhi emerged on the national scene as the most important leader of the Freedom Struggle of India. Besides, leading that movement, he became the most vocal and assertive champion of the lower castes and the oppressed. He cursed the practice of untouchability and fought for its abolition. The most prominent among the leaders, who led the movement to abolish untouchability was Dr. Baba Saheb Ambedkar whose efforts culminated in abolition of untouchability.

1.2. In this backdrop, the concept of reservation in public services emerged as a viable solution to bridge the gap between the lower castes and the upper castes. Realising the inequitable distribution of posts in the administration between different castes and communities, the rulers of some of the then Princely States, who were genuinely interested in the upliftment of disadvantaged sections of the society, took initiatives and introduced reservation in the administrative posts in favour of the backward castes and communities in their States as early as in the first quarter of the twentieth century. Mysore and Kolhapur were amongst the first to do so. Because of the movement for social justice and equity started by the Justice Party, the then Presidency of Madras initiated the reservation in Government employment in 1921. It was followed by Bombay Presidency comprised of the major portions of the present States of Maharashtra, Karnataka and Gujarat. Thus, the first quarter of the twentieth century saw reservations in Government employment in almost whole of Southern India. These reservations were not only in favour of the depressed classes which were rechristened as Scheduled Castes in the Government of India Act, 1935, but also in favour of other backward castes and classes including what were then known as intermediate castes. To identify the backward classes in the State of Mysore, Justice L.C. Miller Committee was appointed in 1918-20. Similarly in the Princely States of Travancore and Cochin, Justice C.D. Nokes Committee was appointed in 1935

[\[1\]](#)

1.3. In the year 1932, the Poona Pact was signed by Pandit Madan Mohan Malaviya, the principal signatory on behalf of the Caste Hindus and Dr. Baba Saheb Ambedkar on behalf of the depressed classes. It was not merely a simple contract between the Caste Hindus and the Untouchables, but it was a sacred pact meant to be honoured with spirit of goodwill and brotherhood. This was, of course, the first occasion when the British Government recognized the depressed classes as a separate element in Indian politics. Before the Poona Pact, 1932 the representation of the depressed classes in public services was negligible except a few pockets of old Presidency of

Madras and Princely State of Mysore<sup>[2]</sup>.

1.4. The sum and substance of the Poona Pact was that the separate electorates granted by the “Communal Award” were withdrawn and the method of joint electorates was introduced with the principle of reservation of certain seats exclusively to the members of the Depressed Classes where the Depressed Classes candidates were to be elected to the panel of four candidates in the first instance by the Depressed Classes members themselves and thereafter one of those four were to be elected by the general electorate. The system of primary election, however, was to last for 10 years unless terminated sooner by mutual agreement between the communities concerned. The principle of reservation was made applicable to both Central Legislature as well as the Provincial Assemblies. Although no fixed percentage of reservation was stipulated in respect of election to the local bodies and employment in public services, it was agreed that a fair representation of the Depressed Classes were to be secured in local bodies and public services.

1.5. For the first time instructions were issued in 1934, without providing a formal reservation that candidates belonging to depressed classes and possessing the requisite qualifications should not be deprived of fair opportunities of appointment merely because they would not succeed in open competition. Till the Government of India Act, 1935 came into force, there was no particular nomenclature for the oppressed. The term Scheduled Castes was used for the first time in the Government of India Act, 1935. In August, 1943, Government of India provided reservation at the rate of 8 1/3 per cent of the Scheduled Castes in the vacancies filled up by direct recruitment through open competition. In June 1946, the percentage of reserved seats was raised to 12.5 percent, corresponding to their percentage in the population in undivided India. The relaxation in the upper-age limit and concessions in examination fee prescribed for appointment to a service or post were announced in favour of the Scheduled Castes candidates<sup>[3]</sup>.

1.6. Soon after independence, orders were issued by Government on 21<sup>st</sup> September, 1947 providing for reservations in services for Scheduled Castes at the rate of 12.5% of vacancies in respect of direct recruitment through open competition. In the case of recruitment otherwise than by open competition separate reservation at the rate of 16 2/3% was provided in favour of Scheduled Castes. The question of providing reservations for the tribal communities in the Central Services also came up for consideration of the Government and instructions were issued in December, 1947, that the appointing authorities should consider as far as possible desirability of recruiting suitably qualified candidates from amongst the tribal communities. However, a decision to reserve a definite percentage of vacancies at the rate 5% for candidates of Scheduled Tribes was taken only after promulgation of the Constitution in 1950.

## **CONSTITUTIONAL PROVISIONS REGARDING RESERVATION**

2. Going by the past experience of exploitation and oppression of the lower castes, the framers of the Constitution felt that unless special provisions were made for the protection of the rights of Scheduled Castes, Scheduled Tribes and Other Backward Classes to secure fair representation in public employment in proportion to their population, it would never be possible for them to catch up and compete successfully for securing public employment. Therefore, to secure fair representation of Scheduled Castes, Scheduled Tribes and Other Backward Classes in services and posts under the State, special provisions of reservation under Articles 16(4), 16(4-A), 16(4-B), 46 and 335 of the Constitution were made.

2.1. Article 16(4) expressly provides for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of State, is not adequately represented in the services under the State. Article 16(4) reads as under : -

“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.”

2.2. Article 16(4-A) says that 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. Article 16(4-A) was inserted by the Constitution (Seventy-seventh Amendment) Act, 1995 to overcome the decision of the Supreme Court in *Indira Sawhney V/s Union of India* (93) (ASC 407 (1992) SUPP III SCC 210) that no reservation in promotions could be made under clause (4).

2.3. Clause (4-B) in Article 16 was included by the Constitution (Eighty-first Amendment) Act 2000 with a view to enabling the State to consider 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. The clause has further provided that 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 per cent reservation on total number of vacancies of that year.

2.4. The Directive Principles of State Policy also enjoin the State to promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and, to protect them from social injustice and all forms of exploitation. (Article 46)

2.5. The proviso to Article 335 of the Constitution clarifies that for including the Scheduled Castes and Scheduled Tribes candidates to State services, the required qualification may be relaxed. Thus, adequate representation of the Scheduled Castes and Scheduled Tribes in the services is given priority over other considerations. Article 335 reads as under :-

The claims 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 the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled 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.

#### **[4] COMMISSIONS APPOINTED BY THE GOVERNMENT FOR BACKWARD CLASSES**

3. It is noteworthy that while the terms “Scheduled Castes” and “Scheduled Tribes” find specific mention in the Constitution, there is also an explicit provision regarding the Other Backward Classes in article 340 (10) of the Constitution. Article 340 of the Constitution contemplates the appointment of a Commission whose reports and recommendations, would be of assistance to the authorities to take adequate steps for the advancement of Backward Classes.

3.1 Government of India appointed a Backward Classes Commission under Article 340 of the Constitution on 29<sup>th</sup> January 1953, popularly known as the Kaka Kalelkar Commission. The Commission was required to “investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove difficulties and to improve their condition”. The Commission submitted its report to the

Government on 30<sup>th</sup> March 1955 which was considered and rejected by it in 1961.

3.2. The Second Backward Classes Commission popularly known as Mandal Commission, was appointed on 1<sup>st</sup> January 1979 to investigate the conditions of socially and educationally backward classes and recommend the criteria for defining such classes of citizens, steps to be taken for their advancement and examine the desirability or otherwise of making provision for the reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or of an State. The Commission submitted its report on 31<sup>st</sup> December 1980.

