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THE RESERVATION POLICY FOR MUSLIM IN ANDHRA PRADESH

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Introduction

In the long journey of State Government's efforts to improve the life of poor and deserving, the Government issued executive orders or passed laws to provide special concession / reservation to weaker sections and religious and linguistic minorities. More often than not, these measures of the Government were challenged in the courts as violative of Articles 14, 15 and 16 of the Constitution. The state of Andhra Pradesh was formed on 01.11.1956 under the State's Reorganization Act, 1956 with the merger of Andhra Region, which formed part of erstwhile Madras Presidency, and Telangana Region of Nizam State. In the erstwhile State of Nizam, reservations to backward classes in educational institutions and services were provided under G.O.Ms.No.10, dated 30.6.1953 for 112 castes. On the recommendations of a Cabinet Committee, the Government, in G.O.Ms.No. 1880 dated 29.07.1966 recognized 112 castes as backward classes for purposes of Article 15 (4) and 16 (4) of the Constitution of India. Subsequently, in exercise of powers conferred by the Central Act, the Government, by its order G.O.Ms.No.870, Education Department, dated 12.4.1968, constituted a Multi Member Commission, initially headed by Justice Manohar Prasad, Ex Chief justice of Andhra Pradesh High Court and later by Sri Anantharaman, ICS, to investigate the claims of backward classes. The Commission, conducted detailed investigation and inquiries and submitted its report on 20/6/1970 recommending 92 castes including Dudekula. (also known laddai or Noorbash). Thus, a Muslim community entered the BC's list for the first time in our state. The Government accepted the said recommendations of the commission in toto and in G.O.Ms.No. 1793 Edn dated 23/9/1970 provided for reservation to backward classes under 4 groups with separate quota for each group for a period of ten years. Later the Government deleted 2 castes and added 3 more castes to the original list which

included another Muslim caste called Mefitar. This order was challenged before the High Court of Andhra Pradesh and the same was quashed. But later the Supreme Court of India upheld the order of the Government in State of AP Vs. Balram. The Government of Andhra Pradesh wanted to review the existing list of backward classes and appointed Sri N.K. Muralidhara Rao, IAS, as One Man Commission of Inquiry. He submitted his report on 31.01.1982 recommending increase of reservations to backward classes from 25% to 44% and to include 9 other castes under the list of backward classes. The Government accepted the issued -recommendations of Sri N.K. Muralidhara Rao and three orders. Of them G.O.Ms.No. 166 dated 16.7.1986 was the main order which included 9 new caste in BCs list. But Government did not accept N.K. Muralidhara Rao's recommendation to delete Mehtar (Muslim scavenger) Community from the list. G.O.Ms.No, 167 and 168, both dated 16.7.1986, were consequential orders. All these three G.O.s were challenged in the High Court of Andhra Pradesh and a full bench quashed only a part of the P.O.Ms.No.166 which enhanced the reservation from 25% to 44% in V.Narayana Rao Vs. State of A. P. But the Government chose to maintain the status-quo ante that existed prior to 15/7/1986. In exercise of power under Article 340 of the Constitution, the President of India, appointed the second Backward Classes Commission under the chairmanship of Sri. B.P. Mandal. This Commission recommended inclusion of 292 castes in the list of BCs for the State of Andhra Pradesh.

The orders of Government of India implementing the recommendation of Mandal Commission were challenged in the celebrated Indra Sawhney case. As per the direction of the Supreme Court in this case, the Government of Andhra Pradesh enacted the Andhra Pradesh Commission for Backward Classes Act in 1993. Subsequently, under G.O.Ms.No.9 dated 26.01.1994 Government appointed Justice K.S. Puttaswamy to examine any requests for inclusion in BCs List and to hear complaints of over inclusion and under inclusion. In 1994, the Government issued G.O.Ms.No.1930 dated 25/8/94 including 14 (a) castes/communities in list of BCs. Muslim Community was one of the 14 communities. This order was challenged in High Court of A.P. Relying on the assurance given by the A.G, on behalf of the State Government that G.O.Ms.No.30 will not be given effect to until receipt of report from the BC Commission, the High Court instructed Relying on the assurance given by the A.G, on behalf of the State Government that G.O.Ms.No.30 will not be given effect to until receipt of report from the BC Commission, the High Court instructed the Government not to give effect to G.O.Ms.No.30. In G.O.Ms.No.15 dated 4/6/2004, Government of A.P., directed Commissioner of Minorities Welfare to examine the social, economic and educational backwardness of the Muslim community in the State. The Commissioner submitted his report on 5/7/2004 recommending reservation of 5% seats to Muslim minorities in educational institutions and employment. Accepting this recommendation, the Government issued G.O.Ms.No.33 dated 12/7/2004

