

NATIONAL COMMISSION FOR SCHEDULED CASTES
A REPORT ON
RESERVATION IN JUDICIARY

Judiciary is one of the three very important pillars of democracy. Judiciary has a very important role to play. It checks arbitrariness of the Executive and Legislature. It functions as a watchdog for the Constitutional safeguards, right to equality, liberty and property, freedom of speech and expression. It is also mandated to protect the basic structure of the Indian Constitution. Interpretation of law and the constitution by the Hon'ble Supreme Court is the ultimate law of the land. In order to ensure independence of judiciary, very specific and elaborate provisions have been made in the Constitution under Article 124, 217, 233, 234 and 235. However the present constitution of working frame work relating to Judiciary does not fully meet the national objective of social equity and justice.

The administration of Law & Justice is closely linked with the social philosophy of judiciary which in turn is linked with the social background of those who dispense justice. Judges are not super human beings. Howsoever objective and fair they may be in their decisions, they are bound to be influenced by their likes and dislikes/prejudices. In an environment of ongoing social struggles, the resultant bitterness is likely to influence their judgements if they happen to share the sentiments of their own warring communities.

Unfortunately the composition of the Higher Judiciary shows that Judges continue to be drawn mostly from the very section of the society which is infected with the age old social

prejudices. In most of the cases, social inhibitions and class interests of such judges do not permit them full play of their intellectual honesty and integrity in their decisions. Communal bias is a premise which is recognized even by the criminal procedure code where in specific provisions are there showing the possibility of communal bias in the judiciary. Recently a case of Justice C.S.Karnan of Madras High Court belonging to SC community has come to notice showing that even person of his stature is suffering victimization at the hands of his fellow judges belonging to higher castes. In the second case, 17 district judges of Chattisgarh, all belonging to SC/ST were removed from service allegedly without valid reasons when they had 5 to 10 years of service to go and were maturing for elevation as High Court judges.

When Executive and Legislature are brought under the ambit of constitutional reservation, it is but natural that Judiciary, the third pillar of Democracy, which is mandated to safeguard the constitution, should also follow the principle of reservation, otherwise, it creates a dubious distinction among the three pillars of democracy. Judiciary cannot be permitted to stand out as an exception. Reservation in Judiciary will bring constitutional balance between the Legislature, Executive and Judiciary and shall rightly serve the cause of Social Justice and Equity.

Legal experts, especially amongst the SCs/STs have not been able to convince themselves as to how the matter of reservation in promotion of SC/STs was dealt with and held unconstitutional in Indira Sawhney's case, which was related only to OBCs and not SC/STs.

Further Courts are not sensitive enough to impose death penalty on the persons guilty of killing SC/STs despite the fact the Constitution bench of Supreme Court had ruled in the Bacchan Singh Case that murder because of caste prejudices should be treated as rarest of the rare cases attracting death penalty. It only shows the apathy of the courts towards SC/STs.

In the matter of rights and interest of weaker sections of the society, the judicial pronouncements made so far constitute the most confusing medley of opinions which settles little and unsettles a lot. So far judiciary has neither been empathetic nor unbiased to the cause of the deprived sections of the society. Decisions taken in favour of affirmative action for the weaker sections are short lived, only to be reversed by the subsequent decision/s by the smaller bench of the courts/smaller courts even going against the principle of "stare decisis". Equally biased bureaucracy loses no time in quickly implementing such adverse decisions affecting SC/ST.

So far Supreme Court has paid some attention to the representation on the basis of religious background and regional allocation in order to preserve a semblance of representative frame work but social background was never given consideration in the composition of Higher Judiciary on the pretext that it will lead to communal representation. In order to ensure a fair play, it is imperative that all major sections of society are represented in the Judiciary to have equitable representation and there is no bar to do so in our constitution. Judiciary must have members who have first hand knowledge and experience of the problems of the backward classes and have personal interest/sense of involvement in solving them through dispensation of justice. In the name of autonomy, judiciary attempts to create Imperium in

Imperio which was not the intention of the constitution. Such a coveted institution should also exhibit the reality of the social milieu in which the judiciary has been created. After all, judiciary should reflect and meet the aspirations of the people. It cannot live in isolation and put itself outside the ambit of constitutional provisions through judicial pronouncements.