3.3. In 1990, the Government of India took the historic decision to introduce reservation of 27% for Backward Classes on the basis of Mandal Commission's recommendation and issued formal orders vide office memorandum No. 36012/31/90-Estt./SCT dated 13<sup>th</sup> August, 1990 providing for reservation for socially and educationally backward classes (SEBCs) of 27% of the vacancies filled by direct recruitment in civil posts and services under the Central Government and Public Sector Undertakings and financial institutions. It was inter-alia laid down that the SEBCs would comprise in the first phase the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Govts./Union Territories lists. However, the Government's decision was followed by widespread protests against it, mostly in Northern States and a number of writ petitions were filed questioning the said order and for staying the operation of the Office Memorandum. The operation of the order was stayed by the Supreme Court. The stay continued in force till 16<sup>th</sup> November, 1992, when the Supreme Court finally disposed of these writ petitions.

3.4. The Supreme Court in its landmark judgement dated 16.11.1992 in Writ Petition (Civil) No. 930 of 1990, Indira Sawhney & Ors. Vs. Union of India and Ors., etc. popularly known as the Mandal Case, held office Memorandum No. 36012/31/90-Estt.(SCT) dated 13.8.1990 valid and enforceable subject to the exclusion of socially advanced persons/sections (creamy layer) from the notified Backward Classes. The Supreme Court also directed the Government of India and each of the State Government and Administration of Union Territories to constitute a permanent body, in the nature of a Commission or Tribunal, for entertaining and advising the respective Governments on the requests for inclusion and complaints of over-inclusion or under-inclusion in the lists of Backward Classes and also directed that advice tendered by such body shall ordinarily be binding upon the concerned Government.

3.5. Pursuant to the direction of the Supreme Court, the Government of India vide its Resolution No. 12011/16/93-BCC(c)-Ministry of Welfare dated 22<sup>nd</sup> February 1993 set up an Expert Committee to determine the basis viz. criteria for identification of the socially advanced persons/sections among the OBCs insofar as the Government of India was concerned. The Committee furnished its report on 10.3.1993. Subsequently, Government of India vide its letter No. 12011/51/93-BCC (C) – Ministry of Welfare dated 4<sup>th</sup> June, 1993 requested the Committee to prepare lists of those castes and communities which figure in the list of Backward Classes notified by State Governments as well as in the lists contained in the Mandal Commission Report, and to prepare other related lists. A report dated 26<sup>th</sup> June 1993 was furnished by the Expert Committee to the then Ministry of Welfare.

3.6. The reservation for Backward Classes took effect from the 8<sup>th</sup> September 1993 when the Department of Personnel & Training vide its Office Memorandum No.36012/22/93-Estt.(SCT) dated 8<sup>th</sup> September 1993 and the then Ministry of Welfare vide their Resolution No. 12011/68/93-BCC (c) dated 10<sup>th</sup> September, 1993 set the stage for the operationalisation of the O.M. of 13<sup>th</sup> August 1990. The O.M. dated 8<sup>th</sup> September 1993 incorporated in the Office Memorandum of 13<sup>th</sup> August 1990, the rule of exclusion of socially advanced persons/sections from reservation, on the basis of the recommendations of the Expert Committee, thus fulfilling the condition laid down

by the Supreme Court for the implementation of the Office Memorandum of 13<sup>th</sup> August 1990.

## **FEATURES OF THE EXISTING RESERVATION POLICY OF GOVERNMENT**

4. The Ministry of Personnel, Public Grievances and Pensions has, in its note submitted to the Committee, apprised that the scheme of reservation in Government services is governed by the executive instructions issued by the Department of Personnel and Training from time to time. Public Sector Undertakings including financial institutions like banks, insurance companies, etc. under the Government of India follow the instructions issued by the Department of Personnel and training. The Supreme Court in the case of Indira Sawhney V/s. Union of India has held that these instructions have the force of law.

4.1 The Ministry has further informed that the reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes in direct recruitments done on an all India basis by open competition is at present 15%, 7.5% and 27% respectively. It is 16.66%, 7.5% and 25.84% respectively in case of direct recruitment on all India basis otherwise than by open competition. In case of direct recruitment to Groups C and D posts which normally attract candidates from a locality or a region, the percentage of reservation for Scheduled Castes and Scheduled Tribes is generally fixed in proportion to the population of Scheduled Castes and Scheduled Tribes in the respective States/ Union Territories and reservation for OBCs is fixed keeping in view the proportion of their population and the fact that total reservation for SCs, STs and OBCs cannot exceed the limit of 50%. The reservation for OBCs has consequently been fixed at 27% or less. Reservation in promotion by non-selection is available to Scheduled Castes and the Scheduled Tribes in all groups of posts and services viz. Groups A, B, C and D at 15% and 7.5% respectively. In case of promotion by selection, reservation to the Scheduled Castes and Scheduled Tribes is available upto the lowest rung of Group 'A' at the rate of 15% and 7.5% respectively. In promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs.18,300/- or less, there is no reservation, but the Scheduled Caste/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list is to be drawn up, are included in that list provided they are not considered unfit for promotion.

4.2 According to the Ministry, various relaxations and concessions are being extended to the Scheduled Castes, Scheduled Tribes and Other Backward Classes in order to ensure that the posts reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes are filled by the candidates belonging to these categories. For example, the upper age limit is relaxable by 5 years for the candidates belonging to the Scheduled Castes, and Scheduled Tribes in case of direct recruitment, whereas, the upper age limit is relaxable by 3 years for the Other Backward Classes. Similarly, the qualification relating to experience for Scheduled Castes and Scheduled Tribes is relaxable at the discretion of the Union Public Service Commission and other recruitment agencies of the Government. Not only this, in case of promotion by selection, the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes are assessed by relaxed standards as the zone of consideration for these candidates is extended to five times.

## **NEED FOR ENACTING A LAW ON RESERVATION**

5. The Secretary, Ministry of Personnel, Public Grievances and Pensions in his deposition apprised the Committee that certain judgements delivered by the Supreme Court has seemingly affected the interests of the backward classes. With a view to protecting the interests of the weaker sections of the society several constitutional amendments, namely, the Constitution (Seventy-seventh Amendment) Act, the Constitution (Eighty-first Amendment) Act, the Constitution (Eighty-second Amendment) Act and the Constitution (Eighty-fifth Amendment) Act have been enacted. Nevertheless, demand for a law on reservation for backward classes made in

the wake of the judgements of the Apex Court has been voiced from time to time by various organisations/associations representing the interests of the weaker sections of the society. In keeping with the spirit of economic and social development of SCs, STs and OBCs, the National Common Minimum Programme adopted by the Government has also stipulated the enactment of a legislation to codify the executive orders/instructions regarding reservations issued from time to time by the Ministry. The legislation on reservation is, in fact, a result of the keenness shown by the Government to provide a statutory backing to the policy of reservation so as to instil confidence in the members of the SCs, STs and OBCs that their legitimate aspirations of adequate representation and participation in national mainstream have been given protection by the Parliament. Another major reason behind bringing in this legislation is to remove ambiguity that could have occurred because of the multiplicity of the Office Memoranda issued by the Ministry for governing reservations.

## **SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER BACKWARD CLASSES (RESERVATION IN POSTS AND SERVICES) BILL, 2004 – SALIENT FEATURES**

6. The Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation in Posts and Services) Bill, 2004 was introduced in the Rajya Sabha on 27<sup>th</sup> December, 2004. The Bill seeks to provide for reservation of posts in civil services for members of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in establishments and for matters connected therewith or incidental thereto. The Bill is stated to go a long way in meeting the constitutional goal of securing justice, liberty and equality for all citizens of the country and in promoting fraternity amongst them all.

