CHAPTER VII
RESERVATION POLICY IN INDIA

Caste is the all-pervasive feature of Indian society. Under this system the Brahmin occupied top of the hierarchy whereas the former untouchable occupied the lowest position in the society. The ex-untouchable known as scheduled caste are the lowest ranked not only in term of social position but also in term of economy, education and so on. Apart from the scheduled castes (SCs). The other backward castes or other backward classes (OBCs) also occupy the low position in the society. Another degraded community of Indian society which is considered as most deprived – economically, educationally etc. is the scheduled tribes (STs).

In 1932, the depressed class led by Ambedkar demanded for separate electorate like that of Muslims, and other minorities. Prime minister of British Ramsay Macdonald also conceded the award to the depressed classes. But to save the life of Gandhiji who had began a fast into death at the Yeravadh prison of Poona, against the communal award to depressed classes, Ambedkar and other depressed class leaders agreed to modify the award. As a result poona pact was signed. Under this agreement instead of separate electorates, reservation of seats were provided.

In fact, as as result of the non-Brahmin movement, the Madras Government had granted certain quotas for different communities in 1927. Later on quota for OBCs and SCs as increased by a government order 1947. However, this order, known as the Cmmunal G.O., was truck down by the Supreme Court in 1950. Periyar E.V. Ramaswamy and his party, the Dravida Kazhagam, launched an agitation against the quashing of the Communal G.O. as it affected the prospects of the backward classes. The agitation spread throughout Tamil Nadu. It was so “severe and persistent, that the Government of India under the prime ministeriship of Jawaharlal Nehru, within two month’s of the supreme court’s
decision, moved the first amendment to the constitution (Venkataswamy 1986: 21). The amendment provided for, inter alia, the powers of the state to make special provisions for the advancement of the socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. A new clause—clause (4), was incorporated in article 15. The Madras Government then passed an order in 1951 providing reservations to the backward classes and the SCs (Shah 1990: 348).

Tamil Nadu Government is known for making it controversial issue on sensitive issue like reservation policy. It had appointed a Commission, the Ambasankar Commission. To look into the problems faced by the backward classes. The commission also submitted a report to the government which was neither published nor accepted possibility because it reduces the percentage of reservation for backward classes and also the list of backward classes to one-third (Manickavasagam and Alagappan 1998: 823).

After independence, the reservation policy became more explicit and clear as it had support of Indian constitution. Before going further, the concept of SC, ST and OBC is required to be stated as these communities are the prime movers and beneficiaries of reservation policy.

**A: Concepts of SC, ST, and OBC:**

**SC:** The term “scheduled caste” was coined by the Simon Commission in 1927. During the colonial period, the SCs were addressed by various terms. Ambedkar termed them as depressed class – referred to those classes or categories of person who were poor and exploited, and socially and ritually degraded whereas Gandhiji called them as Harijans- the children of god. But since the enactment of the Government of India Act, 1935, they have been generally referred to as “scheduled castes”. They are also referred to as “Dalits”.

After independence, the constitution of India made a provision (Article 341) specifying the social groups which were to be treated as SCs by the
Government of India and States. As there is no definition of scheduled castes in constitution, according to article 341(2), “The President may, with respect to any state or union territory, after consultation with the governor, specify the castes, races, or tribes which shall for the purposes of the constitution be deemed to be SCs in relation to that state or union territory”.

The President of India passes orders from time to time specifying the names of SCs in the country. Earlier, these groups were classified on ritual basis, but now the criteria adopted for the inclusion in the SCs list are social, economic and educational backwardness, arising out of the stigma of untouchability. However, a person claiming to be SC should profess either the Hindu or the Sikh or the Buddhist religion (Muthuswamy and Brinda 2002 : 1).

ST : The term ‘tribe’ has never been defined with any scientific precision. Of course, some superficial and empirical characteristics are attributed to the term, namely homogeneity, isolation and non-assimilation, territorial integrity, consciousness of unique identity, animism (now defunct), but religion all pervasive, equity, multifunctionality of kinship relations, segmentary nature of the socio-economic units, frequent cooperation for common goals etc. However, deeper studies pointed out that defining a tribe with such characteristics in the Indian context is particularly difficult, given the high degree of social and ethnic diversity that exists in the country and due to frequent interaction between tribal and non-tribal (Pathy 1999; Kosambi 1963 : 49 etc.).

It is difficult to list the ethnic features that are common to all Indian tribes since India’s tribal world exhibits a high degree of diversity. After independence, however, the Commission for Schedule Castes and Scheduled Tribes listed common features which tribes shared among themselves. These were (i) Tribes live away from the civilised world in the inaccessible part laying in the forest hills; (ii) Tribes belong to one of the three stocks – Negrito, Australoid or Mangoliod; (iii) The members of a tribe speak the common dialect; (iv) Tribe
practice primitive religion known as animism in which they worship ghosts and spirits; (v) Tribe follow primitive occupations such as hunting and food gathering; (vi) Tribes are largely meat eaters; (vii) Tribes are pleasure seekers – they are fond of food and drinks (SC/ST Commission Report 1952).