Further there is nothing in the constitution to support the stand of the government withholding the policy of reservation from some areas like defence services and judiciary.

There is no scientific basis to presume that member of SC/ST have no merit. Such a view can be held only by an incorrigible bigot. With the provisions of reservation in the professional institutions including the National Law Schools and the social welfare measures introduced by the State Governments as also the Government of India to promote SC, ST and OBCs candidates taking up the legal profession, there is no dearth of candidates from these sections who are eligible and qualified for consideration for appointment as Judges. The opportunities provided to them while placing them on panels of Advocate appearing for the Government, and the Public Undertakings along with other opportunities have equipped these candidates to successfully handle Judicial work. Suffice to mention that manpower is available in abundance to fill in the posts of Judges in the High Courts and the Supreme Court.

A firm policy of reservation in Judiciary is the only remedy. The Government needs to change its policy of "Running with the hare and hunting with the hounds". Government needs to have a strong political commitment to bring in an amendment in the constitution to ensure reservations in the High Courts and the

Supreme Courts treating them as “State” within the meaning of article 12.

It is an admitted fact that the Judiciary is a part of the State.

The word "State" in Article 12, Article 13 and Article 37 has to be given the same meaning. Hon'ble Justice, Mathew in Kesavanand Bharati's case held at page 830 (1973 Supp. SCR1)

"The definition of the word 'State' both for the purpose of Part III and Part IV is the same. Whereas article 45 of the Irish Constitution addresses the directive only for the guidance of the Oireachtas, i.e., the legislature, all the directives from articles 38 to 51 of our Constitution are addressed to the 'State' as defined in Article 12. That judicial process is also "State Action" seems to be clear. Article 20(2) which provides that no person shall be prosecuted and punished for the same offence more than once is generally violated by the judiciary and a writ under article 32 should lie to quash the order. In his dissenting judgment in Naresh Vs. State of Maharashtra (1966(3) SCR 744) Hidayutullah, J. took the view – I think rightly – that the judiciary is also "State" within the definition of the word "State" in Article 12 of the Constitution (See also Shelly Vs. Kraemer, 334U.S., 1; Budhan Vs. State of Maharashtra 1955 (1) SCR 1045) @ page 834"

As far as the representation of SC/ST staff in High Courts & Supreme Court is concerned, the position is very dismal. Details about the same as given in Karia Munda report presented to the Parliament on 15.03.2000 are given below:-

S.No	High Court	Total No. of Employees	SC Employees		ST Employees	
			Number	%age	Number	%age
1.	Allahabad	2583	*	*	*	*
2.	Andhra Pradesh	1304 (231 OBC)	106	8.12	9	0.69
3.	Bombay	2171	238	10.96	23	1.06
4.	Calcutta	563	38	6.75	8	1.42
5.	Delhi	*	*	*	*	*
6.	Gauhati	462	41	8.87	37	8.00
7.	Gujrat	685	60	8.76	43	6.28
8.	Himachal Pradesh	351	55	15.67	2	0.57
9.	J & K	354	22	6.22	11	3.11
10.	Karnataka	1253	103	8.22	20	1.60
11.	Kerla#	400	30	7.50	-	-
12.	Madhya Pradesh	1224 (OBC 271)	48	3.92	21	1.72
13.	Madras	1277	146	11.43	2	0.15
14.	Orissa	595	68	11.43	5	0.84
15.	Patna	1151	115	10	49	4.25
16.	Punjab & Haryana	684	70 (SC+ST)	10.23 (SC+ST)		
17.	Rajasthan	933	42	4.50	5	0.54
18.	Sikkim	107	9	8.41	37	31.58