6.1. Salient features of the Bill are as under:-

- (i) Reservation as determined by the Government from time to time shall be provided to the members of Scheduled Castes, Scheduled Tribes and Other Backward Classes not falling in the creamy layer, in the matter of direct recruitment and to the members of the Scheduled Castes and Scheduled Tribes in the matter of promotion to posts in civil services;
- (ii) There shall be no reservation when appointments are made to posts classified as 'scientific or technical' which are required for conducting research and which are above the lowest grade of group 'A';
- (iii) The recruitment to a vacancy not reserved for any category shall be open to all eligible candidates including the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes;
- (iv) The Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates selected on their own merit shall not be adjusted against the vacancies reserved for them;
- (v) The maximum age limit prescribed for direct recruitment to a service or a post shall be increased by 5 years in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes and 3 years in the case of candidates belonging to the Other Backward Classes. In the case of promotion, the upper age limit shall be increased by 5 years in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes where the maximum age limit, if prescribed, is not more than 50 years. Relaxations and concessions may be given to members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes in qualifications relating to experience and standard of suitability in case of direct recruitment;
  - (vi) (a) Total number of vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes in a cadre in a year shall not exceed 50% of the total number of vacancies in that cadre;

- (b) The backlog reserved vacancies of the Scheduled Castes and Scheduled Tribes shall not be counted for determining the 50% ceiling;
- (vii) The vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes in the matter of appointments by direct recruitment shall not be filled by candidates not belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, as the case may be;
- (viii) If some posts in a cadre are abolished and some employees are surrendered or their services are terminated as a result thereof, a Scheduled Caste, Scheduled Tribe and Other Backward Class candidate shall not be surrendered or his services shall not be terminated if it results in lower representation of Scheduled Castes, Scheduled Tribes and Other Backward Classes as the case may be, in the cadre as compared to reservation prescribed for them;
- (ix) There will be provision for punishment for making false claim to belong to a Scheduled Caste, Scheduled Tribe and Other Backward Class and for officers who knowingly issue a false certificate; and
- (x) The Government shall be empowered to make rules for carrying out the provisions of the Act, etc.

### **VIEWS/SUGGESTIONS ON THE BILL RECEIVED FROM INDIVIDUALS, ORGANISATIONS REPRESENTING INTERESTS OF SCs, STs AND OBCs**

7. The Committee received numerous memoranda from the individuals, organisations interested in the subject-matter of the Bill and the specialised agencies like the National Commissions for Scheduled Castes and Scheduled Tribes and the National Commission for Backward Classes. Having been authorised by the Committee, its Chairman had a separate meeting in his office, with Dr. Suraj Bhan, Chairman of the National Commission for Scheduled Castes and other members of the Commission and also with Justice Shri Ram Surat Singh, Chairman of the National Commission for Backward Classes and other members of the Commission on 9<sup>th</sup> March, 2005 and heard their views and suggestions on various provisions of the Bill. The Committee also had the benefit of written suggestions/views received from Shri Udit Raj, Chairman of the All India Confederation of SC/ST organisations and Shri Chranjit Singh Atwal, Hon'ble Deputy Speaker, Lok Sabha. The Committee scrutinized the suggestions in the light of the provisions of the Bill and found them useful for better comprehension of the Reservation Policy of the Government and the reaction shown by the public to the proposed legislation. To be enlightened further on the issues involved in the Bill, the Committee interacted with the following witnesses or groups and heard their views on the Bill in its meetings held on 17<sup>th</sup> February, 10<sup>th</sup> March, 19<sup>th</sup> and 20<sup>th</sup> April, 2005: -

- (i) Shri Subash Kankheria, General Secretary, Dr. B.R. Ambedkar Memorial Foundation,
- (ii) Dr. R.S. Sauran, President, All India Punjab National Bank Employees Welfare Association,
- (iii) Shri T.L. Bharti, Chairman, Akhil Bharat Anusuchit Jati-Janjati Karamchari Parisad,
- (iv) Shri M.L. Nigam, General Secretary, DDA SC/ST Employees Welfare Association,
- (v) Shri Swami Nath, Acting President, Samarjit Samaj,
- (vi) Dr. K. Krishnaswamy MD, Ex. MLA, Leader, Pushiy Tamilagam Party, Tamil Nadu,
- (vii) Shri K. Paramalai, MLA, Tamilnadu,
- (viii) Shri Ganga Das, IAS (Retd.), Former Chairman, Siddhartha Educational & Cultural Trust, New Delhi,
- (ix) Prof. M. Ramadass, Member of Parliament (Lok Sabha),
- (x) Shri K.V. Thangka Balu MP, Chairman Parliamentary Forum Indian Backward Classes Federation, New Delhi,

- (xi) Justice B.S.A. Swamy, Retd. High Court Judge, Hyderabad
- (xii) Shri K. Veeramani, President, Dravidar Kazhagam, Chennai
- (xiii) Shri A. Subba Rao, Managing Trustee, Loursers form for Social Justice, New Delhi,
- (xiv) Dr. M.P. Raju, Advocate, Supreme Court, New Delhi,
- (xv) Shri G. Karunanidhi, General Secretary, All India Federation of Backward Classes Employees Associations,
- (xvi) Shri P. Madhu, M.P.,
- (xvii) Shri Jesudasu. Seelam, M.P.,
- (xviii) Dr. M. Jagannath, M.P.,
- (xix) Shri R.S. Gavai, M.P., Chairman of the Parliamentary Forum for SC/ST.
- (xx) Shri Gandhi Azad, M.P.,
- (xxi) Shri Thawar Chand Gehlot, M.P.,
- (xxii) Shri V. Narayanasamy, President, All India OBCs Employees Association,
- (xxiii) Shri B.K. Hari Prasad,
- (xxiv) Shri V. Hanumantha Rao,
- (xxv) Shri Vittal Rao,
- (xxvi) Shri Avtar Singh Badana,
- (xxvii) Shri Madhu Goud Yaskhi,
- (xxviii) Shri Ram Kripal Yadav, and
- (xxix) Shri Kadar Mohindara

7.1 The suggestions put forward on the Bill and the views expressed by the witnesses during the course of their deposition before the Committee are summarised below :-

- (i) The Reservation Act should extend to the whole of India.
- (ii) The Bill should be included in the Ninth Schedule to the Constitution to avoid unwarranted judicial interventions.
- (iii) The term “backlog vacancies” as defined in sub-clause (b) of clause 2 of the Bill, should include the shortfall of reservation with reference to the post-based roster introduced by the Government in 1997 and backlog vacancies, determined as per vacancy based roster, which were in operation before 2.7.1997, should also be treated as backlog vacancies for the Post Based Roster.
- (iv) The concept of “Creamy Layer” defined in the Bill should not be applicable to the other Backward Classes, it being against the provisions of clause (4) of Article 15 of the Constitution which speaks of the social and educational backwardness of citizens.
- (v) Clause 2(d), defining the term “establishment” should be amended so as to include:-
  - (a) In sub clause (ii), corporation in which not less than thirty three percent of the paid up share capital is held by the Government;
  - (b) A subsidiary company floated by Government Corporation/Company wherein not less than thirty three percent of the paid up share capital is held by the parent corporation/company;
  - (c) All banking companies, non Banking Financial Companies (NBFC) and other Financial Companies in which not less than thirty three percent of paid up share capital is held jointly by

the Nationalised Banks, Government Financial Institutions like LIC, GIC, UTI, SFC, EPF etc.;

- (d) In sub-clause (iv), deemed universities and other professional colleges including educational institutions of excellence;
- (e) In sub-clause (v), educational institutions run by Private Sector;
- (f) In sub-clause (vi), a corporation in which not less than thirty-three percent of the paid up share capital is held by the Government directly or indirectly;
- (g) In sub-clause (vii), all Scheduled Banks of RBI, Nationalised Banks and Scheduled Commercial and Financial Corporations, managed and controlled by Government of India, constituted as Body corporate under the Central Act or maintained by or with the help of the Government of India;
- (h) Corporative Societies established under the Corporative Societies Act or deemed to have been registered under that Act;
- (i) Non Government organisations getting benefit or financial and assistance from the Government; and
- (j) All industries, privatised PSUs and Joint Sector Ventures.

