

Constitutional Reservation by Government : Modelling Equal Access to All Seats¹

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Abstract

The Constitutional provisions for Reservation aim at protecting the well being and welfare of the scheduled caste, scheduled tribe, other backward classes and economically weaker section of the society. Much has changed over the years and many needs to be changed. The state of affairs of the Reserved Category once created has achieved a place in the society with its merit and effort. The society today values merit over the other socio-economic considerations. Yet the vast divide of resources-socio-economic and political may define social justice, its means and ends. The article proposes to create two categories namely the General and Reserved Category (SC/ST/OBC/EWS) to rank them separately in their given domains for the eligibilities sought and to offer equal opportunities to the two categories given the choice of potential as stronger driver against the predefined merit enumerations. The model proposed accepted the standards of practice and defined eligibilities thereof but questions the selection that may be dependent on the background, resource, socio-economic strata and political affiliations. Merit must stand its test while giving due consideration of reservations.

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I. Introduction

THE WORD “RESERVATION” simply means an arrangement to have something held for one’s use. In India a system of reservation was established during British regime. Indian constitution allows Union government, State and Union Territories to allocate specific percentage of ‘reserved quotas’ or seats in every economic and financial sphere for socially and backward citizens of India.

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1.1 History of Reservation

Ancient caste system due to its rigidity, created a system of discrimination and exclusion, particularly against lower caste. Jyotirao Phule and William Hunter in 1880 began to address the issue of caste based discrimination and proposed solutions, hence laid the foundation for reservation policies. In British Raj, there was a Quota system to favour certain castes and other communities. Between 1881 and 1891 (Bansode, 2021), Chatrapati Shahuji, the Maharaj of the Princely State of Kolhapur, introduced reservation for Non-Brahmin and Backward Classes - free education, availability of hostels to facilitate. Not only this, Maharaj Shahuji ensured that educated people suitably employed and appealed for abolition of un-touchability. These measures in 1902 created 50% reservation for backward communities. In 1918, the Mysore Raja Nalvadi Krishnaraja Wadiyar created a committee to implement reservation for Non-Brahmins in Government Jobs and Education. On 16th September 1921, the first communal government order (G.O. #613) to legislate reservations. Elements of reservation for depressed classes introduced in the Government of India Act 1909 by the Imperial Parliament at Westminster. In 1927, the Madras Presidency provided 44% reservation to Non-Brahmin Hindus, 16% to Brahmins, Muslims, Christians and Anglo Indians and 8% to Scheduled Caste. In June 1932, Prime Minister Ramsay MacDonald made a controversial proposal for depressed classes. Mahatma Gandhi fasted in protest against it but Dr. B.R. Ambedkar favoured it. After negotiations, an agreement was made, known as "*Poona Pact*". In 1942, the "SCs" gained 8.5% reservation in Central Services first time.

After Independence (1947) major initiatives for SCs and STs, after 1980s in favour of OBCs and in 2019 for economically backward classes in general category took place. In 1979, "*Mandal Commission*" was established to assess the situation of the socially and educationally backward classes. The commission report in 1980, recommended that a reserved Quota for OBCs of 27% should apply in services and public sector bodies. In 2006 and in 2019, extension of reservation in educational institutions and 10% reservation for economically weaker section in general category took place. The Supreme Court of India ruled in 1992 that reservation cannot exceed 50%, above this would violate equal access as guaranteed by the constitution. It thus put a cap on reservation. However, State Laws exceed this 50% limit, for example Tamil Nadu (caste-based reservation stands for 69%). On 7th November 2022, Supreme Court of India by 3:2 verdict upheld the validity of 103rd constitutional amendment. This constitutional amendment pushed the total reservation to 59.50% in central institutions. On 1st August 2024, the Supreme Court of India ruled 6:1 in favour of permitting states to create sub-quotas for SC & ST within their reservation schemes. It was also said that the "*creamy layer*" concept that applied to OBCs should apply to SC/ST groups as well.

II. Review of Literature

Reservation policies of similar nature introduced in India, were also implemented in other countries with variations in their implementations and focus. Most of the policies aimed to address historical injustice (Ambagudia, 1997) and promote equality.

We studied reservation policies in different countries to get a global and better perspective of the the same. In the United States, affirmative action policies aimed to increase diversity in higher education and employment, especially for marginalized groups like African Americans. In Canada, employment equity policies aimed to address discrimination and ensure equal opportunities for aboriginal people and minorities. In China, reservation for ethnic minorities and women is present. In Japan, policies were made to support Burakumin, who were considered the outcaste groups in Japan. In New Zealand, affirmative action's for Maoris and Polynesian is present. In South Africa, employment equity policies which addressed disparities in employment were introduced. In South Korea, positive action policies for Chinese and North Korean citizen were introduced. In United Kingdom, the Equality Act 2010 was enacted to equality and to prohibit discrimination in higher education. In Europe, quotas for Swedish speakers in Finland, education quotas in Germany and gender quotas in Norway were introduced. In Nepal, Pakistan, Bangladesh and Srilanka also have policies for reservation. The duration and review mechanism of reservation policies differ. Some are temporary and some have extended periods.

Generally policies aim to ensure adequate representation, provide equal opportunities, and systematically address inequalities. Hence the Question is "*How to have a balance between ensuring equal opportunity and upholding merit-based systems?*". Besides periodic review and refinement in addressing evolving societal needs, experts are of the opinion that skill building is the permanent solution rather than just reservation. Subject of reservation is very vast. "*Divide and rule*" in fact was originally used by the dominating classes of Rome who conquered a large portion of the World and had to find ways and means to maintain their empire and supremacy. In India as stated above reservation were introduced in the last decades of the 19th century. Progressive princely states implemented reservation policies for awakening sections of society. Ibbetson (census commissioner) wrote, "Untouchable are politically not important". It was because of that they were demanding concessions and facilities for their upliftment and were not organized themselves as a political force. Only B.R. Ambedkar and education could make a political difference.