As per Karia Munda Report-2000, out of 18 High Courts, 16 High Courts follow to some extent the rules of reservation for SC/STs in recruitment of the Staff and that too according to their own norms which differ from court to court. The Bombay High Court and Delhi High Court are not following the policy of reservation for the last 61 years. The Madras & Rajasthan High Courts have no reservation for SC/STs in case of Gazetted and Promotional Posts. The High Court of Allahabad, Andhra Pradesh, Kerala, Punjab & Haryana, Patna and Madhya Pradesh do not follow provisions for reservations in promotion. Surprisingly the matter of uneven policy being followed by various High Courts regarding reservations in their establishments has not been discussed at the Chief Justices' conference held periodically. The Ministry of Law also does not feel itself to be concerned with this matter. It is a sad commentary on the judiciary who are supposed to oversee the working of the constitution including reservations for weaker sections.

As per the Karia Munda report, position obtaining as on 1.1.1993, out of the 18 High Courts, 12 Courts did not have a single judge belonging to SC. 14 High Court were without any ST Judge. Further the report also explained that as on 1.5.1998 only 15 judges belonged to SC and 5 to ST out of the total strength of 481 High Court judges. In the case of Supreme Court, which should have been a role model for the High Courts, it is a **big zero**.

Even today in 2011 there are only 24 judges belonging to SC/STs against a total of 850 judges in all the 21 High Courts but 14 out of 21 High Courts do not have a single SC/ST judge. Similarly there is not a single judge belonging to SC/STs in the Supreme Court where the strength of judges is 31.

On the top of all, despite suggestion of the Ministry of Home Affairs, the Supreme Court has so far not attempted to frame suitable recruitment rules for reservation for SC/ST's. It is deplorable that framing of codified recruitment rules have not been finalized during the last 61 years. Judges take oath to uphold the constitution & the law of the land but even Hon'ble Supreme Court has failed to follow the Constitutional provision under Article 16(4) & 16(4A). From 1950 onwards only four Scheduled Castes candidates namely Shri K.Ramaswamy, Shri K.G.Balakrishnan, Shri B.C.Ray and Shri A.Varadarajan were considered fit for appointed in the Supreme Court.

If adequate representation could not be attained on its own even after 60 years of our independence, it is high time that explicit provision is made for such reservation and representation for the backward classes among the judges of the Supreme Court and High Courts.

The present system of appointment of judges is vague and arbitrary. Shri P.Shivshanker, Shri B. Shankaranand and Shri H.R. Bhardwaj, during their tenures as Law Ministers of India wrote letters to the Hon'ble Chief Justices of the respective High Courts requesting them to recommend names of SC/STs Backwards, Women and Minorities for appointment as judges of the High Courts. In spite of this the number of judges from these categories is negligible as on date.

Even for appointments to National Commissions, different State Commissions, Tribunals, Consumer Redressal forums and Regulatory Authorities, which are there in good number all over the country, the courts do not find suitable candidates from amongst SC/STs and backwards. It is to be noted that it is

mandatory to appoint a lady member to a number of these forums, but no such provision exists in respect SC/ST's and backwards.

In Income Tax appellate tribunals there is a reservation for SC/ST's but vacancies are generally not being filled up. In the current year of 2011 not a single vacancy has been filled up.

Unfortunately Judges have never given the impression that they are concerned about the need for reservation & about the constitutional obligation of bringing about social change. Courts do have powers to issue writs and directions for the protection of the rights of SC/ST but this has rarely been invoked to ensure justice for these people. Supreme Court took suo moto cognizance of the police action against Baba Ramdev and his followers in Delhi Ramlila Maidan on 4th June 2011, in which there was no casualty. Such suo-motto actions are taken by the courts in other cases also. On the other hand there are so many cases of killings and other cases of atrocities or social boycott of SCs throughout the country but High Courts/Supreme Court have hardly taken suo moto action in such cases.