(vi) Judiciary and Armed Forces should also be brought under the purview of the reservation policy of the Government.

(vii) The term “Civil Services” used in clause (3) of the Bill, needs to be defined specifically and clearly to avoid litigations in matter of interpretation. The definition should include medical, engineering, education, police, para-military, military and judiciary services apart from the services under the purview of the Bill.

(viii) The Bill seeks to provide reservation in appointment by promotion to the grade of such posts where element of direct recruitment does not exceed seventy five percent. This is understood to have adverse effect on the reservation policy as the provisions will not apply to the establishments recruiting more than 75 Percent posts. Therefore, this ceiling should be removed. Particularly, it should not be made applicable in case of promotion from Group D Posts to Group C, as there are more than 75 percent direct recruitment in Group C services.

(ix) Definition clause of the Bill should include “Promotion by upgradation/restructuring” keeping in view the multiple litigations in courts on the questions of interpretation of these terms.

(x) Reservation in promotion should be available within “Group A” posts also meaning thereby that reservation should be made available at all the levels and should not be restricted upto the lowest rung of Group ‘A’.

(xi) Reservation should be applicable to deputation posts both in India and abroad.

(xii) Other Backward Classes (OBCs) should be given reservation in promotion also.

(xiii) The concept of “Zone of Consideration” should be clearly specified.

(xiv) The percentage of reservation for each communities should be specified clearly so that the same is not reduced by any recruitment process both in direct recruitment or in promotion e.g. OBC-27 percent, SC-15 percent and ST-7.5 percent.

(xv) The present ceiling of 50% for reservation for SC/ST and OBCs should be enhanced as there has been rise in the size of population since the time when this ceiling was fixed.

(xvi) Reservation should also be made available to the cases where appointments are made for a period of less than forty five days and for the work-charged posts.

(xvii) Scientific and technical posts and institutions as well as services should be brought under the purview of the reservation.

- (xviii) Where an unreserved vacancy is filled by a candidate belonging to a Scheduled Caste or Scheduled Tribe or Other Backward Class on the basis of merit either by direct recruitment or by promotion after availing relaxation of age, then such candidate should be adjusted against the vacancy reserved for the SC, ST or OBC as the case may be.
- (xix) Relaxation in maximum age limit for direct recruitment should be increased from present 3 years to 5 years for OBCs. Similarly, other concessions like fee concession, relaxation in qualifying standard etc. should also be extended to OBCs at par with the other groups like SC and ST.
- (xx) Backlog vacancies of OBCs should be filled without applying the limit of 50% on reservation in a current year.
- (xxi) The Government should consider bringing an amendment to the Constitution for providing reservation for OBCs in the appointment by promotion.
- (xxii) The current percentage of reservation for OBCs should be revised in proportion to the size of their population. A caste based census needs to be conducted by the Government for reservation on the basis of the increased population.
- (xxiii) There should be adequate representation of SC, ST and OBC in the composition of the Selection Committee/ Recruitment Boards and Agencies.
- (xxiv) Recruitment should be made on the basis of a roster prepared for a cycle of the vacancies. While preparing the roster, care must be taken that not more than 2 vacancies go to a particular category consecutively.
- (xxv) There should be separate Liaison Officers for Scheduled Casts, Scheduled Tribe and Other Backward Classes.
- (xxvi) The Liaison Officer should have power to inspect the record of proceedings of the recruitment/selection/seniority-cum-suitability lists.
- (xxvii) Liaison Officer should belong to SCs/STs /OBC.
- (xxviii) There should be an independent monitoring committee or agency to oversee the implementation of the provisions of the Bill.
- (xxix) Every establishment should have a Scheduled Castes and Scheduled Tribes Grievances Redressal Cell for consideration of grievances of the SCs and STs.
- (xxx) Policy of reservation has not achieved what it aimed despite lapse of more than 50 years of its coming into existence. Serious efforts should be initiated by the Government to implement reservation to the weaker sections of the society.
- (xxxi) The proposed legislation is silent on penalty provisions. It is particularly, impossible to meet the objective of the Bill in the absence of a clear and specific penal provisions.
- (xxxii) The National Commission for Backward Classes should be accorded statutory status so that it can have powers to deal with the grievances of OBCs.
- (xxxiii) There should be two separate legislations, one for the SCs and STs and the other for the OBCs keeping in view the different social, cultural and economic status and background of these communities.
- (xxxiv) A reservation Tribunal should be provided in the Act to decide on the matters relating to reservation for Scheduled Castes/Scheduled Tribes/OBCs.

7.2 Suggestions received on the Bill were forwarded to the Ministry of Personnel, Public Grievances and Pensions for comments. The suggestions and comments received from the Ministry are appended at **Annexure....**

7.3 The Committee notes that the proposed legislation providing for reservation to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in recruitment and promotion to civil services under the control of the Central Government has evoked an overwhelming public response which is evident from plethora of written suggestions received from different parts of the country and the views expressed by several witnesses during the course of evidence. The Committee feels that such a response to the proposed legislation is clearly indicative of their aspirations for upliftment and betterment of the social and economic status. The Committee finds that many of the suggestions/views are beyond the ambit of the Bill, yet they are reflection of the fact that the Reservation Policy of the Government has suffered from infirmities as a result of which the prescribed level of reservation has not been achieved even after more than fifty years of its enforcement. From the suggestions received and the views expressed before it, the Committee finds that the overall position of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes in services has been quite dismal and unsatisfactory. Consequently, the gulf between the upper classes and the lower classes has not been bridged to the desired extent.

7.4 Viewed in the light of the above observations, the Committee impresses upon the Govt. to make a pragmatic assessment of the reservation policy in the light of the suggestions/views on the Bill so as to ensure adequate representation of Scheduled Castes, Scheduled Tribes and Other Backward Classes in services.

7.5. The Committee in its meeting held on the 3<sup>rd</sup> May, 2005 took up clause-by-clause consideration of the Bill.

## **CLAUSE-BY-CLAUSE CONSIDERATION**

### **CLAUSE-2**

8. Clause (2) defines the various terms used in the Bill.

8.1. The Committee considered sub-clause(c) of clause 2 defining the term “creamy layer” as under :-  
“Creamy layer” means those members of Other Backward Classes who constitute the forward section from amongst such Backward Classes”.

8.2. The Committee took into account the various suggestions submitted to it and the views expressed by the witnesses and the members on this issue proposing for deletion of sub-clause(c) of the clause on the ground of its being against the provisions of the Constitution and based on the interpretation of the Supreme Court given in Indira Sawhney V/s union of India popularly known as Mandal Case (AIR 1993, SC 477).