Initially, provision was made for reservation in the constitution for 10 years ending 1960, extended upto 2010, and further extended and so on with no time limit. Reservation in public services and education institutions were created with a view to provide benefit to those who had been denied opportunities in the past. Originally, reservation was provided for the scheduled caste and scheduled tribes. In 1993, it was extended to the backward classes at national level. Women comprise 49-50% of population. There is genuine need for reservation - not only in legislature but also in bureaucracy. At the same time, there is new slogan to abolish reservation because merit and efficiency is in danger.

An important question is "*Have reservations helped in erasing historical injustice in India? (in last 78 years)*". Though historical injustice can never be erased in totality, yet there are some signs of empowerment in the social

environment. The proportion of dalits at the highest levels of the civil services had increased from just 1.6% in 1965 to 11.5% by 2011. It is even more at lower levels compared to their 16% share of the overall population. Constitutional directives, numbers of legislative and executive measures taken by the government are in place. But still remains a huge gap between the human development indicators like mortality rates, employment, education, poverty, etc. There is some evidence of convergence, the disparity is still vast.

At Howard University, President Johnson while addressing the graduating class highlighted that civil right alone cannot remedy discrimination thus, *“you do not wipe away the scars of centuries by saying: now you are free to go where you want, do as you desire and chose the leader you please....., you are free to compete with all the others.....This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity - not just legal equity but human ability - not just freedom but opportunity - not just equality as a fact and as a result”*. President John F Kennedy was the first to utilize the term *“affirmative action”* (means enforcing equal opportunity) in Executive Order 10925 in the year 1961 for ensuring affirmative action by the government contractors in the employment (no discrimination in employees with regard to their race, creed, colour or national origin). Reservation in India is a form of unique caste based affirmative action designed to improve the well-being of backward and underrepresented communities', Caste system is the hard fact of Indian society. The present set of reservation policies in jobs, educational institutions, legislatures and local self governing institutions (Panchayati Raj Institutions) for SCs, STs, OBCs and women, had more than hundred year's history and considered a great achievement. The reservation policies gained ground with various reports submitted by different commissions appointed from time to time.

Presently, reservation stands at 50% (OBC: 27.5%, SCs: 15%, STs: 7.5%) but this varies from state to state. Despite Supreme Court cap of 50% on reservation, there are states exceeding this limit and cases concerned to it are pending in Supreme Court. The claim of eligibility for reserved seats does not exclude the claim for general seat. It is an additional claim obtainable by way of merit and work.

Huge number of castes and vast population covered under these castes pose the risk of some persons enjoying the benefits of reservations at the cost of weaker persons therein. In 1993, UPA government implemented the OBC creamy layer criteria. The creamy layer is the income ceiling separating the well-off OBC candidates from the poor who are eligible for quota benefits. Remember that, creamy layer concept applies only to OBCs and does not apply to SCs and STs at present (₹ 6 lakhs in May 2013).

2.1 Challenges of Reservation

The major yard scale of extending reservation benefits in India is caste rather than wealth or income. Reservation policies are by their very nature discriminatory and exclusive. Reservation is meant to reverse discrimination wherein members of the non-reserved classes are discriminated against in favour of one or more groups. It has become a source of controversy. Right percentage of reservation has always been difficult to decide.

It is critically said that reservation policy, results in appointing less qualified persons to the crucial positions in public institutions by relaxing the standards and thereby negotiating with the efficiency of these institutions. What is important in the whole process is that youth of the unreserved categories are not left in lurch (crimes, terrorism, etc.). In order to correct the legacies of injustice and discrimination to other groups of society, President Bill Clinton (American President on 19th July 1995) stated, “....Affirmative action must not mean.....the unjustified preference of the unqualified over the qualified of any race or gender.....It does not mean....rejection or selection of any employee or student solely on the basis of any race or gender without regard of merit.”

Wherever society fails to prevent discrimination and self governance is not taking place, law and policies resorting needed to step in. It is true, reservation cannot be only and final solution for inequalities. Identification of such sections of society is needed along with development and financial aid. Until and unless suffering of destitute and downtrodden people is minimized/removed, equality among citizens at bare minimum level is achieved; removing of reservation is not possible. At the same time the policy of creamy layer needs to be rationalized and to be implemented in SCs, STs also.

Efficiency, motivation, discipline tenacity of purpose and strong will power to achieve the desired goal lead to a strong nation. Abilities to shoulder responsibilities at each entry point and performance check throughout the career must be given importance for promotions and financial gains. These should be applied equally to all citizens. Otherwise, ill qualified candidates may endanger lives of patients and build faulty infrastructure.

2.2 Demographic Structure at Present

At present, our country has young population with a median age of 28.7 years. Working age group (15-59 years) is significant portion of total population. As a result, India experiences demographic dividend, potentially boosting economic growth. The Urban population is 35% with literacy rate of 74%. It is time that birth rate is declining but still quite high compared to developed nations. There is an increase in life expectancy due to medical achievements. Demographic data is important for planning and implementation of central/ state policies especially those for economic development and general public welfare.

An understanding of Indian Statistics provides that we own

Population	1,408,069,540	(2023)
Density	483.68 people/km	(2023)
Growth Rate	+0.89%	(2023)
Birth Rate	16.15 births/1000 people	(2023)
Death Rate	9.1 deaths/1000 people	(2023)
Life Expectancy	72.03 years	(2023)
Fertility Rate	1.96 children per woman	(2024)
Infant Mortality Rate	22.6 deaths/ 1000 births	(2023)
Net migration rate	0.68 (negative net migration)	
Age Structure	0-14 years	25.68%
	15-64 years	67.49%
	65 and above	6.83%

Higher working age groups mean greater human capital, higher economic growth and improved standard of living. The share of working age groups has grown from 50% (1950) to 65% (2023), a decline in dependency ratio.

In employment we observe that government and public sector will hire job seekers based on reservation percentage from two different categories

- i. Reservation Category (SC, ST, OBC, EWS and other minorities)
- ii. Open Category (General Category, SC, ST, OBCs, EWS & other minorities)

While hiring, major priority is given to reservation category including 33% reservation for women and then after open category will be considered. In 2007, the government of Uttar Pradesh introduced reservation in job promotions. However, citing the Supreme Court decision, the policy was ruled out to be unconstitutional by the Allahabad High Court in 2011. The decision was challenged in the Supreme Court, which upheld it in 2012.