However, not all tribes in India share the above features. In fact it is extremely difficult to find a tribe with all above features. There are significant social and cultural difference exist among the tribal people in India. Thus it is difficult to specify the exact features of a tribal society.

After independence, the constitution of India made a provision (Article 342) specifying the social groups which were to be treated as scheduled tribes (STs) for official purpose. According to article 342 "The President may, with respect to any state or union territory and where it is a state, after consultation with the governor, by public notification, specify the tribes or tribal communities or parts of, or groups within tribes or tribal communities which shall for the purpose of this constitution, be deemed to be STs in relation to that state or union territory”.

Unlike SC “a person of the scheduled tribe may profess any religion (Muthuswamy and Brinda 2002: 1). In 1971, the list of scheduled tribe contained 527 names. However, within the tribe a further distinction was made during the fifth five year plan. Those STs which were educationally and socially more backward and nearly isolated, surviving at pre-agricultural level, and had a declining or nearly constant population, were placed separately in a list of primitive tribes. There are 75 such communities in India. Some examples are Jarwa, Onge, Great Andamanese and Sentinel of Andaman Island.
A person not belonging to SC/ST by birth will not be deemed to be a member of SC/ST by virtue of marriage with a person belonging to SC/ST. Similarly, a person belonging to SC/ST by birth will continue to belong to that category even after marriage with a person not belonging to SC/ST. If an SC person converted to a religion other than Hinduism / Sikhism / Buddhism reconverts himself back to these religions, he will be deemed to have reverted to his original SC status, if he is accepted by the member of that particular caste as one among the (Muthuswamy and Brinda 2002 : 1).

**OBC**: The term “backward classes”, as originally used around 1919 by political leaders, referred to a section of population which was backward in a socio-economic sense. It did not limit itself to the matrix of caste. The term “Backward classes” encompassed the depressed classes, the aboriginal tribes and Other Backwards Classes (OBCs).

Even the constitution is not clear about the OBCs. While the constitution clearly says that special provisions must be made for the SCs and STs, it does not mention the OBCs. It only refers to “social and educationally backward classes of citizens”, in addition to the scheduled castes and scheduled tribes”. In clause 4 of article 15 regarding the prohibition of discrimination, it says that “Nothing in this article or clause 2 of article 29 shall prevent the state from making any special provision for the advancement of any social and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes”. Thus the state is permitted to make provision for the following: socially and educationally backward classes of citizens; scheduled castes; and scheduled tribes.

Again in article 16 which provides for equality of opportunity in matters of public employment, the clause 4 says “nothing in this article shall prevent
Thus the Centre finally decided in 1961 not to draw up any list for OBCs and advised the states to draw up their own lists using economic rather than caste criteria. A number of states initiated process for improving the conditions of backward classes. The government of Bihar introduced the policy of job reservation for 128 backward castes and communities in 1978. It fixed an income ceiling of Rs. 12000 per annum per family as the qualifying criteria. Earlier in 1972, a backward classes commission appointed by Karnataka Government with L.G. Havanur as chairman, however, had rejected the criteria of income and occupation and prepared list of backward classes based on the criteria of caste and economic standing.

Before the union government implemented the Mandal Commission recommendations, there were eight states which had made reservations for the backward classes: Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Kerala, Maharastra Tamil Nadu and Utter Pradesh. Despite instruction from the Centre for economic criteria, most of states however, decided to adopt caste as their basic criteria for drawing the list of backward classes.

The judiciary has also been frequently called upon the deliberate on the issue of the identification of backward classes. In the Balaji Vs. State of Mysore case 1963, the Supreme Court rejected the specification of backward classes on the basis of caste, as had been done by the Mysore Government. The court held the view that though the caste of a group may be relevant in identifying its backward class status the importance of caste should not be exaggerated. It felt that caste was not synonymous with class. However, in the Rajindran case 1968, the judiciary was of the view that “a caste is also a class of citizens”. Again in the
periakaruppan case 1973, it said that ‘a caste has always been recognised as a class’.

In 1978, the Government of India appointed the second backward classes commission under the chairperson of B.P. Mandal. The commission submitted its report in 1980 observed that backwardness is both social and educational. Caste is also a class of people. In case a caste as a whole is found socially and educationally backward, reservation for the entire caste can be allowed. The commission, relying on the 1937 census figure of caste determined that OBCs were 52 percent of the total population. It took into account both Hindu and non-Hindu population in arriving at the fiture of OBCs in India. The commission prepared state-wise lists of OBCs comprising of 3742 castes and communities.

The commission adopted 11 criteria’s in all to determine the backwardness of a specific caste / class – four social criteria, three educational criteria and four economic criteria. The weightage was given to each indicator: the social indicators were given a weightage of three points, the educational indicators two points and the economic indicators were accorded one point. The total value was 22 points. Caste which secured the score of 50 percent, that is 11 points or above, were listed as “backward”.

