



# Reservation in public employment

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The Supreme Court refused to order interim stay of a Patna High Court decision quashing reservation up to 65% for the Backward Classes, the Extremely Backward Classes, the Scheduled Castes, and the Scheduled Tribes in public employment and institutions.

## Article 16 of the Constitution:

(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.

## Exceptions:

(1) Parliament can prescribe residence as the condition for certain employment or appointment in a state or union territory or local authority or other authority.

(2) The state can provide for reservation of office or appointment for post in favor of any backward class that is not adequately represented in the state services. Also the state is empowered to provide for reservations in promotions, with consequential seniority, in services under the state in favour of SC and ST that are not adequately represented in the state services. Further the state is empowered to consider the unfilled reserved vacancies of a year as a separate class of vacancies and are not to be combined with the vacancies of the year in which they are being filled up to to determine the ceiling of 50% reservation on total num of vacancies of that year.

(3) A law can provide 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.

(4) The state is empowered to make special provision for the reservation of up to 10% of appointments or posts in favour of any economically weaker section. This reservation of 10% will be in addition to the existing reservation.

## Mandal Commission:

The Mandal Commission or the **second Socially and Educationally Backward Classes Commission**, was established in India in **1979** with a mandate to "identify the socially or educationally backward classes" of India.

It was headed by **B. P. Mandal** and submitted its report in 1980 and was implemented in 1990.

The Commission reported that **52% of the country's population was comprised of OBCs**. Initially, the commission argued that the percentage of reservations in government service should match this percentage.

However, this would have gone against the Supreme Court ruling in *M.R. Balaji vs State of Mysore* case (1963) which had laid down a limit of 50% on. There was already a 22.5% reservation for SCs and STs.

Therefore, the figure of reservation for OBCs was capped at 27% which when added to keep the reservation below the 50% mark.

The Commission also identified backward classes among non-Hindus.

### **Recommendations of Mandal Commission:**

OBCs must be provided a reservation of 27% in public sector and government jobs.

They should be provided with the same 27% reservation in promotions at all levels of public services.

The reserved quota, if unfilled, should be carried forward for a period of 3 years.

OBCs should be provided age relaxation similar to SCs and STs.

Reservations to be made in PSUs, banks, private sector undertakings receiving government grants, colleges, and universities.

The government to make the necessary legal provisions to implement these recommendations.

**V.P.Singh** government in **1990** introduced 27% reservation

In **1991 Narshima Rao** government introduced two changes

1 Preference to poorer among the OBCs

2 Introduction of additional 10% reservation to the economically weaker section

### **In Indira Sawhney case the supreme court :**

Upheld the validity of 27% reservation for OBCs

Rejected the 10% reservation for economically weaker section.

No reservation in promotion

Reservation should not exceed 50%

Carry forward rule should not violate 50% quota

A permanent statutory body should be established

**Ram nandhan committee** was appointed to identify the creamy layer in **1993**

**National backward class commission** was established in **1993** by an act of the parliament

Later **108 ammendment act of 2018** gave **constitutional status** to the National Backward class commission

In order to nullify the order regarding the reservation in promotion the 77<sup>th</sup> ammendment act was enacted in 1995. It added a new provision that empowered the state to provide for reservation in promotion in favor of SC and ST. again 85<sup>th</sup> ammendment act provided for consequential seniority in reservation by virtue of promotion.

81<sup>st</sup> ammendment act was enacted to deal with the ruling regard to backlog vacancies. It empowered the state to treat any unfilled vacancies as a separate class of vacancies.

Note

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76<sup>th</sup> amendment act of 1994 placed Tamilnadu reservation act of 1993 in the 9<sup>th</sup> schedule to protect it from judicial review asit provided for 69% reservation

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