In education allotment of seats in Universities is based on reservation percentage (a) Reservation Category (49.5% of total) and (b) Open Category.

In India, student aids are available for SCs, ST, BCs, and OBCs, Women, Muslims and other minorities. Only about 0.7% of student aid in India is based on merit. The exact percentage varies from State to State.

Institutions of excellence, research institutions, institutions of National and strategic importance have provisions of reservation in admission process for undergraduate and graduate levels. On 27th October 2015, the Supreme Court directed the State and Central government to end the regional quota and to ensure the super-specialty medical courses and kept "unreserved, open and free" from any domicile status effect. On 28th September 2023, the one Hundred and sixth amendment of the constitution of India, allocated 33% of the seats in Lok Sabha and elected legislative assemblies for women. On 21st July 2021, Karnataka implemented the policy to provide one percent reservation for the transgender community in all government services (first time in India). In June 2024, Madras High Court directed Tamil Nadu government to provide 1% horizontal reservations to the transgender community in education and employment. In June 2024, Calcutta High Court ordered West Bengal government to establish 1% quota in public employment.

Reservation on the basis of religion is unconstitutional, yet several state governments allotted reservation to religious minorities or backward classes among religious minorities on the basis of socio-educational backwardness and representation. The one hundred and twenty-fourth Amendment Bill, 2019, provided 10% additional quota for the economically weaker sections amongst unreserved category students. Economically, weaker section will be restricted to people with household income less than 8 lakhs per annum and those who own agricultural land below five acres.

2.3 National Commission Reports

The 13th Annual Report of National Commission for scheduled castes (NCSC) for the year 2021-22, submitted to the President of India on 26.9.2023. NCSC publishes annual reports that review constitutional safeguards for

scheduled castes, evaluate welfare programs and provide recommendations for their socio-economic development and empowerment. Report highlighted the critical issues of crimes and atrocities committed against SC communities. The NCSC reviewed the implementation of various welfare schemes and socio-economic development programs designed for the benefit of SC community throughout the country. Report findings are drawn from a site visits and consultations with central and State government to assess the effectiveness of current policies and programs. Key recommendations of NCSC report focused on strengthening institutional accountability ensuring swift and equitable justice and enhancing socio-economic development and overall empowerment of SC communities. The recommendation are designed to promote and protect social, economic, educational and cultural interest of SC community and mandated by the Constitution of India.

Despite the constitutional mandate, there often is gap between policies and then effective implementation. The main challenge before NCSC is to ensure that the intended benefits reach the targeted population. Generally, lengthy bureaucratic processes and procedural complexities often result in delayed justice. Further, the commission observed that there are issues with institutional accountability and the effective utilization of funds allocated for SC welfare programs. For this NCSC often recommends measures to ensure the effective utilization of funds under various schemes, particularly the scheduled castes subplan (SCSP), to maximize benefits for SC communities.

2.4 National Commission for Scheduled Tribes Report (NCST Report)

NCST, a constitutional body in India that investigates and monitors the rights and development of the scheduled tribes community. It was established by the constitution (89th Amendment) Act 2003. The commission is an authority working for the economic development of scheduled Tribes in India. NCST annual reports have faced significant delays and were tabled in 2023 and 2025. The NCST has recommended and highlighted that the state government should take steps to rehabilitate tribal people displaced by conflicts and development projects. The monitoring of the implementation of schemes and programs designed to benefit ST community needs strict vigilance and effective implementation. It is also observed that there is fraud in getting tribal certificate and genuine tribal individual face lots of difficulty in getting tribal certificate. Further, there are lots of issues related to the status of ST certificates in various states.

NCST emphasized the need for effective implementation of Panchayats (Extension to scheduled Areas) Act (PESA ACT), which grants self governance to local tribal bodies. There is also an emphasis on enhancing the participation of tribal women. A rigorous implementation and expansion of existing educational and economic schemes for tribal's is recommended by NCST committee.

According to the 2011 census, the ST account for 104 million representing 8.6% country's population. The data received under the RTI Act, pointed that the pile of complaints on issue related to atrocities in public places and "service atrocities". NCST was helpless and ineffective

in stopping the eviction of Tribals in the name of development, which deprived them of their basic human rights. The rights of Tribals over natural resources have been reduced over the years.

National Commission for Other Backward Classes (NCBC), the commission for other backward classes (OBCs) in India is the National Commission for Backward classes (NCBC). Objective of NCBC is to investigate and monitor all matters regarding the socio-economic conditions and its development process of socially and educationally backward classes. Accordingly, NCBC advises the government on policy, and makes recommendation for the inclusion or exclusion of communities from the central list of OBCs.

NCBC acts to protect, promote and advance the welfare of the socially and educationally backward classes. Not only this, commission also provides recommendations and advice on matters concerning the welfare and progress of these classes to the government.

The Ministry of Social Justice and Empowerment is responsible ministry for the affairs of backward classes. NCBC holds the mandate at the national level, overseeing the welfare and advancement of these classes across India. Each Indian state can have its own state commissions for backward classes to address issues specific to their respective states. NCBC recommendation measures that should be taken by Union or any state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of backward classes.

Ministry of Minority Affairs was carved out of Ministry of Social Justice and Empowerment on 29th January 2006 to ensure a more focused approach on towards minority community namely Muslim, Christian, Budhist, Sikhs, Parsis and Jain. The reservation was initially provided to Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC). The new quota has been introduced for the Economically Weaker Sections of the Society. There is continuous demand from other sections of the society like the local population, other sects and religions to provide for reservations. The total reservation for SC, ST and OBC was 15%, 7.5% and 27% amounting to 49.5%. The new addition of the Economically Weaker Section who are not covered under the scheme of reservation for SCs, STs, and OBCs, shall block 10% in direct recruitment in civil posts and services in Government of India. This makes the total reservations go upto 59.5% in the direct recruitments.