Since High Courts and Supreme Court receive the salaries from the consolidated fund of India, they have to follow the Constitutional provisions and implement requisite reservations in recruitment/promotions at various levels. The procedure being followed by these courts in the appointment of Judges leaves much to be desired as far as transparency is concerned, which is the need of the hour. No reasons are given for the rejection of SC/ST candidates for appointment of judge when their names are considered in the rarest of the rare cases. After the executive was deprived of its power to appoint judges, there is absolutely no accountability leave alone transparency. It has resulted in speedy

deterioration of representation of SC, ST & OBCs, even when in the 2nd judges case the validity of circulars issued by the Law Ministry to consider claims of SC, ST & OBCs for selection to the post of judges was upheld by the Hon'ble Supreme Court.

In the case of Supreme Court Advocates-on-Record Association & another V/s Union of India, Hon'ble Justice Pandian while quoting Dr. B.R.Ambadekar had observed that entry into superior judicial office is not the exclusive prerogative of a privileged class. It is neither inheritable nor a matter of patronage.

National Commission to Review the working of the Constitution (NCRWC) headed by Justice M.N.Venkatachalaiah former Chief Justice of India observes "Over 50 years of the progress of education, however tardy, has certainly produced adequate number of persons of the SC, ST and OBC in every State who possess the required qualification having necessary integrity, character and acumen required for judges of Supreme Court and High Court for appointment as Judge of the superior judiciary".

The Supreme Court Judgement delivered in 1993 states that "Even today there are complaints that generations of men from the same family or caste, community or religion, are being sponsored and initiated and appointed as judges, thereby creating a new "theory of judicial relationship". Our democratic polity is not for any self perpetuating oligarchy but is for all the people of our country.

Second report of the Committee on the welfare of SC/ST, Ministry of Justice, authored by Sh. Kariya Munda, MP, as Chairman of the Committee, which was presented to the Lok

Sabha as far back as on 15.03.2000, provides sufficient basis for the amendment of the constitution to effect reservation for SC/STs in the judiciary of High Courts & Supreme Court. It is a well researched report with authentic data. Its suggestion to ensure the same through an All India Judicial Service on the pattern of IAS and creation of a National Judicial Commission having one member each from SC, ST and OBC to deal with the appointment, transfer and placement of the judges of High Court & Supreme Court needs to be considered with all seriousness. In fact Article 312 already indicates the possibility of creation of an All India Judicial Service but the idea has not been taken forward during the last 35 years or so.

Judiciary continues to be the only service that does not boast of a national service. The Supreme Court has been directing in 1992, 1993 and 1997 the Union of India to create 'All India Judicial Service'. In atleast two judgements delivered in early 90s the Apex Court has issued directions for setting-up 'All India Judicial Service'. The 1st, 8th and 11th Law Commissions as well as the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice has also recommended the formation of 'All India Judicial Service'. Recently in reply to a question in the Rajya Sabha, Hon'ble Law Minister Sh. M.Veerappa Moily has stated that in a National Consultation held in October, 2011, which was attended by Chief Justice of India, Supreme Court Judges and Chief Justices of All the High Courts, it was inter-alia resolved to establish an 'All India Judicial Service' through an open competitive examination ensuring best possible selection of judges.

Surprisingly in what could be viewed only as a retrograde step, the Supreme Court has sought the views of the High Court's

on the possibility of entrusting recruitment of 25% posts of Additional session judges and above to a National Authority. Of the 14 High Courts, Rajasthan and Patna High Courts have agreed to it. Himachal Pradesh & Andhra Pradesh Courts have not given their views. Delhi High Court has expressed reservation on the issues but has not given any view. High Courts of Sikkim, Allahabad, Jharkhand, Gujrat, Madhya Pradesh, Madras, Kerla, Uttrakhand and Bombay are opposed to the proposal.

But the million dollar question is as to what is the need of asking for the opinion of the High Courts. It is nothing but mockery of the Parliament and the Supreme Court, since High courts are not superior to the Supreme Court and the Parliament.