Some of the major recommendations of the commission were (i) Reservation of 27 percent jobs for OBCs in Central government institutions and also in educational institutions; (ii) 27 percent reservation for promotion at all levels; (iii) Carry over period of three years for unfilled reserved quota; and (iv) Age relaxation for OBCs should be similar to that of the SCs and STs.
In August 1990, after it was put in cold storage for 10 years, V.P. Singh Government declared reservation of 27 percent seats in government services on the basis of this report. However, this was challenged as unconstitutional.

A nine-judge bench of the Supreme Court has in Indira Sawhney Vs. Union of India’s case (Popularly known as the Mandal Commission case) laid down the following important points which summarise the law on the issue of reservations in government employment.

1. Article 16(4) is exhaustive of the provisions that can be made favour of the backward classes in the matter of employment.
   1. Backward classes of citizens is not defined in the constitution. There is an integral connection between caste, occupation, poverty and social backwardness. In the Indian context, lower castes are treated as backwards. A caste may be itself constitute a class.
   2. The backward classes can be identified in Hindu society with reference to castes along with other criteria such as traditional occupation, poverty, place of residence, lack of education etc. and in communities where caste is not recognised the rest of the criteria would apply.
   3. The backwardness contemplated by Art 16(4) is mainly social. It need not be both social and educational.
   4. Means-test signifies imposition of income limit for the purpose of excluding persons from the backward classes. Those whose income is above that limit are referred to as the ‘Creamy Layer’. Income or extent of property can be taken as a measure of social advancement and on that basis the ‘creamy layer’ of a given caste can be excluded.
   5. For getting reservations a class must be backward and should not be adequately represented in the service under the state.
6. The reservation contemplated in Art 16(4) should not exceed 50 percent.
7. The rule of 50 percent should be applied to each year. It can not be related to the total strength of the class, service or cadre etc.
8. Reservation of posts under Art. 16(4) is confined to initial appointment only and can not extend to providing reservation is the matter of promotion. If a reservation in promotion exists it shall continue for 5 year (16 Nov. 1997). By the constitution (77th Amendment) act, 1995 this limitation of the time has been removed by inserting 11(4A) to enable to continue reservation in promotion for the SC and ST.
9. Identification of backward classes is subject to judicial review. It is to be noted that many states are attempting to surpass the 50 percent limit. All those cases are under the consideration of the Supreme Court (Basu 1997 : 93).

It is evident that the Supreme Court has favoured the combination of social and economic criteria .In pursuance of the directors of the Supreme Court, the Central Government set up an expert committee which, among other things, was requested to prepare a list of those castes and communities which figure in the list of backward classes prepared by the state governments, as well as in the lists contained in the Mandal Commission report. In September 1993, the first phase lists of backward classes for 14 states were released. On this basis, the reservation for backward clauses took effect from September 8 1993. The lists contained names of OBCs belonging to both the Hindu and the non-Hindu communities. The National Commission for Backward Classes (NCBC) was established in Aug. 1993 in accordance with the SC direction.
B: Reservation and constitution:

The constitution provides certain special production to the SCs and STs to protect their educational and economic interest. These provisions are known as protective discrimination. They are related to: (I) Political reservations (articles 330 and 332); (ii) Reservation of seats in educational institutions article 15(4), 29, 46; (iii) Reservation of government jobs article 16(4), 320(4), 333 and 335; (iv) The constitution provides equality before law and positive legal measures against the disabilities based on birth Article 15(2); 29(2), 35, 244 and 371(a). By the various acts of parliament, the provisions received legal status.

According to article 330, reservation of seats for scheduled castes and scheduled tribes, except the scheduled tribes of the tribal areas of Assam and scheduled tribes of the autonomous districts of Assam, is provided in the Lok Sabha. Similarly, as per article 332, seats shall also be reserved for the scheduled castes and scheduled tribes, except the scheduled tribes of the tribal areas of Assam, in the legislative Assembly of every state. Initially the reservation were for 10 years but they have been periodically extended by parliament. There are 78 and 33 seats in parliament and 540 and 282 in the state assembly for the SC and ST respectively.

Despite such reservation, however, the seats are generally grabbed by so-called privileged of SC/ST community, and very few poor SC/ST people have been elected through the reservation (Shah 1975; Shah 1990 : 350). There may be two important reasons for this. First, the political parties generally distribute tickets to well off persons of reserved community with some support of non-reserved section's vote along with of course, the reserved community's vote, as
these candidates have better chance of winning the seats. Second, there is lack of strong political mobilisation and social movement from within the reserved community except in few pockets of the country.