The Department of Social Justice and Empowerment has the vision to build an inclusive society wherein members of the target groups can lead productive, safe and dignified lives with adequate support for their growth and development. It aims to support and empower its target groups through programs of educational, economic and social development, and rehabilitation wherever necessary (MTA, 2008).

Scheduled Castes are those castes named in the Scheduled Castes Order of the Government of India, promulgated in August 1950. A person is considered to be a member of a Scheduled Caste, if he or she belongs to a caste which, under the Constitution, has been declared to be a Scheduled Caste for the area, for which he or she is a resident.

The term, "Scheduled Castes" was first incorporated into the Government of India Act of 1935. 'Schedule' means a Schedule to the Constitution. 'Scheduled Castes' means such castes, races or tribes or parts of or groups within castes, races, or tribes as are deemed under Article 341 of the Constitution to be the Scheduled Castes for the purposes of the Constitution.

2.5 *Governing Laws*

As per the Annual Report of Department of Social Justice and Empowerment (2023-24)

- i. There are a number of articles included in Part-III of the Constitution which provides fundamental rights to the citizens.
- ii. Articles 14, 15, 16 and 17 provide rights to equality.
- iii. Under the Constitution of India some special provisions are made for the Scheduled Castes. The Article 330 and Article 332 provided for the reservation of seats to appointments, Article 338 has made provision to investigate all matters relating to the safeguards for the Scheduled Castes and Article 46 relates to special care about the educational and economic interest of the Scheduled Castes. The definition of Scheduled Castes is contained in the Articles 366(24).

As per the Constitution, the reservation policy for the SCs has three main components;

- i. Reservation in government appointments,
- ii. Reservation in admission to educational institutions and
- iii. Reservation of seats in the House of People (Lok Sabha) and the Legislative Assemblies of the States

The safeguards provided to Scheduled Castes and Scheduled Tribes are grouped in the following broad heads (a) Social Safeguards; (b) Economic Safeguards; (c) Educational & Cultural Safeguards; (d) Political Safeguards; (e) Service Safeguards.

The Articles 17, 23, 24 and 25(2) (b) of the Constitution enjoins the State to provide social safeguards to Scheduled Castes. Article 23, 24 and 46 form part of the economic safeguards for members of the Scheduled Castes and Scheduled Tribes. Article 15(4) provides for educational and cultural safeguards.

The Article 243D - This article assures the reservation of seats in Panchayats, both for men and women of Scheduled castes and scheduled tribes and also assures the seats of chairpersons in the Panchayats, according to their population in the constituencies. The actual number of seats is to be provided by the state government by a law, but the percentage should approximate the population of these caste groups in the respective constituencies.

The Article 243T - This article makes the similar provision of seats for SC/ST men and women, in the Municipalities.

The Article 330 - It makes provision for Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people, i.e. Lok Sabha. The seats are reserved as per the percentage of their population in the states and Union territories.

The Article 332 - It makes similar provision for SC and ST people, in the Legislative Assemblies of the States.

The Article 16(4) & 16(4)(A) and Article 335 provides for service safeguards for SCs

The Article 338 provides for National Commission for Scheduled Castes. In pursuance of Constitutional provision, the Untouchability (Offences) Act, 1955 (22 of 1955), was enacted and notified on 08.05.1955. Subsequently, it was amended and renamed in the year 1976 as the "Protection of Civil Rights Act, 1955". Rules under this Act, viz, "The Protection of Civil Rights Rules, 1977" were notified in 1977. The Act extends to the whole of India and provides punishment for the practice of un-touchability. It is implemented by the respective State Governments and Union Territory Administrations. Responsibility for implementation of the PCR Act primarily lies with State Governments and their subordinate authorities (police and executive magistrate)

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was enacted when the provisions of the existing laws (such as the Protection of Civil Rights Act, 1955 and Indian Penal Code) were found to be inadequate to check these crimes (denied as 'atrocities' in the Act). The object of the Act is to prevent commission of atrocities against members of the Scheduled Castes and Scheduled Tribes.

III. Reservation Policy in India

In India reservation is provided to the members of the Scheduled Castes (SC), Scheduled Tribes (ST) and other Backward Classes (OBC) at 15%, 7.5% and 27% respectively, in the matter of appointment by direct recruitment to civil posts and civil services on all India basis by open competition (Maheshwari, 1997). In case of appointments to civil posts and civil services on all India basis otherwise than by open competition, reservation is provided to members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes @16.66%, 7.5% and 25.8%, respectively.

Open Competition refers to all recruitments by Union Public Service Commission (UPSC) whether through written examination or by interview or by both. It also includes recruitments made by Staff Selection Commission or any other appointing authority through written competitive examination or tests (but not by interview alone)

Members of OBC that fall in the category of creamy layer shall not get the benefit of reservations. The category in which creamy layer shall fall are constitutional posts; Service Category including Group A/ Class I officers of the All Indian Central and State Service, Group B/ Class II officers of Central and State Services, employees in public sector undertaking; Armed forces including paramilitary forces; Professional class and those engaged in trade and industry; property owners of agriculture holdings, plantations, vacant land and or building in urban areas or urban agglomeration and lastly the income/wealth test.

Reservation is provided at 15% and 7.5% to SC and the ST respectively (a) promotions through limited Departmental Competitive Examination in Group B, C and D (b) in promotion by selection in Group B, C and D and

From Group B to the lowest rung of Group A and (c) in promotion on the basis of Seniority subject to fitness in all Groups i.e. Group A, B, C & D. The promotion policy is applicable to all grades.

The Reservation to Scientific and technical posts is provided for all grades above the lowest grade in Group A 'for conducting research' or for organizing, guiding and directing research'. There is no reservation for the Department of Space & Department of Electronics and recruitment of trainees to the training school of Department of Atomic Energy.

The industrial establishment of the Government of India and the posts and grades in such establishments, whether classified as Group A, B, C and D or not are covered by the scheme of reservation for SC, ST and OBC.

The principle of reservation for SC, ST and OBC is suitably applied to the extent possible to work charged posts and also those required for emergencies like flood relief work, accident restoration and relief, etc.

The reservation policy is not applicable to daily rated staff.