In a participatory democracy the participation of SC, ST and OBCs in the Judicial system must be ensured. Now E.M.Sudarsana Natchiappan Committee has also considered the issue in depth and has categorically recommended reservation in favour of SC, ST & OBCs in higher judiciary. Instead of implementing the reports of Karia Munda & Natchiappan Committee, the Government has increased the strength of judges of the Supreme Court upto 31 while ignoring the claims of SC, ST & OBCs. The Government must reassure these sections by showing bonafides and putting on hold the creation of additional posts and appointment against vacant posts.

Had the report presented by Sh. Karia Munda, as Chairman of the Committee on the Welfare of SC/STs, been acted upon 11 years ago, there would have been vast improvement in the matter of dispensation of justice.

The present reservation free judicial system has proved to be highly unsatisfactory which can be judged by the State of Affairs of dispensation of justice. Justice P.V.Sawant had observed in his judgement in the Mandal Case that a small section of the society which is around 10% of our total population controls, directs and regulates all aspects of life, mostly to suit their own interest. This has resulted in the concentration of the power in the hands of a select social group. Present setup of judiciary is apathetic to the cause of backward classes.

High Courts treats itself as “States” in the matter of appointment of officers & servants of the High Courts in terms of Article 229. It logically flows from it that high courts fall in the category of “State” within the meaning of Article 12. Therefore, Article 15(4), 16(4) and 16(4A) are automatically applicable to the Judiciary.

Consequently, reservation policy applies to the Judges of High Courts & Supreme Court as envisaged in article 15(4), 16(4) & 16(4A) as also article 335 of the Indian Constitution. Article 229 & 146 may be amended suitably, if need be. Since the procedure for selection and appointment of judges has not been laid down explicitly unlike in the case of legislature and executive, the application of Articles 14 and 15(4) could not be provided explicitly, the fact that the implied procedure did not bring about the 'adequate representation' of these classes only shows the failure of the present implied procedure. It offends one's common sense as to why there should not be any reservation in a Constitutional body of **law interpreters and guardians of constitution** while such reservation is available in the **law-makers**'.

In view of the above, the stand taken by Ministry of Law & Justice as mentioned in the report of Shri Kariya Munda, that there is no specific provision for Reservation in Judiciary is not tenable. Further, the stand taken by High Court of Delhi that the Chief Justice has unfettered powers in the matter of appointments in the High Court & such staff is taken out of the purview of Article 309 is not acceptable.

The Supreme Court has concluded (In the case of the Government of Andhra Pradesh vs. Vijay Kumar-AIR 1995) that Article 15(4), which deals with the SC/ST and OBC, is wider than Article 16(4) and the same [Article 15 (4)] has to be read harmoniously with article 16(4), 124 & 217 which provides for appointment of the judges of the High Court & Supreme Court particularly when Article 124 & 217 do not specifically prohibit reservations for SC, ST and OBC. This is necessary to pave the way for reservation in judiciary.

The appointment of judges belonging to SC, ST and OBCs will not in any way interfere with the basic structure of the Constitution as they will also be independent judges like any other Judges appointed from the general categories. Therefore, it is wrong to presume that the basic structure of the Constitution will be disturbed by providing reservation for SC, ST & OBCs in higher judiciary. **Administering of justice is different from appointment of judges to higher judiciary.**

Only to satisfy the ego of so called managers of the system we can accept their irrelevant argument that to keep Judiciary independent, Judiciary must be reservation free. But at the same time, it is obligatory on their part to clarify the reason for not recommending the names of SC/ST Advocates for appointments

as Judges as 67% of Judges are being appointed from Advocates that too without any competitive examination but only through simple recommendation of Chief Justice of concerned High Court. If the figures related to appointment of Judges from the Advocates Quota is calculated then the real face and biased act of the system is established beyond doubt as it does not give even 1% representation to SC/ST.