Because the so-called well-off section politician of SC/ST are controlled and guided by their respective political parties whose vested interest often clash with the interest of the Dalits, the SC/ST elected politicians do not give due attention to the welfare of their community. Besides, some selfish leaders of Dalit community hesitate to do the welfare of their community for maintaining their own hegemony. However, in some cases, effecting common interest of SC/ST, the Dalit leaders across the party do take the united stand despite their ideological variations. The other section’s leaders also, on the other hand, do not take tough decision against the SC/ST community due to their sizable members present in the parliament and the assembly. Thus, though so far Dalit leaders haven’t performed satisfactorily for the welfare of their community for obvious reason which of course could have been avoided, their strong presence in the house has been working as bulwark against any drastic steps of government effecting the Dalit community. However, the mute silence of Dalit leaders on the ongoing privatisation or liberalisation policy in which there is no reservation provided by government so far, can well put big question mark on their becoming bulwark too.

In the field of education also reservation has been provided to the weaker sections though the constitutional provisions. Clause 4 of article 15 allowed the state for making any special provision for the advancement of any social and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes. Article 29 protect the cultural and educational interest of minorities. The article 46 instruct the state for promotion of educational and economic interest of scheduled caste, scheduled tribes and other weaker sections.
As per article 15(4) and 29, the Union Ministry of education has issued instruction to all the state governments / union territories as well as the universities to reserve 20 percent of seats in all educational and technical institutions for SC and ST students. Several state governments have, in course of time made similar provisions for students belonging to OBCs. Qualifications for their admission are relaxed. Though most institutions implement these instructions of the government regarding the reserved quota, a few institutions still defy them completely. Despite relaxation in the matter of qualifications, the quota reserved for the deprived communities is not yet fully filled up in most institutions. Out of the total number of 92,775 student enrolled in under-graduate medical course in 1977-78 in all states, only 7613 and 1731, students that is 8.4 percent and 1.9 percent belonged to SCs and STs respectively (Shah 1990 : 361). Several other observations by scholars have supported shah’s contention of poor representation of SC/St student in educational institutions.

There are many reasons for the poor presence of SC/ST students in educational institutions especially in higher education. The poverty is one of the most important factors. Higher educational institutions are generally located in cities in which cost of living is quite high. The poor Dalits can not afford to spend for such education. Though some financial provisions have been provided to them by the government, those are not sufficient for surviving in the city. Moreover. Some socio-psychological harassment they face even from their colleague and teachers. Besides, educational institutions do not take active interest for their progress; often it discourage them. Some institutions even defy the reserved quota provided through the constitution but the root cause starts from the childhood itself. Unsupportive educational and home climate demoralise the Dalit students and lead to the cumulative indifferences as each year he spends in school. Thus he has left with only one option- dropout. Hence, the reasonable steps
should be taken from childhood itself as several psychologists have observed this process (Rath X; Tripathy and Pandey X etc.).

According to article 16(4), the state may reserve any post or appointment in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services. Under article 16(4), 320(4) and 333 of the constitution, 15 percent and 7.5 percent of the position are reserved at all levels in the government and public sector for SCs and STs. After implementation of Mandal Commission by the government, with effect from September 8, 1993, 27 percent jobs are also reserved for OBCs.

If we go back to history, then it is known that, on the attainment of independence, instructions were issued on September 21, 1947 providing reservation of 12.5 percent of vacancies for SCs in respect of recruitment made by open competition. It is 16 2/3 percent for recruitment than by open competition. In 1950, the President, by promulgating the ordinance, identified the SCs and STs. Thus in 1950, 5 percent vacancies were reserved for STs, apart from the above percentage fixed for SCs. The 1951 census showed that the percentage of SCs in the total population was 15 percent and that of STs was 6.3 percent. The 1961 census revealed that the proportion of SC and ST population stood at 14 percent and 6.80 percent respectively. Accordingly, the percentage of reservation for SCs and STs was increased from 12.5 percent and 5 percent to 15 percent and 7.5 percent respectively on March 25, 1970 (Manickvasagam and Alagappan 1998 : 823). The present percentage for SCs, STs and OBCs will be stated a separate section on this chapter.

Though some progress in obtaining government jobs has been made, the deprived communities still a long way to go before they can occupy all the
positions reserved for them at the upper echelons of the administration. The position of SC.ST employees at various levels in the central government between 1959 to 1979 shows that only 1.18 percent of the positions of class I of the central government were occupied by SCs in 1959. Their proportion has increased to 4.75 by 1979. The position of STs has increased from 0.16 percent to 0.94 percent during such period. However, they occupy many lower level positions. A similar situation prevails in the state government and public sectors. They have very little scope in the private sectors as there is no reservation for them. More observations/studies of non-implementation of reserved quota have been reported by several studies (SC/ST Commission Report 1985-86; Singh 1979 : 136; Oommen 1978; Gandhi 1982; Sharma 1984; SC/ST Commission Report 1983-84 : 61-77; Hantal 1996: 2001; etc).

The reserved positions go unfilled not necessarily because SC/ST candidates with minimum qualifications are not available. More often than not, it is the prejudices of the recruiting authority against the candidates that operates against their interest. They hesitate, and if possible delay the implementation of the government orders regarding recruitment or promotion of SC/STs. Later, many of the positions are de-reserved on one pretext or another. Information regarding the number of persons belonging to the OBCs occupying positions in the state government is not available. However, according to the data compiled by the Second Backward Classes Commission 1980, 12.55 positions in the central government are occupied by the OBCs (Shah 1990 : 362).