The reservation policy in case of Ad-hoc appointments shall on the basis of their general seniority as per the gradation list, on the principle of seniority-cum-fitness and if they are no adjudged unfit.

The reservation in case of Single Vacancy, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment years. In subsequent years even if there is only one vacancy, it should be treated as "Reserved" against the carried forward reservation form the initial recruitment year and SC/ST candidates should be appointed.

3.1 *Authorities Competent to Issue Caste/Tribe/Community Certificates*

As per the instructions issued from time to time, caste/tribe/communities certificate issued by the following authorities are accepted:

- i. District Magistrate/ Additional District Magistrate/ Collector/ Deputy Commissioner/ Additional Deputy Commissioner/ Deputy Collector/ 1st Class Stipendary Magistrate/ Sub Divisional Magistrate/ Taluka Magistrate/ Executive Magistrate/ Extra Assistant Commissioner
- ii. Chief Presidency Magistrate/ Additional Chief Presidency Magistrate/ Presidency Magistrate
- iii. Revenue Officer not below the rank of Tehsildar
- iv. Sub-Divisional Officer of the area where the candidate not/ or his family normally resides.

3.2 *Constitutional Provision*

The Article 16 (4) provides that "nothing in this Article prevent the State from making any provision for reservation in appointments and posts in favour of any backward class of citizens which, in opinion of the State, is not adequately represented in the services under the State"

The Article 16 (4A) was inserted vide the Constitution (Seventy Seventh Amendment) Act, 1995 with the provision" "nothing in this Article shall prevent the State from making any provision for reservation in matters of

promotion to any class or classes of post in this services under the state in favour of the Scheduled Castes and Scheduled Tribes which, in opinion of the State, are not adequately represented in the services under the State”.

The Article 16 (4A) was further amended in 2001 to substitute the words “in matter of promotion to any class” by words “in matters of promotions, with consequential seniority, to any class” vide the Constitution (Eighty-Fifth Amendment) Act, 2001. This Amendment was made operative retrospectively from 17.06.1995 i.e the date of addition of this Article vide the Constitution (Seventy-Seventh Amendment) Act, 1995.

The Article 16 (4B) inserted vide the Constitution (Eighty-First Amendment) Act, 2000, provides that “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 (4A) as a separate class of vacancies to be filled up in any succeeding years 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”

The Article 335 provides that “claims of the member of the SC and ST shall be taken into consideration, consistent with maintenance of efficiency of administration, in making of appointments to services and posts in connection with the affairs of the Union or of a State”. The following provision was added to this Article by the Constitution (Eighty-second Amendment) Act, 2000. “Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the SC and ST 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 State”.

3.3 Present State of Recruitments

After the completion of 5th iteration of Service Allocation, 890 candidates have been allocated service against 1022 advertised vacancies for CSE-2022 in the following 20 participating services (see Table I)

Table I
20 Participating Services

S. No.	Service	SC	ST	OBC	EWS	UR	Total
1.	IAS	29	13	45	19	75	181
2.	IFS	6	3	11	4	14	38
3.	IPS	31	13	53	20	83	200
4.	IA & AS, Group A	4	2	7	2	12	27
5.	ICAS (Group A)	2	1	4	1	2	10
6.	ICLS (Group A)	2	0	3	3	6	14
7.	IDAS (Group A)	4	2	6	2	10	24
8.	IDES (Group A)	1	1	3	1	5	11
9.	IISJG (Group A)	1	1	3	1	5	11
10.	IPTAFS (Group A)	0	0	1	0	4	5
11.	IPS (Group A)	1	0	2	1	6	10
12.	IRMS (Group A)	22	9	31	8	62	132

(Contd...)

13.	IRPFS (Group A)	0	0	2	0	3	5
14.	IRS (C&IT) (Group A)	6	4	11	4	17	42
15.	IRS(IT) (Group A)	20	10	35	12	53	130
16.	ITS (Group A)	1	0	1	0	1	3
17.	AFHCS (Group B)	1	0	1	0	1	3
18.	DANI,L,D&D&D,NHCS (Group B)	5	1	6	4	15	31
19.	DANI,L,D&D&D,NHPS (Group B)	4	0	0	2	0	6
20.	PCS (Group B)	1	0	0	0	1	2

Note : IA&AS Indian Audit and Accounts Service
 ICAS Indian Civil Accounts Service
 ICLS Indian Corporate Law Service
 IDAS Indian Defence Account Service
 IDES Indian Defence Estates Service
 IISJG Indian Information Service Junior Grade
 IPTAFS Indian Post and Telecommunication Accounts and Finance Service
 IPS Indian Postal Service
 IRMS Indian Railway Management Services
 IRPFS Indian Railway Protection Force Service
 IRS(C&IT) Indian Revenue Service (Custom & Indirect Taxes)
 IRS(IT) Indian Revenue Service (Income Tax)
 ITS Indian Trade Services
 AFHCS Armed Forces Headquarters Civil Services
 DANI,L,D&D,NHCS Delhi, Andaman and Nicobar Islands, Lakshwadeep,
 Daman and Diu and Dadar & Nagar Haveli Civil Service
 DANI,L,D&D&D,NHPS (Group B) Delhi, Andaman and Nicobar Islands,
 Lakshwadeep, Daman and Diu and Dadra & Nagar Haveli Police Service
 PCS Pondicherry Civil Services

Source: Department of Personnel and Training Annual Report 2023-24

3.4 Central, State and Local Body Reservation Policy

The Reservation in Direct Recruitment in Group C and Group D in different states is given in Table II.

Table II
Percentage of Reservation in Direct Recruitment

S.No.	Name of the State/UT	SC	ST	OBC
1	Andhra Pradesh	16	7	27
2	Arunachal Pradesh	1	45	0
3	Assam	7	12	27
4	Bihar	16	1	27
5	Chhattisgarh	12	32	6
6	Goa	2	12	18
7	Gujarat	7	15	27
8	Haryana	19	0	27
9	Himachal Pradesh	25	4	20
10	Jammu & Kashmir	8	11	27
11	Jharkhand	12	26	12
12	Karnataka	16	7	27
13	Kerala	10	1	27
14	Madhya Pradesh	15	20	15
15	Maharashtra	10	9	27
16	Manipur	3	34	13
17	Meghalaya	1	44	5
18	Mizoram	0	45	5
19	Nagaland	0	45	0

(Contd...)