As such to maintain proper reservation of SC/ST in the Judiciary all the vacancies and fresh appointments of Judges from Advocates quota must be filled through candidates belonging to reserve category and should continue till the 22.5% representation is fully achieved.

Our Constitution is not a non-aligned national charter. It is a document of social revolution which casts an obligation on every instrumentality including the Judiciary, which is one out of the three branches of the State, to transform the status-quo ante into a new human social order in which there will be equality of status and opportunity for all. Judiciary cannot afford to remain only as an umpire but it must be functionally involved in the goal of socio-economic justice.

Reservation of Judges in Subordinate and Higher Judiciary:-

Subordinate Judiciary :-

1. Reservation is applicable to the post of District Judge in some of the States and to posts other than District Judges in all the states.
2. Under Article 233 of the Constitution a person who has seven years experience as an advocate or a pleader is eligible for appointment as District Judges subject to the recommendations by the High Court

3. Under Article 234 of the Constitution appointment to the post other than District Judge is made by the Governor of the State in accordance with the rules made by him in consultation with the State Public Service Commission and with the concerned High Court.

High Courts :-

Under Article 217 of the Constitution, a person who has held a judicial office for at least 10 years, and a person who has been an Advocate of a High Court for at least 10 years is eligible for appointment as a High Court Judge.

There is no provision for reservation. It must be done through a constitutional amendment.

Supreme Courts :-

Under Article 124 of the Constitution a person who has been a judge of a High Court for at least 5 years, a person who has been an advocate of a High Court for at least 10 years and a person who in the opinion in the President of India is a distinguished jurist is eligible for appointment as a Supreme Court Judge.

Constitution of India should be suitably amended to make provision for reservation to the members of SC/ST, in the appointment of Judges at all levels.

Till 1993 the executive used to exercise the powers of appointments of judges in consultation with the Chief Justice of respective courts and the Chief Justice of India and the Executive had the powers to either accept or reject the recommendation. In 1994, Supreme Court (ref. second judges case) wrested the power of appointment of High Court Judges from the hands of the

executive and vested the same with the CJI who was to consult two of his senior most judges forming a collegium. No appointment of any judge of the Supreme Court or any High Court can be made unless it is in conformity with the opinion of the Chief Justice of India, which is determinative in nature. Strength of the collegium in case of Supreme Court appointment has since been increased to 5 including the CJI.

Collegium is an extra constitutional authority which was invented by Justice J.S.Verma and his colleagues for making appointments of judges in High Court and Supreme Court. It was never envisaged by the Constitution or thought of by the founding fathers of the Constitution.

There are no specific and enforceable statutory guidelines to be followed in the matter of appointments. Guidelines formulated by the Supreme Court itself for making appointments are often interpreted to suit their own convenience to get their favourites appointed thus defeating the claims of many meritorious candidates. There is complete lack of transparency and accountability on the part of members of the collegiums unlike America where there is total transparency in the matter of appointment of Judges. Further, the appointment thus made is not justiciable in a court of law. Even though making appointments is an administrative action but the same is not excluded from the purview of the Contempt of Courts Act. Therefore, no questions can be asked about the appointments so made.

About 67% of the appointments are made out of the advocates practising in the courts. An analysis of the appointments made in the last six decades would show that the appointments revolve around a few families only even among the

privileged sections of the society, who do not constitute even 1% of the country's population. To perpetuate the hereditary system, which is akin to the system of Archakas and village officers, career of the persons belonging to the families and acquaintances of the judges, who are already holding posts in high courts and supreme courts, is nurtured very carefully from the very beginning.

In North India, advocates belonging to these privileged sections are appointed to the superior courts in their 40s keeping their ultimate eye on the Chief Justice-ship/Judge-ship of the Supreme Court. To build the necessary atmosphere, encomiums are paid to them in the judgment etc., while they work as a lawyer before their appointment to the courts. Judges from the weaker section are invariably appointed in their 50s and are thus kept out of consideration on the principle of seniority, which along with merit was propounded as theory behind the appointments. No tests are held for assessing the merit of a person though, and appointments are made simply on the recommendation of the concerned Chief Justice.