Reservation has certainly absorbed the educated SCs and STs in government jobs. But this is only to some extent. Even very sincere implementation of the reservation policy will not be able to ensure the absorption of all the qualified persons from these communities. The reason is simple. The
present economy is unable to provide employment to all the qualified persons. Educated unemployment is rising since 1950. There were 3.29 lakh educated unemployed persons on the Live Register in 1951. Their number has increased to 200.45 lakhs in 1981. Similarly, the number of educated unemployed SC and ST persons is far more than the available reserved jobs for them. As many as 16,61,081 SC and 4,08,123 ST candidates were on the live register seeking employment at the end of 1979 (ibid : 362-63). A few of SC/ST have started business and fewer have become entrepreneurs. The SC and ST entrepreneurs established 4,620 and 1,423 small industrial units by the end of 1979. Among OBCs the number of entrepreneur is large (Ibid).

Reservation and Judicial Review:

As already stated reservation has been provided on the basis of article 16(4). According to article 335, ‘the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration in the matter of appointment to services and posts under the union and the states, as far as may be consistent with the maintenance of efficiency of administration’. The Supreme Court, in General Manager vs. Rangachari’s case in 1962 held that while article 16(4) is apparently without any limitation upon the power of reservation conferral by it, it has to be read together with article 335 which enjoins that in taking into consideration the claims of the members of the schedule castes and scheduled tribes in the making of appointments in connections with the affairs of the union or a state, the policy of the state should be consistent with the maintenance of efficiency of administration. The result is that as per Balaji Vs. State of Mysore case in 1963, there can be no doubt that the constitution makers assumed that while making adequate reservation under article 16(4) care would be taken not to provide unreasonable, excessive or extravagant reservation; therefore, like the
special provision improperly made under article 15(4), reservation made under article 16(4) beyond the permissible and legitimate limit would be liable to be challenged as a fraud on the constitution (as quoted Basu 1997 : 92).

As already stated in Indira Sawhney's case 1992 known as Mandal Commission case) the Supreme Court had ordered that if a reservation in promotion exists it shall continue for 5 years. However, by the constitution (77th Amendment) act, 1995, this limitation of time has been removed by inserting Clause 4A to enable it to continue reservation in promotion for the SC and ST.

The Supreme Court in its judgement dated October, 1996 in the case of S.Vinod Kumar vs. Union of India however, held that such relaxations in matters of reservation in promotion were not permissible under article 16(4) of the constitution in view of the command contained in article 335 of the constitution. In order to implement the judgements of the supreme court such relaxations had to be withdrawn with effect from July 22, 1997.

Prior to August 29, 1997 the vacancies reserved for the scheduled castes (SCs) and the scheduled tribes (STs) which could not be filled up by direct recruitment on amount of non-availability of the candidates belonging to the SCs or the STs were treated as 'backlog vacancies'. These vacancies were treated as distinct group and were excluded from the ceiling of fifty percent reservation. The Supreme Court of India in its judgement in Indira Sawhney Vs. Union of India held that the number of vacancies to be filled up on the basis of reservations in a year including carried forward reservations in no case exceed the limit of fifty percent. As total reservations in a year for the SCs, STs and the OBCs combined together had already reached 49.5 percent and the total number of vacancies to be filled up in a year could not exceed 50 percent it became almost impossible to fill
the "backlog vacancies" and to hold special recruitment drives. Therefore, to implement the judgement of the Supreme Court, an Official Memorandum dated August 29, 1997 was issued to provide that the fifty percent limit shall imply to current as well as backlog vacancies and for discontinuation of the special recruitment drive.

Counter Forces to Supreme Court's decision:

As already stated that to implement the judgement of the Supreme Court, an Official Memorandum, dated Aug 29, 1997 was issued to provide that the fifty percent limit shall imply to current as well as backlog vacancies and for discontinuation of the special recruitment drive.

Due to the adverse effects of the aforesaid order dated August 29, 1997, to the reserved category, various organisations including the MPs and MLAs sent their representation to the central government for protecting the interests of the SCs and STs. The government, after considering various representations, reviewed the position and decided to make amendment in the constitution so that the unfilled vacancies of a year, which were reserved for being filled up in that year in accordance with any provision for reservation made under clause(4) or clause(4a) of article 16 of the constitution, shall be considered as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they were being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year. This constitution (Eighty first amendment) act, 2000 would enable the state to restore the position as was prevalent before Aug, 29, 1997.
Similarly, in order to implement the judgements of the Supreme Court, dated October 1, 1998, in the case of S.Vinod Kumar Vs. Union of India, the facility of relaxation of qualifying marks and standards of evaluation in matters reservation in promotion had to be withdrawn with effect from July 22, 1997, by the Government Order.