Table II (Continued)

20	Orissa	16	22	12
21	Punjab	29	0	21
22	Rajasthan	17	13	20
23	Sikkim	5	21	24
24	Tamil Nadu	19	1	27
25	Tripura	17	31	2
26	Uttaranchal	18	3	13
27	Uttar Pradesh	21	1	27
28	West Bengal	23	5	22
29	Andaman & Nicobar Islands	0	8	27
30	Chandigarh	18	0	27
31	Dadra & Nagar Haveli	2	43	5
32	Daman & Diu	3	9	27
33	Delhi	15	7.5	27
34	Lakshadweep	0	45	0
35	Pondicherry	16	0	27

Source: No.36011/1/2022-Estt(Res-I), Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, ESTT.(Estt. Reservation-I) dated 28th March 2024

IV. Model for Merit Based Equal Access to All Seats for Reserved Category

A group of children were taken from the formal education and from no education backgrounds at a young age and were asked to drink water from a tap. The students from the formal education queued in a disciplined manner to take their chance of having water. On the other hand the children from no education background pushed each other and found themselves in place to get a chance to drink water. Nobody remained thirsty in the two groups of children. The same two groups were now asked to drink water from a tap much above their height. The children with formal education background assembled quietly and with whispers discussed how to have the tap water. They waited and waited for the teacher to arrive and give them some help. The teacher brought a stool with her and they drank water from the tap, one by one in a disciplined manner. The other group of students found that the tap was higher and one of them offered to bend for the other to climb and have water. They took turns and offered to bend on back or shoulder to raise the other child to have water. Everyone found they were able to drink water from the tap. This time there was no pushing around but a more orderly wait for turns. The same groups of children were then given shapes of triangles, rectangles, circles and other to be recognized and put in their right clogs. The children with formal education recognized the shapes and were able to place them in the clogs. The children with no educational background could not recognize the shapes but placed them in the clogs correctly. Well the two groups of children could not be judged on either of the situations for their intelligence quotient for their backgrounds differed and their responses to the situation were different and yet very insightful. The same story revolves around with the merits of the reserved and unreserved category. The resources differ for the reserved and unreserved category, the learning and background differ. The test or eligibility selections are the same. They offer no insight into the understanding of the candidate's

background to judge his ability to resolve a problem in hand. They do offer insights into trained responses that provide a rank to them through their scores. Reservation provides a quota to those who are from the reserved category but does not give them the right to all seats. Merits may differ with the background and ability may also differ with the background. To be able to solve a given problem or situation is dependent on the training of the person and not his background. Predefined sets of questions for eligibility or eligibility test refer to the majority's view of eligibility and do not provide sufficient enough chances to secure merit for those who do not belong to the majority's view of evaluation. In my model we do not differ to the standards of merit set by the majority but we differ from the ability of equal opportunity provided to the reserved category. We understand that people other than majority or for the disadvantaged to provide for by putting aside a fist of grain may be a feasible option but to give them what they rightfully belongs to them is to give an opportunity to fill that fist from the grain bag. It is in this calling that we offer our model to create two lists for selection of eligible candidates to arrive at merit of the general and reserved category. We hereby also propose the abolition any quotas to reservation as they restrict the general category from seeking an opportunity on those seats. It is rightfully the right of the reserved category to be judged for what and who they are and not on predefined measures of standard that may have been sidelined for them in the course of social frameworks or justice.

4.1 Assumptions of our Model are

The following assumptions were established in the Model Proposed

- i. To create two list of Merit namely for the General Category and other for the Reserved Category
- ii. The Reserved Category may be SC/ST/OBC/ Women/Religious communities/EWS or any other as the state may define for their opportunities and based on the socio-economic set up of each state and the country assessed as per the population Census with working and wealth demographics.
- iii. General Category (GC) may be any of those people not considered under the Reserved Category (RC).
- iv. The same set of eligibility procedures and conditions are offered to the two categories as may be standard for the selection or standard desired for the discipline.
- v. The lists may be acceptable in all selections including army and judiciary for the interpretation of law and defense is merit of understanding justice and defending oneself against any injustice seen and heard from the understanding of one's background and circumstances.
- vi. Any differences in the merits for the standards of specialisation may be completed with Academic Support Programs and training to arrive at standard set of acceptable practices.
- vii. The system of the two list may be abolished once the means and standard deviations of the two list normally distributed and significantly similar in all respects.
- viii. The Reserved category (RC) in which the mean and standard deviation

becomes equal to the mean and standard deviation of the General Category may be then shifted to the General Category.

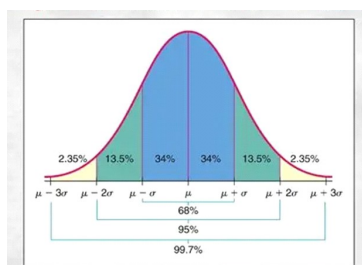
- ix. Honesty and Integrity is adopted in the determining the scores and ranking the students from the list for selection.

4.2 Model

We propose that the test scores for the two lists may be compiled. The mean and standard deviation for the two list may be calculated. The Normal Probability distribution table of Z-Scores may be used for the same. The means and standard deviation of the two list so determined can be used to determine the Cut off as Mean(μ) + Standard Deviation(σ) * Number (1 to 3) as may cover the area required to fill the seats in the respective organization for the two lists- General Category and Reserved Category. Using the cut offs the ranks in the two list may be arranged in the descending order with higher scores given higher rank and lower score given lower ranks. The selection of the candidates from the list as per their ranks in the two list in order of the ranks may be given. The rank in 1 in general category and rank 1 in the reserved category will be selected before the rank 2 in the any category. Also the rank 2 in any category having a higher score will be selected before the rank two in other list. Rank 2 will be selected prior to rank 3 in any category in any list irrespective of their score. The selections will be as per ranks in the two list in case of two ranks the higher scorer would be chosen from any category. The cut off both the categories will always be determined through the number between (1 to 3) multiplied with standard deviation and added to mean. The same formula shall be used for the cut off for the general category and reserved Category.