8.3. The Committee notes that, in fact, the concept of ‘creamy layer’ to exclude well off persons among the OBCs from the benefits of the policy of reservation, was introduced by the Supreme Court in Indira Sawhney and others V/s Union of India. The Constitution, however, is silent on this issue. Article 15 (4) of the Constitution provides for special provisions for socially and educationally backward classes of citizens or for the SCs and STs. As is evident, the article does not mention anything about ‘creamy layer’ nor does it mention any economic criteria for determination of backwardness of a community. The Government is implementing creamy layer formula which is based on economic status of OBCs. This is a kind of further division of OBCs in forward class OBCs and less forward class OBCs. Supreme Court held this division justified and reasonable in the above case. The Committee does not want to go into the controversy of reasonableness of this division. However, the Committee feels that ‘creamy layer’ indirectly brings in the economic criteria rejected by the constitutional framers. The Committee notes that article 16(4) empowers the State to provide for reservation for any backward class in appointments, which in the opinion of the State, is not adequately represented in the services under the State. This, in view of the Committee sufficiently exhibits the intention that adequate representation in services under the state should be

ensured. On the contrary, formula of creamy layer puts a restriction on achieving this constitutional obligation. The Committee also notes that individuals/organisations belonging to SCs, STs and OBCs in their suggestions submitted to the Committee and views expressed before it vehemently opposed the insertion of the term "creamy layer" in the proposed legislation contending that a class should not be excluded from getting benefit of reservation quota only on the basis of a judicial interpretation. The Committee, in these circumstances, recommends for deletion of sub-clause(c).

8.4. The Committee notes that ever since it started the process of examination of the Bill, there has been a persistent demand for amending sub-clause (iii) of clause 2(d) which lays down as under :-

“a corporation in which not less than fifty-one per cent of the paid-up share capital is held by the Government.”

8.5. On many occasions while hearing the witnesses, it has been placed before the Committee that in view of the liberalisation of the economic policy of the country, a trend has begun to disinvest the Government equity shareholding in public sector undertakings/corporations and Government Companies. Consequently, the percentage of paid up share capital held by the Government in some of those companies, has got reduced to below fifty-one percent. It has been further argued that with gradual reduction in the percentage of paid-up share capital held by Government the reservation policy in those undertakings, corporation, companies have taken a back seat which has adversely affected the interests of SCs, STs and OBCs as the employment opportunities which were available to them earlier because of their reservation quota in these corporations have now shrunk drastically.

8.6. The Committee feels that in these circumstances it is all the more important to protect the interests of the weaker communities of the society failing which the State would not be able to meet the constitutional mandate as embodied in article 16(4) according to which the State is required to provide adequate representation to the backward classes of citizens in services under the control of the State. The Committee, therefore, recommends that irrespective of the percentage of shareholding of the Government in PSUs, Corporations and Companies, the reservation policy should be followed therein. Accordingly, the Government should consider amending the sub-clause suitably.

8.7. The Committee considered sub-clause (n) defining the terms "scientific or technical posts" as follows :-

“Scientific or technical posts” include posts for which qualifications in the natural sciences or exact sciences or applied sciences or in technology are required and the incumbents for such posts have to use that knowledge in the discharge of their duties.

8.8. The Committee is of the view that reservation should also be extended to scientific or technical posts. The Committee has dealt this issue in detail while considering clause 4 of Bill. In view of its observation in succeeding paras relating to clause 4, the Committee recommends deletion of sub-clause (n).

8.9. The clause is adopted as amended.

### **CLAUSE-3**

9. The clause provides for reservation for members of Scheduled Castes, Scheduled Tribes and Other Backward Classes in the matter of direct requirement and to the members of Scheduled Castes, Scheduled Tribes in the matter of promotion to posts in civil services.

9.1. The Committee considered the proviso to sub-clause (1) of clause 3 which reads as under :-

“Provided that the members of the Other Backward Classes falling in the creamy layer shall not be deemed to be as members of the Other Backward Classes for the purpose of this Act.”

9.2. The Committee feels that in view of its observations in para 8.3 there remains no justification and rationale behind retention of the proviso. The Committee, therefore, recommends deletion of the proviso.

9.3. The Committee considered sub-clause (2) providing for reservation for members of the Scheduled Castes, Scheduled Tribes, for appointment by promotion to the grades of such posts where element of direct recruitment does not exceed seventy-five percent.

9.4. The Committee, in this connection, notes that the representatives of Banking Employees' Welfare Association, while deposing before it, specifically mentioned that criteria based on 75 percent ceiling for direct recruitment does not fit in the scheme of reservation for weaker sections of the society. In their view, this ceiling restricts the appointments where posts are filled by promotion. Citing an example, they informed the Committee that if the direct recruitment element exceeds 75 percent, the promotion is generally denied to the persons holding clerical cadre posts in banks. It was, therefore, advised that this criteria should not be applied in promotion from Group D posts to Group C, as there is more than 75 percent recruitment in this cadre.

9.5 The Committee feels that the provisions contained in sub-clauses (2), (3) and (4) cumulatively curtail the scope of reservation for the candidates belonging to Scheduled Castes and Scheduled Tribes, instead of providing adequate representation to these classes, as envisaged by the Constitution. The Committee, therefore, recommends deletion of sub-clauses (2), (3) and (4).

9.6 The clause is adopted as amended.

#### **CLAUSE-4**

10. The clause seeks to exclude the following categories of services from the purview of reservation:-

- (i) where appointments are made for a period of less than forty-five days;
- (ii) for the work charged posts;
- (iii) for the posts higher than the lowest grade of Group A post and classified as scientific or technical, which are required for conducting research or for organising, guiding and directing research.

10.1. The Committee was informed that though work charged posts are required for any emergency relief, in practice, they are carried on indefinitely. First, appointments are made to these posts temporarily but later they are regularised. In this process, job opportunities, which could have been available to the candidates belonging to the reserved categories, are denied to them. The Committee was further informed that the Departments like disaster management, flood relief, etc., have been created on permanent basis thus, depriving the SCs and STs from getting the benefit of reservation in jobs under these Departments.

10.2. The Committee notes that almost all the witnesses who appeared before the Committee, during the course of oral evidence and suggestions received by it, supported the view that reservation policy should be extended to the excluded categories, including scientific as well as technical posts. It was argued that such an exclusion from getting benefit of reservation in such posts is against the spirit of articles 14, and 16(4) of the Constitution which states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India and ensure adequate representation in services under the control of the State. In other words, the Constitution guarantees the right to equality and as per this right, there should not be any discrimination in

access to public offices.

10.3. On a query as to why the reservation policy cannot be extended to the scientific and technical posts, the Ministry of Personnel, Public Grievances and Pensions replied :-

“As per definition given in the Bill “Scientific or Technical Posts” include posts for which qualification in the natural sciences or exact sciences or applied sciences or in technology are required and the incumbents to such posts have to use that knowledge in the discharge of their duties. Such posts exist in organizations like the Department of Atomic Energy, Bhabha Atomic Research Centre, etc. The Supreme Court, in the Indira Sawhney’s case, had held that such posts and other specialist posts should be excluded from the purview of reservation.

10.4. The Committee understands that Scientific or Technical Posts by their nature require specialised knowledge and skill and appointments to such posts need candidates of the higher merit to bring in the elements of efficiency and competence in these fields. The Committee, however, feels that if these fields are kept out of the purview of the reservation policy of the Government, the spirit of the Constitution to adequately represent the backward classes in services under the State will be defeated. The Committee observes that the representations received from different persons, groups and organisations belonging to SCs, STs and OBCs, suggesting measures for an effective reservation policy, are indicative of the fact that the reservation policy has not succeeded in achieving the desired results and if these services are kept out of reservation, the scenario may worsen further. The Committee, therefore, recommends that Government should consider bringing scientific and technical posts, as well as the short term and work charged posts, within the ambit of reservation. The Committee, however, desires that in the process of reservation to the scientific and technical posts, elements of efficiency and competence should not be compromised.