In view of the adverse effect of such order issued in July on the interests of SCs and STs, representations were received by the government from several quarters including MPs. The government reviewed the position and decided to amend the constitution with a view to restoring the relaxation which were withdrawn vide. instruction issued by the Department of Personnel and Training, on July 22, 1997. Provisions were made accordingly in the constitution (Eighty-Second Amendment) Act, 2000.

The above amendments enable the government to restore the protective measures to Dalits. But then, in the context of privatisation the reservation has started losing its significance. Secondly, the poor implementation process has restricted the Dalits from availing of the reservation facilities. In following section the present state of reservation in appointment for central government services is stated.

**C : Reservations and Concessions in Appointment.**

The present percentage fixed for reservation in direct recruitment for SCs and STs is shown in table 1.

*Table 1.*
**Reservations in Direct Recruitment.**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Method of Recruitment</th>
<th>Percentage of reservation</th>
<th>Roster</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Direct recruitment on all India basis by open competition.</td>
<td>15</td>
<td>200 point post-based roster</td>
</tr>
<tr>
<td>2.</td>
<td>Organisation receiving candidates from a single Common all India List prepared by SSC</td>
<td>15</td>
<td>200 point post-based roster</td>
</tr>
<tr>
<td>3.</td>
<td>Direct recruitment on all India basis otherwise than by open competition</td>
<td>16 2/3</td>
<td>120 point post-based roster</td>
</tr>
<tr>
<td>4.</td>
<td>Local recruitment at Delhi</td>
<td>Same as 1 and 3</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Direct recruitment of group “C” &amp; “D” posts normally attracting candidates from a locality or a region</td>
<td>For S.No. 4,5 and 6 percentage applicable to the respective states</td>
<td>The present 100 point vacancy based roster should be suitably revised as post based</td>
</tr>
<tr>
<td>6.</td>
<td>Organisations receiving candidates from SSC on the basis of centre-linked zonal basis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Organisation spreading into more than one State / UT (The roster will be drawn up with the help of Deptt. Of Per. 6 Trg, taking into</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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account in such areas.


**Extent of Application :**

The reservation is applicable to (a) all services / posts in the non-industrial as well as in the industrial establishments under the control of the government of India; (b) work-charged posts except those required for emergencies like flood/accident, relief etc., percent of reservation will be as for Groups “C” & “D”; (c) daily-rated staff, though reservation orders do not apply in toto, SC/ST candidates will be recruited in such a way that their total representation does not fall below the prescribed percentage; (d) casual workers appointed against regular posts. Short fall will be adjusted by appointment of SC/ST candidates from outside (Muthuswamy and Brinda 2002 : 2).

However, reservation is not applicable to (a) post in Department of Space and trainees under the department of Atomic Energy; (b) ex-cadre post. But if they are in existence for a long time, the question of including such posts in the cadre should be considered; (c) post filled by deputation. But eligible SC/ST candidates should be duly considered; if the number of posts is fairly substantial, a fair percentage should be filled by the SC/ST subject to availability; (d) certain categories of scientific and technical personnel (earlier exempted from the reservation provision) in respect of posts up to and including lowest grade in group “A” (ibid : 3).

**Relaxations / Concessions admissible to SC/ST in Drect Recruitments are:**
(i) **Age** - Maximum age limit up to five years for all posts;

(ii) **Minimum standard in Examination / Interview** – If adequate number of SC/ST candidates satisfying the minimum standard is not available, shortfall will be adjusted by relaxing the minimum standard, provided they are not considered unsuitable. There will be no relaxation in qualification and / or minimum number of marks / grade;

(iii) **Less than minimum standard** – in the case of non-technical and technical group “C” and “D” filled by direct recruitment, instead of through written examination, if SC/ST candidates are not available even under relaxed standards, shortfall will be adjusted by appointment of the best among the remaining SC/ST candidates with minimum educational qualifications;

(iv) **Exemption from fee**-candidates are fully exempted from fees for admission to any examination for recruitment/ selection;

(v) **For direct recruitment against reserved vacancies**, separate interview will be held for SC/ST candidates so that they are not adjudged along with general candidates (Muthuswamy and Brinda 2002 : 3).

**Reservation in Promotions**:

The percentage of reservations in promotions wherever applicable are the same as for direct recruitment on all India basis by open competition. Reservations are applicable for promotion in all grades and services in which the element of direct recruitment, if any, does not exceed 75 percent.
Promotion / appointments to selection grade posts – reservation orders are applicable, as for “selection- cum- seniority / selection by merit method” or “seniority- cum- fitness method”.

Reservations in promotions for SCs and STs will continue till such time as the representation of each category in each cadre reaches the prescribed percentage of reservation – OM, dated 13/8/1997.