The Steps involved in the process are:

- i. Develop two lists of the General Category students and Reserved category students.
- ii. The two lists will contain the scores of the General Category and Reserved Category of students.
- iii. Determine the Mean (μ) of the two list of scores.
- iv. Determine the Standard Deviation (σ) of the two list of scores.
- v. Based on the number of total seats available in the institution define the area of the normal probability curve to be considered. For example



Source: Self Formulated

Figure 1
Normal Probability Curve

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- Area to be considered above $\mu + \sigma$ that would mean top 15.85% to be selected
- Or $\mu + 2\sigma$ that would mean top 2.35% to be selected
- Or $\mu + 3\sigma$ that would mean top 0.3% to be selected
- Or $\mu + n\sigma$ where n is the any no that needed to cover the full seats in the top category of the list

This value will be the cut off used in the two list. The same cut off score needs to be applied in the two list.

- vi. The candidates above the cut off score for the two lists which is General Category and Reserved Category will be compiled.
- vii. The candidates would then be ranked in the descending order of the scores in both the list.
- viii. The candidates would be offered the opportunity of selection on the basis of the ranks. The same ranks in the two list have the same opportunity but the one with higher score has higher opportunity than the one with lower score. The rank higher in any of the lists will be first selected over a lower rank irrespective of the score in both the list. The candidates with same score in any list irrespective of the number shall be given the same rank and accordingly the preference over the lower ranks.
- ix. The cut off may be reduced based on number of vacant seats and same procedure may be adopted for selection.
- x. The formula cannot be used with quota system as it unjustified to the General Category. The right to equal opportunity belongs to both the General Category and Reserved Category.

4.3 Testing the Model

We take sample of random numbers for 50 candidates from two list with different mean and standard deviation to understand how the model works. The initial sample is given below in Table III. Here it is assumed that the Reserved Category has lower mean which may or may not be true.

Table III
Random Selection of Scores from Two List -
Reserved Category and General Category

S No.	Reserved Category	General Category
1	52	53
2	37	74
3	82	5
4	69	71
5	98	6
6	33	49
7	50	11
8	27	13
9	81	62
10	66	69
11	74	85
12	30	69
13	59	13
14	67	82
15	60	27
16	60	93
17	6	74
18	63	62

(Contd...)

Table III (Continued)

19	57	99
20	2	71
21	94	36
22	33	30
23	32	35
24	88	94
25	14	99
26	2	78
27	83	56
28	5	60
29	34	44
30	55	57
31	9	82
32	77	23
33	8	64
34	50	49
35	28	74
36	68	76
37	36	9
38	90	11
39	62	13
40	27	25
41	50	69
42	24	72
43	18	10
44	62	24
45	78	3
46	74	32
47	82	23
48	1	59
49	33	95
50	30	60
Mean (μ)	48.4	51
SD (σ)	27.67523021	29.0678306
Cut off Score ($\mu + 1\sigma$)	76.07523021	80.0678306

Source: Self Computed

The Table III provides for mean of Reserved Category as 48.4 and General Category as 51 and Standard Deviation of Reserved Category as 27.68 and General Category as 29.07. The cut off is determined as $\mu + 1\sigma$ which for the Reserved Category is 76.08 and General Category is 80.07.

The list of the candidates selected above the cut off and their ranks is given in Table IV as follows:

SNo.	RC	GC	Ranks (RC)	Ranks(GC)
1	0	0	—	—
2	0	0	—	—
3	82	0	6	—
4	0	0	—	—
5	98	0	1	—
6	0	0	—	—
7	0	0	—	—

(Contd...)

8	0	0	—	—
9	81	0	7	—
10	0	0	—	—
11	0	85	—	5
12	0	0	—	—
13	0	0	—	—
14	0	82	—	6
15	0	0	—	—
16	0	93	—	4
17	0	0	—	—
18	0	0	—	—
19	0	99	—	1
20	0	0	—	—
21	94	0	2	—
22	0	0	—	—
23	0	0	—	—
24	88	94	4	3
25	0	99	—	1
26	0	0	—	—
27	83	0	5	—
28	0	0	—	—
29	0	0	—	—
30	0	0	—	—
31	0	82	—	6
32	77	0	9	—
33	0	0	—	—
34	0	0	—	—
35	0	0	—	—
36	0	0	—	—
37	0	0	—	—
38	90	0	3	—
39	0	0	—	—
40	0	0	—	—
41	0	0	—	—
42	0	0	—	—
43	0	0	—	—
44	0	0	—	—
45	78	0	8	—
46	0	0	—	—
47	82	0	6	—
48	0	0	—	—
49	0	95	—	2
50	0	0	—	—

Note : — Not Available RC Reserved Category GC General Category

Source: Self Computed

The Selected Candidates and their Ranks as per the above list (in Table IV) is given in Table V.

Reserved Category (S No. ; Score)	General Category (S No. ; Score)	Rank
5; 98	19; 99 & 25; 99	1
21; 94	49; 95	2
38; 90	24; 94	3
24; 88	16; 93	4
27; 83	11; 85	5

(Contd...)

Table V (Continued)

3; 82 & 47; 82	14; 82 & 31; 82	6
9; 81		7
45; 78		8
32; 77		9

Source: Self Computed

There are 11 candidates selected for the Reserved category and 8 candidates selected for the General category. The selection is on merit, the merit numbers are close to each other and equal opportunity is provided to both. Out of the 18 candidates the percentage of candidates selected for reserved category is 61.11% and for the General Category is 44.44 %.

Let us try another sample of Scores taken from Random Numbers in Table VI

Table VI
Sample II Random Selection of Scores from Two List -
Reserved Category and General Category

S No.	Reserved Category	General Category
1	20	72
2	74	56
3	94	5
4	22	74
5	93	26
6	45	87
7	44	72
8	16	97
9	4	99
10	32	79
11	3	85
12	62	28
13	61	86
14	89	10
15	17	33
16	49	49
17	70	74
18	15	26
19	29	87
20	4	72
21	91	97
22	23	87
23	50	98
24	70	63
25	64	96
26	49	94
27	0	60
28	95	5
29	90	94
30	42	11
31	4	64
32	49	50
33	78	66
34	12	66
35	77	33

(Contd...)

