CHAPTER – 1

INTRODUCTION

Constitutional and Legal Provisions

1.1 Objective of providing reservations to the Scheduled Castes(SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) in services is not only to give jobs to some persons belonging to these communities. It basically aims at empowering them and ensuring their participation in the decision making process of the State. Justice B.P. Jeevan Reddy, while delivering the majority judgement in the matter of Indra Sawhney & Ors Vs. UOI & Ors, observed that public employment gives a certain status and power, besides the means of livelihood. The Constitution has, therefore, taken special care to declare equality of opportunity in the matter of public employment. Keeping the broader concept of equality in view, Clauses (4) and (4A) of Article 16 of the Constitution declare that nothing in the said Article shall prevent the State from making any provision for reservation of appointments or posts in favour of backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. Article 16 of the Constitution and also Article 335 which have direct bearing on reservation in services are reproduced below:

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

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

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

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the state.

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

(4B) 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 year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

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

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

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

1.2 Besides, Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

1.3 Articles 341 and 342 of the Constitution which define as to who would be Scheduled Castes and Scheduled Tribes with respect to any State or Union Territory are quoted below:

341. (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342(1) The President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the 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 Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (I) any caste, race or tribe or part or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied. by any subsequent notification.

1.4 The Constitution does not define Other Backward Classes. However, in pursuance of the judgment of Supreme Court in Indira Sawhney's case, the Government enacted the National Commission for Backward Classes (NCBC) Act in April, 1993. As per Section 2 of the NCBC Act, "Backward classes" means such backward classes of citizens, other than the Scheduled Castes and Scheduled Tribes, as may be specified by the Central Government in the lists. For the above purpose, Section 2 also defines "lists" as lists prepared by the Central Government for providing reservation in appointments to backward classes of citizens, which, in its opinion are not adequately represented in services, under the Government of India and any local or other

authority. The Ministry of Social Justice and Empowerment has notified the lists of Castes / Communities which are treated as Other Backward Classes.

1.5 It may be noted that the Constitution imposes inter-state area restrictions so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Castes or Scheduled Tribes status, only benefit from the facilities provided for them. Similar restrictions are applicable to the OBCs also. Since the people belonging to the same caste but living in different States / Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in different States/ U.Ts may not both be treated to belong to SC/ST/OBC. Thus the residence of a person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality.

1.6 The Constitution (Scheduled Castes) Order, 1950 (as amended from time to time) states that no person professing a religion different from Hindu or Sikh or Buddhist religion can be deemed to be a member of a Scheduled Caste. There is, however, no religious bar for being treated as Scheduled Tribe or Other Backward Class.

Evolution of the Scheme of Reservation

1.7 On attainment of Independence, instructions were issued on 21-9-47 providing for reservation of 12 ½ per cent of vacancies for SCs in respect of recruitment made by open competition. In case of recruitment otherwise than by open competition this percentage was fixed at 16 $^{2/3}$ per cent. Difference between recruitment by open competition and otherwise then by open competition has been explained in Chapter-II. After the Constitution was promulgated, MUA, in its Resolution of 13-9-50, provided 5 per cent reservation for *STs* apart from the percentage fixed for SCs already in force. The 1951 Census showed that the percentage of SCs in the total population was 15.05 per cent and that of ST 6.31 per cent. The percentages were not revised at the time as a comprehensive bill revising the lists of SCs and STs was under consideration. The other reason for not revising the percentage was that reservation had already been provided for SCs in posts filled otherwise than by open competition to the extent of 16.66 per cent and instructions had also been issued for following a regional and local percentage for Class III and Class IV posts attracting candidates from a locality or a region. The 1961 Census revealed that the SC and ST population in proportion to the Indian population stood at 14.64 per

cent and 6.80 per cent respectively. Accordingly, the percentage of reservation for SCs and STs was increased from 12 ½ and 5 per cent to 15 per cent and 7 ½ per cent respectively on 25-3-70. The 1971 Census did not warrant any such review. The actual impact of 1981 Census figures on all India percentages could not be known because the Census of 1981 could not be carried out in the State of Assam. The Government in 1993 introduced reservation for Other Backward Classes in direct recruitment broadly at the rate of 27%. After introduction of reservation for OBCs, total reservation for SCs, STs and OBCs comes to 49.5% in case of direct recruitment on all India basis by open competition and 50% in case of otherwise than by open competition. As per various judgements of the Supreme Court, total reservation for these communities cannot exceed the limit of 50%.

1.8 Reservation has been extended to different modes of promotion in stages. In 1957, reservation was provided for SC & ST in departmental competitive examinations. Reservation in promotion by selection in Group C and Group D was provided in 1963 and in the same year reservation in departmental competitive examination was limited to Class III and Class IV only. The position was slightly changed in 1968 when reservation in limited departmental examination to Class II, III and IV and promotion by selection 'to Class III and IV was subjected to a condition that element of direct recruitment should not exceed 50 per cent. Reservation in promotion by 'seniority subject to fitness', came in force in 1972 subject to the condition that the element of direct recruitment does not exceed 50 per cent. In 1974, reservation in promotion by selection from Group C to Group B, within Group B and from Group B to the lowest rung of Group A was introduced subject to the condition that the element of direct recruitment, if any, does not exceed 50 per cent. The limitation of the direct recruitment not exceeding 50 per cent was raised to 66 $^{2}/_{3\%}$ per cent in 1976 and to 75% in 1989.