providing 5% reservation for Muslim minorities in education and employment by creating a fifth group called E'. A full bench of the AP High Court in T. Muralidhar Rao Vs. State of AP struck down this order and directed the Government to reconstitute the BC Commission. In pursuance of the said direction the Government of Andhra Pradesh constituted the present Andhra Pradesh BC Commission in G.O.Ms.No.57 BC welfare (C2) dated 18/11/2004 to examine the request for inclusion of any class or classes of citizens as BCs in the list and to hear complaints of over inclusion and Under inclusion of B.Cs in such list. The Commission, after following the procedure prescribed under the Act and after conducting due inquiry, sent a report to the Government and the Government of Andhra Pradesh accepted than Under inclusion of B.Cs in such list. The Commission, after following the procedure prescribed under the Act and after conducting due inquiry, sent a report to the Government and the Government of Andhra Pradesh accepted the report of the Commission for inclusion of Muslim community in the list of Backward Classes and issued Ordinance No. 13 of 2005 dated 25/6/05 providing reservation to the Muslims community in the matter of education and appointment of the Muslims in the A.P. State services.

The above said reservation was also challenged in W.P.No. 13832, 13834 and batch cases of 2006. The High Court in its judgment dated 7/11/05 struck down the Act and status-quo orders were give regarding the admissions already made in the Government colleges. The Government tiled Civil Appeal in Supreme Court against the orders of the High Court.

In view of the High Court striking down Ordinance No. 13/2005 and Act No.21/2005 and for the reason stated in the judgment, the Govt, of A.P., has made a reference to the A.P. Commission for Backward Classes vide Lr.No.5488/C2/ 2004-12, Dated' 17-4-2007 (vide Annexure I) to identify classes/communities/ groups among the Muslim population in the State that can be classified as Socially and Educationally Backward Classes in the light of the judgement of the High Court in W.P.No. 13832 of 2005 and the Judgement of the Hon'ble Supreme Court in the Mandal (Indra Sawhney) case dated:16-11-1992 and submit a report with clear recommendations of the Commission. Meanwhile the Government of Andhra Pradesh has appointed Sri P.S.Krishnan, IAS, former Secretary to Ministry of Welfare, Government of India, as Advisor to Government of Andhra Pradesh. Backward Classes Welfare Department to advice, inter alia, on the issue of identifying socially and educationally backward classes in the Muslim population in the State. Sri Krishnan submitted his report to the Government on 11-06-2007. The Government referred his report to this Commission for examination.

The Sri Krishna Commission thank him for the data & the analysis which provided useful inputs for the Commission in its report while, making its recommendations for including the genuine groups/classes in the list of socially & educationally backward classes of Muslims in A.P., While the Commission has made appropriate references to portions of Sri Krishnan's report at different places in the Commission report, the full text of Sri Krishnan's report and recommendations should be read together with this report in order to have a complete picture on the subject dealt with in the present report.

In addition to our survey and public hearings which we have covered in Chapter No. 3 under the heading 'Methodology followed by the Commission' and Mr. Krishnan's report, we have found very rich data in the three large volumes of 'People of India,' State Series relating to Andhra Pradesh published by the Anthropological Survey of India. These three volumes were first published recently in 2003.