36	99	52
37	91	74
38	17	50
39	59	49
40	0	98
41	95	26
42	90	46
43	1	65
44	27	17
45	49	43
46	20	89
47	48	77
48	8	26
49	95	13
50	37	37
Mean (μ)	47.46	59.26
SD (σ)	32.60349925	28.74931055
Cut off Score ($\mu + 1\sigma$)	80.06349925	88.00931055

Source: Self Computed

The Mean (μ) of the Reserved Category is 32.60 and mean of General Category is 28.74 and Standard Deviation (σ) of Reserved Category is 80.06 and of the General Category is 88.01. The cut off scores are 80.06 and 88 for Reserved and General Category.

The candidates selected as per the scores and their Ranks are given in Table VII.

Table VII
Selected Candidates Scores and Ranks of Second Sample

SNo.	RC	GC	Ranks (RC)	Ranks(GC)
1	0	0	—	—
2	0	0	—	—
3	94	0	3	—
4	0	0	—	—
5	93	0	4	—
6	0	0	—	—
7	0	0	—	—
8	0	97	—	3
9	0	99	—	1
10	0	0	—	—
11	0	0	—	—
12	0	0	—	—
13	0	0	—	—
14	89	0	7	—
15	0	0	—	—
16	0	0	—	—
17	0	0	—	—
18	0	0	—	—
19	0	0	—	—
20	0	0	—	—
21	91	97	5	3
22	0	0	—	—
23	0	98	—	2
24	0	0	—	—
25	0	96	—	4

(Contd...)

Table VII (Continued)

26	0	94	—	5
27	0	0	—	—
28	95	0	2	—
29	90	94	6	5
30	0	0	—	—
31	0	0	—	—
32	0	0	—	—
33	0	0	—	—
34	0	0	—	—
35	0	0	—	—
36	99	0	1	—
37	91	0	5	—
38	0	0	—	—
39	0	0	—	—
40	0	98	—	2
41	95	0	2	—
42	90	0	6	—
43	0	0	—	—
44	0	0	—	—
45	0	0	—	—
46	0	89	—	6
47	0	0	—	—
48	0	0	—	—
49	95	0	2	—
50	0	0	—	—

Note : — Not Available RC Reserved Category GC General Category

Source: Self Computed

The list of Candidates selected with their scores and Ranks is given in Table VIII

Table VIII
Selected Candidates, Scores and Ranks for 2nd Sample

Reserved Category (S No. ; Score)	General Category (S No. ; Score)	Rank
36; 99	9; 99	1
28; 95 & 41; 95 & 49; 95	23; 98 & 40; 98	2
3; 94	8; 97 & 21; 97	3
5; 93	25; 96	4
21; 91 & 37; 91	26; 94 & 29; 94	5
29; 90 & 42; 90	46; 89	6
14; 89		7

Source: Self Computed

There are a total of 20 candidates selected with 11 candidates from the Reserved category and 9 candidates from the General category. The percentage of selected candidates from Reserved Category is 55% and from general category it is 45%.

The model may be used till the merit in a given institutions do not seek similarity in mean and dispersion levels.

4.4 Limitation of the Model

The following limitations of the Model have been identified

- It may not withhold the defined systematic model of merit higher than perspective and inclusive merit for a nation and society.

- ii. It provides for the tax payer money to be utilized for the welfare of the society through upliftment of the Reserved class rather than subsidizing higher merit defined through system processes.
- iii. It redefines inclusion through consideration of possible merits giving opportunity to define development through people rather than systems.
- iv. It does not question the merit of the eligibility test that affects the selection process.
- v. It does not question the present structure of eligibility models that may not be self sufficient and giving social justice that have deepen the gap between income inequalities.

V. Conclusion

Reservation has both positive and negative spillover effects. This has given chance to historically oppressed communities for education, employment, resource distribution and social acceptance. Though, there is reduction in the gap between privileged and depressed sections of societies. This has led to reduction in percentage of people below poverty line. Thus, reduction in social inequalities and promoting inclusive growth can be achieved through these policies in Indian Society. The model proposed accepted the standards of practice and defined eligibilities thereof but questions the selection that may be dependent on the background, resource, socio-economic strata and political affiliations. Merit must stand its test while giving due consideration of reservations (Agarwal, Agarwal, Agarwal and Agarwal, 2017).

Based on our find the following suggestions are there

- i. Reservation benefits should flow to the vast majority of underprivileged children from historically deprived and oppressed castes, not to a few privileged children with caste tag.
- ii. High Income families should not get reservation benefits
- iii. The process of reservation must filter the truly economically deprived individuals and bring them all to justice.
- iv. Change in education system at grass root level to make acceptance a means of achieving social justice (Agarwal and Agarwal, 2017; 2018).
- v. There is a need to develop models that compete the growth of individual to their potentials over their resource endowments that may be defined through their ownership of capital and social endowments. The need to identify how the society continues to define standard of practice as a privilege and not in achievement of justice may be sought through this model. (Agarwal, Agarwal, Agarwal and Agarwal, 2017)

India marching into the next decade is strong, confident and having robust engines of Growth (Agarwal and Agarwal, 2023). It now with due diligence and profound structural framework to be provided by government, regulators and the leaders of India, which can convert omnipotent markets to yield growth momentum to jobs (employment), reduction in in-equalities of income, reduction in gender disparities (work/ pay) and bring Indians out of the nexus of poverty as we say in Chandragupta's period (350 BCE; Chanakya, 2000) and India's historical periods as the Golden Bird. The biggest security to labour is his manhours and its credits that he encashes over his lifetime. The exchange provides him with the opportunity to use these credits at his will with information and knowledge at the core along with technology of artificial intelligence, data and machine learning to create efficient markets through enhanced Human Capital (Agarwal and Agarwal, 2024).

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