1.9 Reservation till 1.7.1997 was computed on the basis of number of vacancies filled. The Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab held that the reservation should be determined on the basis of number of posts in the cadre and not on the basis of vacancies. Accordingly post based reservation was introduced w.e.f. 2.7.1997. The basic principle of post based reservation is that the number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. Prior to introduction of post based reservation, there was a provision of exchange of reservation between SCs and STs. After implementation of the post based reservation such exchange is no more permissible.

1.10 Prior to 1975, scientific' and technical posts required for conducting research or for organising, guiding and directing research were exempted from the purview of orders relating to reservation for Scheduled Castes and Scheduled Tribes. In 1975 however, the above orders were modified and it was decided that the scheme of reservations for Scheduled Castes and Scheduled Tribes should also cover. appointments made to scientific and technical posts upto and including the lowest grade of Class I in the respective services wherever they were exempt from the purview of the scheme of reservations; The amended orders were however not made applicable to Department of Space, Department of Electronics, and in regard to recruitment of trainees to the training school of the Department of Atomic Energy. In the case of these latter departments, the orders in force prior to 1975 continue to apply.

1.11 Various relaxations and concessions are given to SC/ST candidates like relaxation in upper age limit, exemption from payment of examination/application fees, relaxation in qualification of experience at the discretion of the UPSC/competent authority, relaxations in standard of suitability etc. Some relaxations like in upper age limit are also available to OBCs.

Institutional Safeguards

1.12 Each Ministry / Department is required to nominate officers of the rank of Deputy Secretary or above to work as Liaison Officer who take care of implementation of instructions relating to special representation of SCs/STs/OBCs in their respective Ministries and attached and subordinate offices. The system of nominating Liaison Officers has also been extended to the offices under the Heads of Departments. Ministries/Departments have been asked in 1969 to set up a small Cell within each Ministry/Department under the direct control of Liaison Officer to assist him to discharge his duties effectively.

1.13 The Constitution provides for the **National Commission for Scheduled Castes and the National Commission for Scheduled Tribes** which have wide ranging powers and functions in regard to matters pertaining to Scheduled Castes and Scheduled Tribes respectively. The Government has also set up the **National Commission for Other Backward Classes.** Besides, there is a Committee of Parliament on the Welfare of Scheduled Castes/Scheduled Tribes. The Committee *inter-alia* examines the position regarding representation of Scheduled Castes/Scheduled Tribes in the services under the various Ministries and other Government organisations and makes suitable recommendations for bringing about improvement therein or removing bottlenecks detected by it during the course of a study.

Impact of Reservation

1.14 Representation of SCs/ STs has increased in all the Groups viz. A, B, C and D during last six decades. At the dawn of independence representation of SCs/STs in services was very little. As per available information, representation of SCs in Groups A, B, C and D as on 1.1.1965 was 1.64%, 2.82%, 8.88% and 17.75% respectively which has increased to 12.5%, 14.9%, 15.7% and 19.6% respectively as on 1.1.2008. Likewise while representation of STs as on 1.1.1965 in Group A, B, C and D was 0.27%, 0.34%, 1.14% & 3.39% respectively, it has increased to 4.9%, 5.7%, 7.0% and 6.9% respectively as on 1.1.2008. Total representation of SCs and STs as on 1.1.1965 was 13.17% and 2.25% respectively, which as on 1.1.2008 has increased to 17.51% and 6.82% respectively. Group-wise and total representation (in percentage) of SCs/STs in different years is given in the following table:

As on 1st of January	Group A		Group B		Group C		Group D		Total	
	SCs	STs	SCs	STs	SCs	STs	SCs	STs	SCs	STs
1965	1.64	0.27	2.82	0.34	8.88	1.14	17.75	3.39	13.17	2.25
1970	2.36	0.4	3.84	0.37	9.27	1.47	18.09	3.59	13.09	2.4
1975	3.43	0.62	4.98	0.59	10.71	2.27	18.64	3.99	13.84	2.94
1980	4.95	1.06	8.54	1.29	13.44	3.16	19.46	5.38	15.67	3.99
1985	7.3	1.73	10.03	1.57	14.87	4.2	20.8	5.70	16.83	4.66
1990	8.64	2.58	11.29	2.39	15.19	4.83	21.48	6.73	16.97	5.33
1995	10.15	2.89	12.67	2.68	16.15	5.69	21.26	6.48	17.43	5.78
2001	11.42	3.58	12.82	3.7	16.25	6.46	17.89	6.81	16.41	6.36
2002	11.09	3.97	14.08	4.18	16.12	5.93	20.07	7.13	16.98	6.11
2003	11.93	4.18	14.32	4.32	16.29	6.54	17.98	6.96	16.52	6.46
2004	12.2	4.1	14.5	4.6	16.9	6.7	18.4	6.7	17.05	6.54
2005	11.8	4.3	13.7	4.5	16.4	6.5	18.3	6.9	16.62	6.42
2006	12.9	3.9	15.0	5.7	16.4	6.9	18.6	7.1	16.75	6.75
2008	12.5	4.9	14.9	5.7	15.7	7.0	19.6	6.9	17.51	6.82