University departments of anthropology, other departments of local universities, etc. Local scholars participated in the project as well as in the seminars held by ASI. The progress in the investigation and coverage of communities from October 2, 1985 to March 31, 1992 was steady. As mentioned above, ASI was able to identify, locate and study 4694 communities in all the States and Union Territories of India, out of the 6748 listed initially. As many as 500 scholars participated in this project, including 197 from 26 institutions. About 100 workshops and rounds of discussion were held in all the States and Union Territories, and, in these, about 3000 scholars participated. The investigators spent 26,510 days in the field. They interviewed 25,000 people, in 3581 villages, mostly multi-community villages, and in 1011 towns and cities spread over almost all the districts of India, i.e. 421 districts and 91 cultural regions during the period 1985 to 1992. Of the informants, 4981 were women. The data generated in this respect has been supported with the additional information from Decennial Census and other secondary sources

The phase of more elaborate analysis started in July 1991, in collaboration with the Center for Ecological Sciences, Indian Institute of Science, Bangalore. This resulted in a voluminous output of analyzed data, which has been presented in a comprehensive matrix consisting of the four categories of populations, the constitutional,, religious, occupational and locational The 'People of India' si India and all the AP was first published in 2003 in three large volumes.

Educational Backwardness of Muslims

Educational backwardness occurring in Article 15(4.) refers to the backwardness in achieving the levels of modern education. In modern education, competition is very intense in professional courses like Medicine, Engineering, Information Technology and Business Administration. Literacy and education are not one and the same. Literacy is generally indicated by reading, writing and simple

arithmetic. But social backwardness is crucial. Educational backwardness in isolation and independent ST or social backwardness does not make a class eligible to be recognized as a backward class/or socially and educationally backward class under Articles 16(4)/ 15(4). The word "Class" under Article 15(4) is clearly wider than "caste" and backward classes" means not only castes, wherever they may be found but also other groups, and sections among the populace, which are socially backward. That is why, the expressions "castes" or "caste" were not used under Articles 15(4) and 16(4), in respect of those other than SC & ST, but the word "class" which includes caste and other communities, groups and sections which constitute backward classes among the populace was used. Therefore, sections/groups among the Muslim community or the Muslim community itself can be identified as a socially and educationally backward class (es) for the purpose of Article 15(4) and as backward classes of citizens for the purpose of Article 16(4) provided they satisfy the test of social backwardness. Reservations for Muslims or sections/groups among them in no manner militate against secularism, which is a part of the basic structure of the Constitution; reservation itself, whether for SCs, STs or Socially and Educationally Backward Classes including Muslims or sections or groups of Muslims among them is itself part of the basic structure of the constitution being part of the basic feature of equality, since reservation for them is an important means of achieving equality. Articles 14, 15 and 16 enjoin upon the state to treat all its people equally irrespective of their religion, faith or belief. The state, while discharging its constitutional obligation, cannot make any distinction between one group of citizens and another only on the ground of religion, faith, or belief or exclude from its consideration the demands, entitlements of any claimants. Whether a group, caste or class is entitled to the benefit of reservation and other social justice measures does not depend upon religion, faith or worship. The identification of socially and educationally backward classes must be on a practical basis, the practical basis must have reference to sociohistorical factors and the prevailing social conditions and circumstances.

In Archana Reddy vs. State of A.P. The main challenge to A.P Reservation of Seats in Educational Institutions and of Appointments or Posts in Public Services under the State to Muslim community Ordinance 2005, was that the entire Muslim population in the State cannot be declared as socially and educationally backward. The judgment of the court laid down that "there is no prohibition to declare Muslims, as a community, socially and educationally backward for the purposes of Article 15(4) and 16(4) of the constitution of India, provided they satisfy the test of social backwardness, as stated in the judgment. Going through what is stated in the judgment, the majority of judges held that the entire Muslim community in A.P is not a homogenous class and that there are several groups/classes among them. The Court approvingly quoted the findings of N.K. Muralidhara Rao Commission, Anantaraman Commission and the National Backward Classes Commission and cited

the "People of India" series by the ASI & the "Encyclopedia of the World Muslims: Tribes, castes and communities" editors N.K.Singh and A.M.Khan, on this finding. It was also held that the condition of social backwardness which is fundamental has not been shown to be existing in respect of the Muslim community as a whole and the High Court struck down the ordinance/act as the identification done in this case did not indicate as to whether the Muslim community as a whole is backward or not