10.5 Subject to the above, the clause is adopted.

#### **CLAUSE-6**

11. This clause provides for relaxation of the maximum age, etc, for a candidate belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, for direct recruitment to a service or post.

11.1. The Committee notes that the individuals and the Groups/Organisations representing the interests of Other Backward Classes strongly and emphatically put forward their demand for increasing the maximum age fixed for direct recruitment for a candidate belonging to OBCs. In their view, the maximum age limit for direct recruitment is relaxed by five years in case of members of Scheduled Castes and Scheduled Tribes, whereas the maximum age limit for OBCs for direct recruitment in services is relaxed by three years only, and by not extending the same benefit to OBCs, the Government has adopted a discriminatory approach in this matter.

11.2. The Committee, in this context, considered the reply of the Ministry of Personnel, Public Grievance and Pensions, given in response to a query as to why the relaxations which are available to the members of SCs and STs, have not been extended to the members of OBCs. The Ministry in its reply stated as under :-

“The social, educational and economic conditions of OBCs are not as bad as that of SCs and STs. Therefore, comparison of OBCs with the Scheduled Castes/Scheduled Tribes is not justified. Representation of OBCs in services is still less because reservation for them was introduced as late as in 1993. In due course of time, it would be made up. It is felt that relaxation in age limit or in fee for OBCs, at par with Scheduled Castes/ Scheduled Tribes, is not needed.

11.3. The Committee does not find the reply of the Ministry convincing. In the view of the Committee, the

Ministry's conclusion seems to be founded on a mere theory, than on reality. The Committee, therefore, recommends that the benefits, such as relaxation in the maximum age limit, etc. for direct recruitment, should also be extended to the candidates belonging to OBCs, in the same manner as are available to the candidates belonging to SCs and STs and the clause be amended accordingly.

11.4 Subject to the above, the clause is adopted.

### **CLAUSE - 7**

12. The clause provides for relaxation/reduction in the examination fee and application fee payable for recruitment to a service or post through competitive examination, for the members of the Scheduled Castes and Scheduled Tribes.

12.1. In view of the observation of the Committee in Para 11.3, it recommends that the benefit of reduction in the examination fee and application fee payable for recruitment to a service or post through competitive examination should also be extended to the candidates belonging to OBCs.

12.2. Subject to the above, the clause is adopted.

### **CLAUSE - 8**

13. The clause seeks to provide relaxation and concessions to members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes in qualifications relating to experience and standard of suitability in case of direct recruitment.

13.1. The Committee considered the proviso to sub-clause (2) of clause 8 of the Bill. The effect of the proviso is that if a candidate is found unfit to hold the post he/she shall not be appointed to that post.

13.2. The Committee finds that the proviso has no relevance to sub-clause (2) as the sub-clause seeks to lower the general standard of suitability for direct recruitment in case sufficient number of SCs, STs and OBCs are not available to fill all the vacancies reserved for them. The Committee is of the view that the proviso does not fit in this scheme, as its insertion would render a candidate belonging to these communities unfit to hold the post for which he/she has to be appointed through direct recruitment. In other words, the proviso would defeat the purpose of the proposed provision. The Committee, therefore, recommends that the proviso should be deleted.

13.3. The Clause is adopted as amended.

### **CLAUSE - 13**

14. The clause provides for appointment of Liaison Officers in every Ministry or Department of the Government or in offices under the control of Heads of Departments to ensure that the provisions of the Act or the rules made thereunder or instructions issued by the Government regarding reservation, are not violated in any establishment.

14.1. The Committee notes that the Liaison Officer to be appointed under the provisions of clause 13 has been provided limited powers to exercise. His jurisdiction would be restricted to submitting a report to the concerned Secretary or Head of the Department in case he, during the course of his inspection, finds any case of negligence/

violation or lapse in relation to providing reservation for members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes. The Committee feels that with these limitations, the Liaison Officer may not perform his functions properly, as he would have to deal with diverse grievances of different communities. It would, therefore, be appropriate if, instead of a common Liaison Officer for the three communities, separate Liaison Officers for each of the communities are appointed. In the view of the Committee, this would help them to have better appraisal of the grievances of the community under their functional jurisdiction. The Committee, therefore, recommend that the clause should be amended accordingly.

14.2. Subject to the above, the clause is adopted.

### **CLAUSE 1, ENACTING FORMULA AND TITLE**

15. Clause 1, the Enacting Formula and the Title were adopted with some changes, which were of consequential or drafting nature, namely, the figure “2004” and the words and “Fifty-fifth” to be substituted by the figure “2005” and the words “Fifty-sixth”, respectively.

16. The Committee adopts the following clauses without any changes/amendments:-

- (i) Clause 5 seeking to provide that unreserved vacancies to be open to members of the Scheduled Castes, etc.;
- (ii) Clause 10 seeking to provide for the maximum limit of reservation in a recruitment year;
- (iii) Clause 11 proposing that the appointment for reserved vacancies to be made by candidates from reserved categories;
- (iv) Clause 12 regarding abolition of posts not to affect the number of reserved posts;
- (v) Clause 14 regarding report to be made by every appointing authority;
- (vi) Clause 15 regarding penalty for making false claim;
- (vii) Clause 16 regarding power to give directions;
- (viii) Clause 17 seeking to provide for continuance of the existing office memoranda;
- (ix) Clause 18 regarding central Government power to make rules.

17. In respect of clauses 10, 13 and 15, the Committee has made some general observations based on the sentiments and feelings expressed by various individuals/groups representing interests of the Scheduled Castes, Scheduled Tribes and Other Backward Classes. The Committee’s observations on the above clauses and on some other key issues pertaining to the reservation policy, are given under a separate heading titled ‘Part – II General Observations of the Committee on key issues pertaining to reservation’.

## **CHAPTER – II**

### **GENERAL OBSERVATIONS OF THE COMMITTEE ON KEY ISSUES PERTAINING TO RESERVATION**

#### **Issue : Whether present ceiling of fifty percent reservation be increased?**

18. Clause 10 puts a restriction on the total number of vacancies reserved for members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes in a cadre in a recruitment year, by saying that such reserved

vacancies shall not exceed fifty percent of the total number of vacancies in the cadre. This ceiling, however, will not apply while counting the backlog vacancies which shall be carried forward from the previous year.

18.1. It was argued before the Committee that the present ceiling of fifty percent does not represent the interests of weaker sections or communities, adequately. Parliamentarians belonging to the Other Backward Classes demanded vehemently that the ceiling should be increased in proportion to the size of population as the percentage of OBCs has increased substantially over the years. It was contended that the ceiling fixed for reservation is based on 1971 census and since then considerable changes have taken place in the socio-economic fabric. It was, accordingly, pleaded that to adequately represent the three weaker communities, ceiling should be determined on the basis of data made available by the 2001 census. Another argument was that in some States like, Tamil Nadu, Karnataka and Andhra Pradesh, the maximum limit of reservation has been fixed at more than fifty percent, to cater to the wishes and aspirations of the weaker sections of those States.

