

Draft Constitutional Amendments for Ensuring Reservation in Promotion for SCs and STs

1. Article 16(4A) be amended as follows:-

“16 (4A) (i) Notwithstanding anything in this article or in any other article in the Constitution, the State shall make provision for reservation of appointments or posts, including reservation in matters of promotion, with consequential seniority in all classes of posts, in the services of the State, in favour of the Scheduled Castes, who have been classified and specified on the basis of the criterion of subjection to “untouchability”, and Scheduled Tribes, who have been classified and specified on the basis of the criterion of tribal organization of society, as distinct from caste-based organization of society, and distinct tribal culture and isolation under vulnerable conditions, and such reservation shall be the fundamental right of Scheduled Castes and Scheduled Tribes until

(a) their representation, at all levels of the services in each cadre, reaches the proportion equivalent to their proportion in the population of the country, in the case of the services under the Union of India and of the respective States of the Union in the case of the services under the States of the Union; and

(b) the Scheduled Castes and Scheduled Tribes are enabled to become capable, through open competition, of maintaining the level of representation mentioned at (a) above; and

(c) “Untouchability” in all its forms and tribal isolation under vulnerable conditions and all their consequences completely disappear and the Scheduled Castes and Scheduled Tribes reach the level of Equality with the Socially Advanced Castes in every parameter of development and welfare.

Explanation:- In this article, the expression population means the population as ascertained at the last preceding Census of which the relevant figures have been published.

(ii) Reservation for Scheduled Castes and Scheduled Tribes shall be 15 percent and 7.5 percent respectively in the case of direct recruitment and in the same proportion as the population of the Scheduled Castes and the Scheduled Tribes in the country as a whole or in the respective States, as the case may be, in the case of posts to be filled by promotion.

(iii) Notwithstanding any judgment or order or direction of any Court, inadequacy of representation of Scheduled Castes and Scheduled Tribes shall be calculated on the basis of each Group/Class of the services.

(iv) Reservation in promotion in favour of Scheduled Castes and Scheduled Tribes shall operate at all levels of posts without any limitation or exception.

(v) The State shall identify posts and services, including posts and services at promotional levels of services, for which adequate number of qualified candidates of SCs and STs are not available and take timely planned steps to create an adequate pool of qualified candidates of Scheduled Castes and Scheduled Tribes for each such posts and services and, during the period till such adequate pool is created, the carry forward rule of filling up such vacancies in subsequent years of recruitment shall operate.

(vi) Notwithstanding any judgment or order or direction of any Court, the concept of exclusion of “Socially Advanced Persons/Sections”, often loosely referred to as “Creamy Layer”, shall not be applicable to reservation for SCs and STs, either in direct recruitment or in promotion.

(vii) (a) Notwithstanding anything in this article or any other article in the Constitution, the State shall make provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation of qualifying marks in any examination or lowering the standards of evaluation, for reservation, including reservation in matters of promotion in any class or classes of services or posts in connection with the affairs of the Union or of a State, to the extent necessary to ensure that posts reserved for the Scheduled Castes and Scheduled Tribes are filled up completely by Scheduled Castes and Scheduled Tribes.

(b) Without abridgement of the fundamental right of the SCs and STs in reservation, including reservation in matters of promotion under sub-clause (i) of Clause (4A) of this article, the State shall, prior to and/or subsequent to initial appointment and promotion, establish well-designed coaching, training and orientation programmes for Scheduled Castes and Scheduled Tribes as well as others in order to remove any deficiency affecting efficiency of administration, including prejudices and biases against Scheduled Castes and Scheduled Tribes, and to substitute old systems and methods of administration, which are the basic causes of inefficiency of administration, with modern result-oriented and people-oriented systems and methods of administration and thereby improve and maintain efficiency of administration. ”

Explanation: (a) “Efficiency of administration” shall be understood essentially as ability to identify and expeditiously resolve problems, or contribute to the resolution of problems, faced by the people in general and particularly people who suffer any form of deprivation, in accordance with the Constitutional mandates, laws and principles of Social Justice and fairness, without allowing extraneous considerations and influences to intrude.