Relaxations / Concessions in Promotions:

No relaxation / concession in promotion admissible during the period 22/7/1997 to 2/10/2000. Relaxation / concessions restored from 3/10/2000 as below: (I) Age- where an upper age limit not exceeding 50 years is prescribed for promotion, it should be relaxed by five years; (ii) Departmental Competitive Examination – SC/ST candidates who have not acquired the general qualifying standard should also be considered for promotion, if they are not considered unfit for such promotion, by relaxing the qualifying standards in their favour; (iii) Departmental Qualifying Examination – suitable relaxation in the qualifying standard in such examinations should be made in the case of SC/ST candidates (Muthuswamy and Binda 2002 : 4).

An officer, liaison officer, in the rank of deputy secretary is nominated in each ministry to ensure compliance of the reservation orders issued in favour of SCs and STs, to ensure prompt disposal of grievances and to scrutinise and consolidate statistical data. Liaison Officers are also to be nominated in the offices of head of departments and in each attached / sub-ordinate offices (Ibid). For OBCs, reservations exist only in direct recruitment – 27 percent in limit posts / services are reserved for OBCs. No reservation in promotions.
Scientific / technical posts for conducting, organising, guiding and directing research, which are above the lowest group “A” grade are exempted from the purview of reservations – OM, dated 13/5/1994 (Murthuswamy and Brinda 2002 : 4).

**Relaxations and Concessions available to OBCs are:** (i) Age-limit for direct recruitment three years, for all posts; (ii) Meritorious candidates not to be adjusted against reservation- OBC candidates recruited on the basis of merit on the same standards as for general candidates will not be adjusted against the 27 percent reservation; (iii) Minimum standard in examination / interview – in respect of written examination / interview for direct recruitment, relaxation of standards will be allowed for OBC candidates as in the case of SC/ST (Ibid 4-5).

Separate Liaison Officers for OBC, in the rank of deputy secretary in charge or administration or an officer of equivalent rank in each ministry / department attached and subordinate offices will be appointed as liaison officer separately to look after work relating to matters of reservation for OBCs – OM dated 1/10/1997.

**D : Deprivation and Reservation : Some issues :**

The dalits have been deprived of basic human necessities throughout history. Even after 50 years of independence they live under clutch of extreme poverty and destitute conditions of life. The percentage of dalit population living below the poverty line is much more than the national average, the figures are stated in Table 2.
Table 2
Comparison of SC, ST and Total Population living under Below Poverty Line
(in 1993-94).

<table>
<thead>
<tr>
<th>Areas</th>
<th>National</th>
<th>SC</th>
<th>ST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural</td>
<td>37.27</td>
<td>48.11</td>
<td>51.94</td>
</tr>
<tr>
<td>Urban</td>
<td>32.36</td>
<td>49.48</td>
<td>41.14</td>
</tr>
</tbody>
</table>


Thus, though reservation and other protective measures have been provided on all developmental programmes, truly they haven’t reached to the poor toiling mass. The SC/ST also lag far behind other sections in term of literacy and education.

The Dalits become victims to a number of atrocities because of their general backwardness. In 1991, 24,922 cases of crime against SCs were registered which went up to 33,908 in 1994 but decreased to 27,944 in 1997. The number of crimes committed against STs was 5498 in 1995, 4773 in 1996, 4644 in 1997 (Crimes in India 1997). According to the report, Crime in India, the population of SCs which is nearly 16 percent at national level shares only one percent of the reported crimes under IPC at national level. Uttar Pradesh, which has the highest share both in the country’s total population and in the SC population, reported the third highest rate of crimes at 5.3. Rajasthan reported the highest rate of crimes at 11.0. The Madhya Pradesh ranked second in the crime rate- 5.6. However, the Utter Pradesh has highest share of crime (30.4 percent), followed by Rajasthan (20.1 percent) and Madhya pradesh (15.3 percent). The maximum crime rate against STs was reported in Rajasthan (31.1 percent) followed by Madhya Pradesh (30.1 percent) and Gujurat (8.3 percent). These
three states together accounted for 69.5 percent of the total crimes committed against STs in the country (Crimes in India 1997; also see SC/ST Commission Report 1998-99).

An overwhelming majority of the SCs still constitutes the most backward sections of our society. They still suffer from traditional disabilities and deprivation which is more pronounced in rural areas than in urban areas. A study in Karnataka revealed that 13 percent of rural Dalits are not able to wear clothes or jewelry of their own choice. Another study in Karnataka revealed that 70 percent of the Dalits interviewed were denied participation in the religious processions (The Hindu 2000). According to SC/ST commission statement on Nov. 2000 affluent state like Punjab and Harayana also have oppressed the Dalits.