Kith and Kin of the people in power both in the Executive & Judiciary are being appointed as Law Officers/ Legal Advisors to the PSUs immediately after their entry into the profession and, thereafter, they are being appointed as judges of the High Court even when they never had practised as an advocate.

The above facts show that vested interest are not allowing the judges belonging to the weaker sections to come anywhere near the Supreme Court by adopting various methods, thereby not allowing the social transformation to take place in the Country. To translate the constitutional goals into reality and to percolate the system to the lower rung of the masses, the persons from

lower strata of the society should find a place in the superior judiciary. Hence, it is strongly urged upon the Central Government to provide reservations in favour of the SC, ST and OBC in the matter of appointment of judges to the High Court and the Supreme Court.

Recommendations :-

1. Treat Supreme Court and High Courts as "STATE" within the meaning of Article 12 of the Constitution as held by Justice Mathew in Keshwanand Bharti case at page 830 (1973 supp.SCRI)
2. A National Judicial Commission should be constituted to make appointment to the superior courts, which should inter-alia consist of one member each from SC,ST,OBC and Minority category besides the Law Minister, Chief Justice of India and one eminent person with legal background-not a retired judge of High Court & Supreme Court- nominated by the President of India in consultation with Leaders of the Opposition of both the Houses of the Parliament. The Chairman of National Commission for Scheduled Castes, Chairman of National Commission for Scheduled Tribes and Chairman of National Commission of Backward Classes and the Chairman National Commission for Minorities should be consulted in appointments of judges to the High Courts & the Supreme Court. The primacy provided to the CJI and 2 of his colleagues through collegium has to be replaced with a provision that whereas CJI may consult his colleagues, they shall not be the members of the National Judicial Commission. Being an extra constitutional authority, **Collegium** aforementioned

should be scrapped by bringing in a suitable legislation simultaneously. Not to give a chance to the Supreme Court to strike down the law, the legislation may be included in the IXth Schedule in the Constitution of the India keeping it away from the judicial review by the superior courts.

The National Judicial Commission, while making appointments to the High Courts and to the Supreme Court, must take into account and see that minimum 49.5% reservation is followed for OBCs 27%, SCs 15% and STs 7.5%.

To start with, new appointments should be made out of SC/ST (to the extent of 50%) and it may be continued till 22.5% reservation is achieved for SC/ST.

To ensure transparency, open press advertisements may be given to invite applications and search committees may be constituted by the High Courts and Supreme Court for the identification of suitable advocates-in-practice from amongst SC/ST and OBC.

Similarly, names of suitable SC/ST candidates (judicial officers) may be obtained for appointment in High Courts and Supreme Court from District Courts and High Courts.

Reasons for rejection of individuals from SC/ST may be kept on record before they are finally rejected for appointment as Judges of High Courts and Supreme Court. To ensure fair treatment test should be conducted and interviews may be videographed.

3. For appointment to the District Courts, an All India Judicial Services, on the lines of IAS, is needed to be brought into practice creation of which was envisaged through the Forty Second Amendment to the Constitution with reference to Article 312. Even the Judiciary and the 1st, 8th and 11th Law Commissions have supported such a proposal. The Supreme Court has even issued directions through atleast two judgements for setting up All India Judicial Service. Reservation should be applicable upto the post of District Judges in all the states.
4. Suitable recruitment rules may be framed in relation to the appointment of staff and officers of District Courts, High Courts and the Supreme Court, which may be applied uniformly all over and Articles 15(4) 16(4), (164A) of the constitution may be followed. Article 229 and 146 of the constitution may be suitably amended.
5. For appointments in Commissions, Tribunals, Regulatory Authorities and Consumer Redressal forums suitable provision may be made for SC/STs and OBCs in line with the existing provision for appointment of lady members.

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