18.2. The Committee notes that fifty percent limit is not a fall out of any statutory provision but has been worked out by the Supreme Court in Indira Sahwny's case. Later, this limit found a reference in article 16(4-B) of the Constitution, which was inserted by the Constitution (Eighty-first Amendment) Act, 2000. The Committee, in this context, considered the views expressed by some witnesses that the percentage of reservation quota fixed for different communities should be mentioned in the Bill itself, to reflect the actual representation and to ensure its enforceability in letter and spirit. The Committee has, however, not found the suggestion tenable. The Committee also considered the view of Government on the question whether the limit of 50% should be increased. The Government opined that increasing the limit might be held illegal and unconstitutional. The Committee is of the view that Government should carry out a survey to assess the size of different communities i.e., SCs, STs and OBCs in the total population of the country, make an appraisal of their representation according to their population, and if need be, explore the feasibility of enhancing the limit of fifty percent by way of amending the Constitution suitably.

**Issue : Whether there is a need for a monitoring agency for proper implementation of the provisions regarding reservation?**

19. The Committee was given to understand that the role and powers of the Liaison Officer to be appointed under the provisions of clause 13 of the Bill are limited. It has been contended that under the scheme of the proposed legislation, Liaison Officer will have to submit a report about negligence or lapse in relation to providing reservation for members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes to the Secretaries to Government of India and Heads of the Departments. **It has been viewed that the Liaison Officer himself being a functionary under the control of the higher authorities, including appointing authority of Government, may find some difficulties in discharging his functions fearlessly and impartially. It would, therefore, be appropriate if he is given some more powers.**

20. The Committee, considering the views and suggestions put forward before it, feels that there is a need to make the role of the Liaison Officer more effective and powerful, so to enable him to discharge his functions efficaciously. In fact, Liaison Officer would be more of a coordinating officer, who would be required to carry out an inspection to look into the cases of violation of the provisions of the proposed legislation on the one hand, and submit a report thereon to the Competent Authorities on the other. **The Committee is of the view that for better assessment of enforcement of reservation in appointment and to have first hand information, Liaison Officer should have regular meetings with the representatives of recognized SCs, STs and OBCs Associations.**

21. The Committee feels that in the circumstances narrated above, Liaison Officer has not been given any power to impose penalty or even at least to propose a penal action against the authorities responsible for violation

of the provisions of the Act. Suspicion was raised by many witnesses that in such a situation, effective enforcement of the reservation policy would not be possible. **The Committee endorses the view and impresses upon Government to consider constituting a special monitoring committee, to oversee the overall enforcement of the Act and impose penalties or propose disciplinary action, etc. for contravening the provisions of the Act.**

***Issue :* Whether appointing authority or officer or any employee entrusted with the responsibility to enforce the provisions of the Act should be penalised/punished for violation of the provisions of the Act?**

22. The Committee notes that there has been an overwhelming demand for insertion of adequate penal provisions in the Bill. Clause 15 of the Bill provides punishment for a term of three years or with fine extending to fifty thousand rupees or with both, in case of making a false claim to be a member of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and also in case of issuing a false certificate. Thus, the penal provision governs the two categories of persons, one who makes a false claim and the other, who issues a false certificate. **The clause nowhere mentions anything for penal action against the erring authorities. It has been contended that it would be virtually impossible to meet the objectives of the Bill without being entrusted with adequate and comprehensive penal provisions. The Committee's attention was drawn to the Reservation Act in enforcement in Uttar Pradesh, which contains certain penal provisions.**

22.1. The Committee notes that the Government, when asked to furnish comments on the issue of punitive clause for officers found negligent in implementing the provisions for reservation, has explained the following position :-

“It is expected of every Government servant to maintain at all times absolute integrity and devotion to duty and ensure the same of his subordinates under the CCS (Conduct) Rules. Any deliberate flouting of the provisions of the Act would clearly amount to misconduct within the meaning of the Conduct Rules and the delinquent officials would make themselves liable for disciplinary action under the CCS (CCA) Rules. Further, making such a provision in the Bill will go adversely against the integrity of Government servants who generally discharge their duties assigned to them diligently.”

22.2. The Committee is not satisfied with the reply of the Government. In the view of the Committee, cases of dereliction of duty are not uncommon and it is also a fact that all the erring officials are not brought to book, due to several reasons or lapses in the system. The Committee feels that in the absence of any penal provisions, the purpose and intent behind bringing this legislation would be defeated. It notes that the Bill does not contain any explicit provision to punish or impose penalty on those who derelict their duty of enforcing the provisions of the Act. For example, the Bill is silent on what action would be initiated against the appointing authority or any other officer entrusted with the task of enforcement of the Act who would be found negligent or violating the prescribed rules. In the view of the Committee, this is a serious lacunae, which would render the whole reservation policy redundant. **Also the constitutional obligation to provide adequate representation to members of SCs, STs and OBCs in services under the control of State could only be achieved, if enforcement machinery is strengthened with adequate penal powers. The Committee, therefore, impresses upon Government to consider inserting suitable penal provisions in the Bill almost on the following lines:**

**Any appointing authority or officer or employee entrusted with responsibility to enforce the provisions of this Act, acts in a manner intended to contravene or defeat the purposes of this Act, or in anyway prejudicial to the interest of Scheduled Castes, Scheduled Tribes and Other Backward Classes in the matter of selection, appointment, promotion and such service condition shall on conviction, be punishable with imprisonment which may extend to three years or with fine which may extend to fifty thousand rupees or with both.**

**Issue : Separate Legislation for SCs, STs and OBCs**

23. The Committee, while interacting with Members of Parliament, on behalf of the Scheduled Castes and Scheduled Tribes communities, came across their demand for a separate legislation for members of SCs and STs. They pleaded that history is testimony of the fact that SCs and STs have been subjected to so many discriminations, like untouchability and other social evils from the times immemorial. Hence, their sufferings and grievances and other issues related to them need to be looked differently from the Other Backward Classes.

23.1. On another occasion, the Committee heard views of the Parliamentarians representing Other Backward Classes and sought their opinion on the question of a separate legislation, one, for the SCs and STs and the other for the Other Backward Classes, as demanded by the Parliamentarians belonging to SCs and STs. The Committee, after interacting with the OBCs Members gathered that there was no support in favour of a separate legislation from their side.

23.2. Before arriving at any conclusion on the issue of a separate legislation, community-wise, the Committee finds it useful to take into account certain other facts. The Committee notes that there is a separate Ministry of Tribal Affairs to look after the welfare and other related issues of tribal communities of the country. Likewise, the Ministry of Social Justice is responsible for development and welfare of Scheduled Castes and Other Backward Classes. The Ministry also implements the reservation policy of the Government as prescribed in the standing instructions of the Department of Personnel and Training. Further, there are three separate Commissions, two Constitutional, namely, the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes and one Statutory, namely, the National Commission for Backward Classes (yet to get constitutional powers) to monitor the safeguards provided to these communities and review issues concerning their welfare. Not only this, OBCs are treated differently in some matters from the other two Backward Communities. For example, there is no reservation for OBCs in appointments by promotion and the maximum age limit fixed for direct recruitment to services or posts is increased by five years in case of a candidate belonging to SCs and STs while the maximum age limit is relaxed by three years in case of a candidate belonging to OBCs.