(b) Absence of or reduction in “efficiency of administration” shall not be understood as a result of the presence or due increase in the presence of persons belonging to the historically deprived and disadvantaged social classes among the personnel in administration or as a result of reservation for Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes.

(c) Widening of social base of the personnel in posts at every level through reservation shall be understood as an important means of improving efficiency of administration.

2. Article 16 (4B) be amended as follows:-

“Notwithstanding anything in this article or in any other article of the Constitution, the State shall consider any unfilled vacancies of a year, which are reserved for being filled up in that year in accordance with any provision for reservation made under Clause (4) and Clause (4A), as a separate class of vacancies to be filled up in the 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 percent reservation on total number of vacancies of that year, and it shall be the fundamental right of the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes, that this carry forward rule shall operate until their representation, at all levels of the services in each cadre, reaches the proportion equivalent to the proportions mentioned in sub-clause (ii) of Clause (4A) of Article 16 in the case of SCs and STs and reaches the percentages of reservation fixed for Socially and Educationally Backward Classes in the services of the Union and the States.”

3. Article 16(4) be amended so as to cover only the “Socially and Educationally Backward Classes”, identified on the basis of the criterion of social and educational backwardness since Article 16 (4A), as proposed above, covers Scheduled Castes and Scheduled Tribes.

The following amendments in Article 16(4) may, therefore, be considered:-

“16 (4) (i) Notwithstanding anything in this article or in any other article in the Constitution, the State shall make provision for reservation of appointments or posts in all classes of posts in the services of the State, in favour of any of the Socially and Educationally Backward Classes, who have been identified on the basis of the criterion of social backwardness, i.e., castes which have “low” social status in the traditional caste system, often linked with traditional occupations which are traditionally held in low esteem, accompanied by educational backwardness, which, in the opinion of the State, are not adequately

represented in the services under the State, and such reservation shall be the fundamental right of Socially and Educationally Backward Classes until

(a) their representation, at all levels of the services in each cadre, reaches the proportion equivalent to the percentage of reservation fixed for them; and

(b) the Socially and Educationally Backward Classes are enabled to become capable, through open competition, of maintaining the level of representation mentioned at (a) above; and

(c) social backwardness completely disappears and the Socially and Educationally Backward Classes reach the level of Equality with the Socially Advanced Castes in every parameter of development and welfare.

(ii) Notwithstanding any judgment or order or direction of any Court, posts in the services and seat in admissions to educational institutions reserved for the Socially and Educationally Backward Classes, which are not filled by candidates who do not belong to Socially Advanced Persons/Sections of the Socially and Educationally Backward Classes, on account of inadequacy of qualified candidates among them, shall be filled with candidates belonging to the Socially Advanced Persons/Sections of the castes included in the list of Socially and Educationally Backward Classes, and only the balance thereunder, if any, shall be transferred to the general category, subject, in the case of posts in the services, to the carry-forward rule.

(iii) The provisions in sub-clause (vii) of clause (4A) of Article 16, along with the Explanations thereunder, shall also be applicable in the case of Socially and Educationally Backward Classes.

4. New Article 14 (A) be inserted as follows:-

“(i) The State shall not deny to the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes Social Equality and shall take all measures necessary for achieving Social Equality, as defined in clause (ii) below, as rapidly as possible.

(ii) Social Equality, which shall be understood to mean Equality for Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes with the Socially Advanced Castes, in all parameters of development and welfare and in all fields, such as economic; educational at all levels; health, nutrition and infant and child survival-related; housing and residential areas facilities-related, etc, are recognised, and shall be understood, as a basic feature of the Constitution and as part of the basic structure of the Constitution.

(iii) The entire gamut of Social Justice measures, including reservation, which shall be undertaken by the State for achieving Social Equality as at (i) above is also recognised, and shall be understood, as a basic feature of the Constitution and part of the basic structure of the Constitution.”

(P. S. Krishnan)