The Commission respects these observations. Accordingly, the Commission decided not to treat the entire Muslim population as a single group and declare them as B.O enblock. In this report we have decided to recognize identifiable separate groups among Muslim communities and consider which of them are socially and educationally backward. So far as data and methodology is concerned the Commission is conscious that the deeper we dig into the data mine the better the results. The Commission has, therefore, looked into the elaborate and authentic data found in "the People of India, A.P." series by Anthropological Survey of India which was first published in 2003, Sachar Commission report, the valuable historical perspective and careful analysis given in the Sri. P.S. Krishnan's report, numerous data made available by different government departments on the number of employees belonging to Muslim communities, the house hold survey done by the staff of the Commission, the information collected in public hearings held by the Commission and the written representations given to the Commission. The present findings of the Commission are arrived at on the basis of above vast data, and in deference to the observations of the High court.

The gist of opinions against reservations are as follows:

1. The Commission cannot adopt a pick and choose method and conduct inquiry regarding certain communities only. A ceiling of 50% reservation is still in force and if recommendations and actions of the Govt., resort to providing reservations in this left over 4%, the other communities who do not have the political blessings of the political executive will suffer irreparable loss.
2. Muslims in the state of A.P. are not Socially Backward. They have ruled the erstwhile Nizam State and densely populated as a religious minority.
3. They were a part of the upper echelons of the society being addressed as Sahab or Mian or Sahiba Begum etc.,
4. Anantaraman Commission and Muralidhara Rao Commission have rejected inclusion of Muslims in the list of BCs.
5. Religious functions of Muslims are conducted with fervor and pomp with all around participation notably Iftar parties.
6. The lot of Muslims has improved to be at par with all the forward sections.
7. One of the salient features of Islam is it being non-sectarian and unitary reflected in single line prayers for all Muslims and also single line dinner/without particular reference to any sectarian line of thought.

8. The Creamy layer among Muslims has to be identified and the parameters for the same has to be identified first.

Rangnath Mishra Commission's Report of Muslims Reservation

The government appointed Justice Rangnath Mishra Commission has recommended 10% reservation for Muslims and 5% for other minorities in government jobs and favoured Scheduled Caste status for Dalits in all religions. The report of the National Commission for Religious and Linguistic Minorities, headed by former Chief Justice of India Rangnath Mishra, was tabled by Minority Affairs Minister Salman Khurshid in the Lok Sabha today.

Transparent Publication of Sri Krishnan's Report

On receipt of letter No.5488/C2/2004, dt.11.6.2007 from the Government, the Commission met on 12-06-2007 and decided to transparently place the full report of Sri Krishnan on the web for public information, inviting views and suggestions of interested members of the public. It was placed on the Government website on 12-06-2007 at the link at Department of Backward Classes under A.P. Commission for Backward Classes. The notification is reproduced. "Hearings by the Commission on Muslims Representation, Report & Recommendation of Sri P.S. Krishnan, Advisor to Government.

The Government of Andhra Pradesh had appointed Shri P.S. Krishnan as Advisor to the department of Backward Classes Welfare, especially for giving report on the identification of socially and educationally Backward Classes in the Muslim community of Andhra Pradesh and recommendations in this regard and related matters. The report of the Advisor to Government of Andhra Pradesh Shri P.S. Krishnan titled. "Report on Identification of Socially and Educationally Backward Classes in the Muslim community of Andhra Pradesh and Recommendations", has been submitted to Government on 11/06/2007. The Government has made available the report to the Commission for its consideration and recommendations. The B.C. Commission has decided to place the report online to be transparently accessed by the public.

In order to invite views and suggestions and in exercise of the powers of A.P. Commission for Backward Classes Rules of 1993 on matters referred to it by Government, the A.P. Commission for Backward Classes is holding public hearings for all classes among Muslims who have requested for inclusion in the list of socially and educationally BCs/OBCs including those who have been recommended in the report quoted above in the following districts on the dates mentioned against each. All persons/ groups interested to give their views, opinions, suggestions on this matter and including this report may meet the Commission at the places and dates mentioned above."