As already stated the reservation has not been implemented satisfactory. Even after almost 50 years of reservation provided to SCs and STs, their reserved seats are not fully filled up. Till 1995, out of 15 percent seats reserved for SCs in all categories of jobs in the central government only 10.15 percent was filled in group A”, 12.67 percent in group B, 16.15 percent in group C, 16.15 percent in group D (excluding sweepers). Similarly, till 1995; in central government’s job, out of 7.5 percent seats reserved for scheduled tribes, only 2.89 percent were filled in group A, 2.68 percent in group B, 5.69 percent in group C, and 6.48 percent in group D (Annual report 1997-98, Ministry of Personnel, Public Grievance and Pension. But it is sorrowful to note that the highest court of land – Supreme Court has not directed the government and other institutions to fill in the reserved post in letter and spirit. It may be also due to the fact that there is no reservation in appointment to the High Courts and the Supreme Courts. As a result there is almost negligible presence of SCs/STs in High Courts in general and Supreme Court in particular. Because the Dalits are most deprive
sections, and various forms of crimes are committed against them, their representation in the courts is required to provide them justice and protect their interests. Had there been sizeable number of Dalit judges, perhaps, they would have well questioned about the poor implementation the reserved seats. At present out of 610 high court judges, there are less than ten women judges and the number of SC/ST judges is around twenty. Recently, the Centre has received several representations from across section of people on the need for appointing more judges from among women and SC/STs and OBCs. However, the government maintains that there is no provision for reservation for any caste or class of persons in article 124 and 217 of the constitution under which appointments of judges are made.

In its second report presented to the Lok Sabha, the Committee on the Welfare of SCs and STs, observed that since these classes have a dismal representation in the Judiciary, the centre should take concrete steps, if necessary by amending the constitution, to provide reservation to SCs / STs in the appointment of judges. The committee said that there was no legal and constitutional bar for providing reservation in the judiciary and that the provision of article 15(4), as interpreted by the Supreme Court, should be applied to the appointment of Supreme Court and High Court judges without any further loss of time.

In its 13th report submitted to the Lok Sabha in mid 2001, the committee on the welfare of SCs and STs, headed by Mr. Kariya Munda, reiterated its earlier recommendation to the centre to take "concrete" steps, if needed by amending the constitution, to provide for quota for SCs and STs in the appointment of judges to the high court and the supreme court. In stern words, the committee said: "It seems that no serious thought has been given to the committee's recommendation which shows that the tall claim by the government to uplift these
classes of society who have borne the brunt and neglect and injustice over the ages, has got no justification”.

According to 1991 census, the percentage of scheduled caste population went up to 16.48 and that of scheduled tribe to 8.8. Hence, the present reservation of 15 and 7.5 percent is not commensurate with their proportion of population as stated by the constitution. The limit of course, prescribed by the Supreme Court is 50 percent. But then, if the government is much concerned about their representation, it can enact law through amendment of the constitution to provide reservation the most depressed community – SCs and STs, in proportion to their population. Recently through constitution (Eighty – third amendment) Act, 2000 the Arunchal Pradesh has been exempted from providing reservation to scheduled caste communities in Panchayat Raj since there exist no SCs in the state. Then why can’t the Centre through similar amendment provide reservation to SC/STs in accordance with their population? So also in judiciary system!

Reservation policy in India also exists for, physically handicapped (3 percent) : 1 percent for each of the three categories i.e. (i) blindness or low vision,( ii) Hearing impairment and(iii) locomotor disability or vertebral palsy (Muthuswamy and Brinda 2002 : 10). Similarly 10 percent of vacancies in group C” and 20 percent in group D” posts are reserved for Ex-servicemen in direct recruitment only (ibid : 13). Besides most of states have provided reservation of about 1/3 of posts for women candidates. But the for central government posts, the women are yet to be provided with reservation. Women reservation bill for parliament and state assemblies is not yet passed due to lack of consensus of the political headers though the women have been provided with about 1/3 of total seats in panchayat raj seats.
The reservation has been one of the most controversial issues in Indian. Had it been effectively implemented after ten years if its commencement, perhaps, it would have ceased to exist. But still it is in continuance, though it yet to fill the given representation even after more than 50 years of its commencement. Some scholars have favoured the policy, some have opposed the policy. Lot of such discussions have been debated, published, even in government document (Mandal Commission report 1991 : 1-8). According to Prof. Gupta unlike Ambedkar’s Scheme, Mandal’s Scheme lack moral equality, because Mandal programme is not in the spirit of enlarging fraternity as Ambedkar’s proposals are (Gupta 1997:1971-1978). No more debates on such issue is highlighted here again.

Before concluding this chapter however I would like to state two points. The first is that policy has no meaning if it is not implemented. Lot of developmental policies have been formulated, but owing to their poor implementation the people are illiterate, under poverty and backward. There are no major faults in policies but such were not implemented effectively. Similarly though since 1950 the reservation to the SCs and STs have been provided. Even now they are not represented properly. They yet to cross the 22.5 percent of government services. Their representation particularly poor in university who are supposed to be the light watcher of social justice.

Secondly, under the new economic policy in which the privatisation has been taking place very drastically, the reservation has started losing its meaning. Therefore, not only expansion of reservation to judiciary systems, private sectors etc, but its effective implementation through stern constitutional / legal measures are necessary. Besides, for making available to all sections of the dalits -the
benefit of reservation, as reportedly some affluent sections are only getting benefit and the vast poor majority is deprived of, some sub-categorisation within the category, should be suitably devised. This has been already discussed in chapter five: Social justice and developments.