23.3. The Committee appreciates the efforts of the Government in bringing in this legislation by which, administrative instructions governing reservation are intended to put on the statute book for the first time. In view of the Committee, social, educational, geographical, ethnic and economic conditions of SCs, STs and OBCs are different and this diversity has shaped their lives accordingly. Reservation in services may be one tool to ameliorate standard of living of disadvantaged or deprived classes of society but this is not the only way to uplift them to the desired level. Some other issues concerning welfare and development of SCs, STs and OBCs also need to be addressed properly for overall improvement of their conditions. **The Committee, therefore, feels that it would be appropriate if separate legislations are brought for SCs, STs and OBCs instead of one comprehensive law. The Committee, however, raises its concern that if thrust is laid on separate legislation community-wise, there could be an enormous delay in law making process which may persist for months or even for years hampering interests of the weaker sections. The Committee, therefore, impresses upon the Government to consider bringing in separate legislations for SCs, STs and OBCs. The Committee is of the view that it would be a worthwhile exercise to bring in separate legislations simultaneously without any delay.**

**Issue : Whether OBCs should be given reservation in promotions also like SCs and STs?**

24. Various witnesses belonging to Other Backward Classes, during the course of their deposition before the Committee, submitted that OBCs, like members of SCs and STs, should be considered for the benefit of reservation in appointment by promotion to the services or posts under the Central Government. They argued that OBCs' share in the total population of the country had increased over the years and the present reservation policy has not come

upto their expectation in that proportion. At present, reservation to this community is restricted to direct recruitment to the services only.

24.1. The Committee has observed in the first part of the report that Other Backward Classes is a nomenclature which came into existence after the Mandal Commission examined the whole issue, taking into account the socio-economic conditions of these classes. The Constitution does mention about the Other Backward Classes in article 340(10) of the Constitution. Articles 15(4) and 16(4) of the Constitution refer to educationally and socially backward classes, yet, in broader sense, the Constitution covers them in so far as it casts an obligation on the State to ensure adequate representation of backward classes in services.

**24.2. In this background, the Committee notes that the Other Backward Classes have no representation in promotion to the services or posts, though they have a prescribed reservation quota in direct recruitment. The Committee feels that to meet the constitutional obligation to provide adequate representation to these classes, Government should consider extending reservation to the members of Other Backward Classes in promotions also, and bring an amendment to the Constitution, to give effect to this proposal.**

**Issue : Welfare of Minorities**

25. The Committee was informed that five minority communities, namely, Muslims, Sikhs, Christians, Buddhists and Zoroastrians (Parsis) constitute 18% of the total population of the country, as per 2001 census. These communities have, however, remained socially and educationally backward. Though Government has launched some welfare schemes for bringing them at par with the other communities of the society, yet the desired results have not been achieved. The Committee found it necessary to take up the issue of welfare of the minorities, while commenting on the provisions of the Bill.

25.1. The Committee feels that much more is still needed to be done for the welfare of the minority communities to bring them in the national mainstream. Plans or schemes, whatsoever, chalked out for development of the minority communities have not yielded desired results, so far. In fact, these communities also need to be considered for the benefit of reservation so as to treat them at par with the SCs, STs and OBCs. The Committee observes that Government has extended reservation to some classes or castes of Muslims in some States realizing the constitutional mandate to adequately represent each class of backward citizens. Likewise, Government may also identify other categories of the minority communities such as, SCs, STs and backward classes Christians for giving them such benefit as they have suffered a lot for want of any such policy. This, in view of the Committee, would be a step forward in the direction of overall development of weaker or backward classes of the society.

**Issue : Should the Bill after enactment be included in the Ninth Schedule of the Constitution?**

26. The Committee was informed that there have been several litigations in courts involving interpretation of various issues/matters pertaining to the reservation policy of the Government implemented through various administrative orders/instructions issued from time-to-time. It was argued before the Committee that because of these litigations and judicial pronouncements in matters pertaining to reservation, many administrative problems have arisen in implementing the reservation smoothly. In fact, judicial interventions have hampered the process and acted adversely against the spirit behind providing reservation to the weaker communities. It was, therefore, demanded that the Bill, after its enactment, should be included in the Ninth schedule to the Constitution, so as to keep the provisions of the Bill out of courts' intervention.

26.1. The Committee notes that the Ministry of Personnel, Public Grievances and Pensions, in their comments furnished to it, stated that the Act could be placed in the Ninth Schedule by an amendment of the Constitution

only. The Committee impresses upon Government to explore the feasibility of including the Act in the Ninth Schedule, after enactment of the Bill.

## **ADEQUACIES OF REPRESENTATION IN SERVICES**

27. During the course of deliberations on the issue of adequacy of representation of backward classes in services under control of State, the Committee was apprised that many of the castes, races and tribes among the SCs, STs and OBCs have been deprived of the benefit of reservation in services/jobs as such benefit due to variety of reasons has been restricted to certain upper castes among the weaker sections. Exclusion of some castes from the benefit of reservation has pushed them far behind which is violation of the principles of social harmony and social equality as embodied in the constitutional provisions. For example, the Valmiki Majhabi Category despite their large population in Punjab has got scant representation in Government jobs. Not only this, they are also fearing merger with other categories which, in their opinion, would further worsen their living conditions.

27.1 The Committee also came across demand of certain sections of people of Andhra Pradesh for sub-dividing or sub-grouping the castes enumerated in the list of Scheduled Castes on the plea that this sub-division would entitle them to the benefit of reservation in Government jobs.

27.2 The Committee observes that to protect and promote interests of backward classes of society, the Constitution specifically mentions about advancement of any socially and educationally backward classes of citizens or for the SCs and STs. Article 16(4) of the Constitution casts an obligation on the State to identify the group of backward class of citizens which in the opinion of the State is not adequately represented in the service under the State and make reservations in their favour for such appointments. The Committee notes that views/suggestions of people belonging to SCs, STs and OBCs have highlighted the need to make the existing reservation policy more effective and purposeful to full-fill the Constitutional mandate. In a way this infers that the reservation policy has not succeeded in achieving the desired objective. The Committee is of the opinion that possibly a particular sub-caste or group of a homogeneous class may have been enjoying the benefit of reservation and other groups though may be more backward and deserving, may have been deprived of the benefit simply because of their lack of awareness, information or knowledge. On the other hand, it can not also be ruled out that induction of more categories, castes, groups, tribes or classes in the lists of SCs, STc and OBCs has rendered it difficult to implement the reservation policy successfully because fresh entrants in the lists reduce opportunities for availing the benefit under reservation. It would be imperative if Government, curbs induction of new categories and sub castes till the objective of adequate representation for the existing categories is achieved. **The Committee, therefore, impresses upon the Government to make concerted efforts to identify such sub-castes or categories of a homogeneous class who have been deprived of reservation in jobs or services, if possible. The Government may also consider amending the Constitution suitably to this effect.**

28. The Committee has been given to understand that generally, candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes have no information or knowledge of the reservation prescribed for them at the stage of direct recruitment to services or jobs. In fact, people come to know the percentage of seats reserved for SCs, STs and OBCs only when any advertisement for filling up certain posts in Government Departments or Ministries appears in the electronic or print media. The three backward communities together constitute nearly more than 60% of the total population of the country and it is an irony that for such a large size of population, there are no convenient means to get acquainted with the reservation policy. Administrative instructions issued in this regard by the Government are of limited access. The Committee feels that awareness of reservation policy would enable candidates belonging to SCs, STs and OBCs to take maximum advantage of the scheme and it would therefore, be appropriate if a schedule is appended to the statute showing percentage fixed for reservation of SCs, STs and OBCs at national, state and regional levels. The schedule so

appended, should also reflect the lists of the three backward communities each showing sub-castes and groups identified for reservation by the Central and State Governments.

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[1]. Sixteenth Report of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes of Thirteenth Lok Sabha (2001-2002) Page 1

[2]. Mahatma Gandhi and Baba Saheb Ambedkar, Dr. S.N. Busi, Pages 201-203

[3]. Dalit Movement in India and its Leaders : Dr. R.K. Kshirsagar, Page 131, (Para 11)

[4]. Report of the National Commission for Backward Classes, Pages 1-2