Statistics Regarding Muslim Communities in A.P.

Government of India has notified the following Muslim communities / Groups as Socially and Educationally Backward classes. Some of these have been included on the basis of principle of

commonality (eg. Mehtar, Dudekula etc, in the case of A.P.) Between the State list and the Mandal list for the states. Others have been included and notified on the basis of advices of the National Commission for Backward Classes (eg. Qureshi of A.P.,). According to the list obtained from National Backward Classes Commission, in June 2006, Muslim communities and other minorities notified as OBCs at the all India level are the following.

Reservation for Muslim Backwards

Muslim reservation in Kerala, Karnataka, Manipur and Tamil Nadu, there is no reservation for all Muslims in Karnataka and Kerala. In Tamil Nadu only Tamil-speaking Muslims are included in the backward list excluding the Urdu-speaking. In Manipur, all Muslims are not included in backward list. In Kerala the word used is "All Muslims excluding" and those excluded in Karnataka are "Kachi Memon, Navayat, Bohra, Bhunaya, Borha, Saiyad, Sheikh, Pathan, Mughal, Mahad Yoma, Mohdadi, Kokani or Gomti Muslim. In Kerala, those excluded are "Bohra, Kachchi Memon, Nayayats, Turkan and Dakhni Muslims" (source National Commission of Backward Classes).

India Supreme Court allows 4% Muslim Reservation a Complete Case study

India - Supreme Court allows 4% Muslim Reservation a Complete Case study -

1. The Andhra Pradesh Government in 2004 passed a Government Order to provide 5 percent reservations to Muslims.
2. This government order was challenged in the High court
3. High court struck down the order as the backward classes commission was not consulted before passing this order with other reasons.
4. Again, in the year 2005, the government passed an ordinance providing percent reservations to entire Muslim community in consultation with the backward class's commission.
5. Again, this order of government was challenged in the High Court.
6. This time also High court struck down the government order for many reasons. High court said that Muslims as a community are not homogeneous. The entire religion cannot be considered as 'backward', the order and act did not differentiate between 'creamy layer' and other backward Muslim groups. High court also said that by granting blanket reservation to Muslims it provides an incentive for conversion from other religions to Islam in order to avail the benefits of the reservation. The Court also applied the principles laid down by the Supreme Court as the reservation limit had exceeded 50 percent.
7. After this decision of High court in the year 2005, the government constituted a committee to look into the backward communities amongst the Muslims and find groups that belong to the backward class.
8. The State had moved a bill in the Assembly based on a report submitted to it by Andhra Pradesh

Commission for Backward Classes (APBC).

9. The bill was later passed by the Assembly. The report had recommended that the socially and educationally backward should be adequately represented in the State.
10. The Government Order was issued on July 7, 2007 providing for quota to Muslim groups.
11. In the year 2007 the Andhra Pradesh Government again by using the legal loopholes reduced the 5 percent reservation by one percent and made it 4 percent reservation so that it did not exceed the 50 percent limit which was set by the supreme court of India
12. Again, this time also matter reached the high court and 7-judge bench presided over the issue and heard the case for more than a year.
13. A seven-judge constitution bench of the Andhra Pradesh High Court had by a majority judgment of 5:2 held that the law providing 4 per cent reservation to backward class Muslims in the State was unsustainable and violative of Article 14, 15(1) and 16(2) of the Constitution.
14. The High Court had passed the judgment holding the Andhra Pradesh reservation in favor of socially and educationally backward classes of Muslims Act, 2007 unsustainable. The High Court, while setting aside the State Act, had also quashed a subsequent 2007 Government Order allocating 4 per cent reservation to Muslim groups in educational institutions and jobs. The High Court held that the recommendation made by the APBC was unsustainable as it failed to evolve and spell out proper and relevant criteria for identification of social and educational backwardness or social backwardness and inadequate representation in public employment among classes or persons belonging to Muslim community. It said the data was not collected properly by the APBC for determining the social and educational backwardness of Muslims in the State.

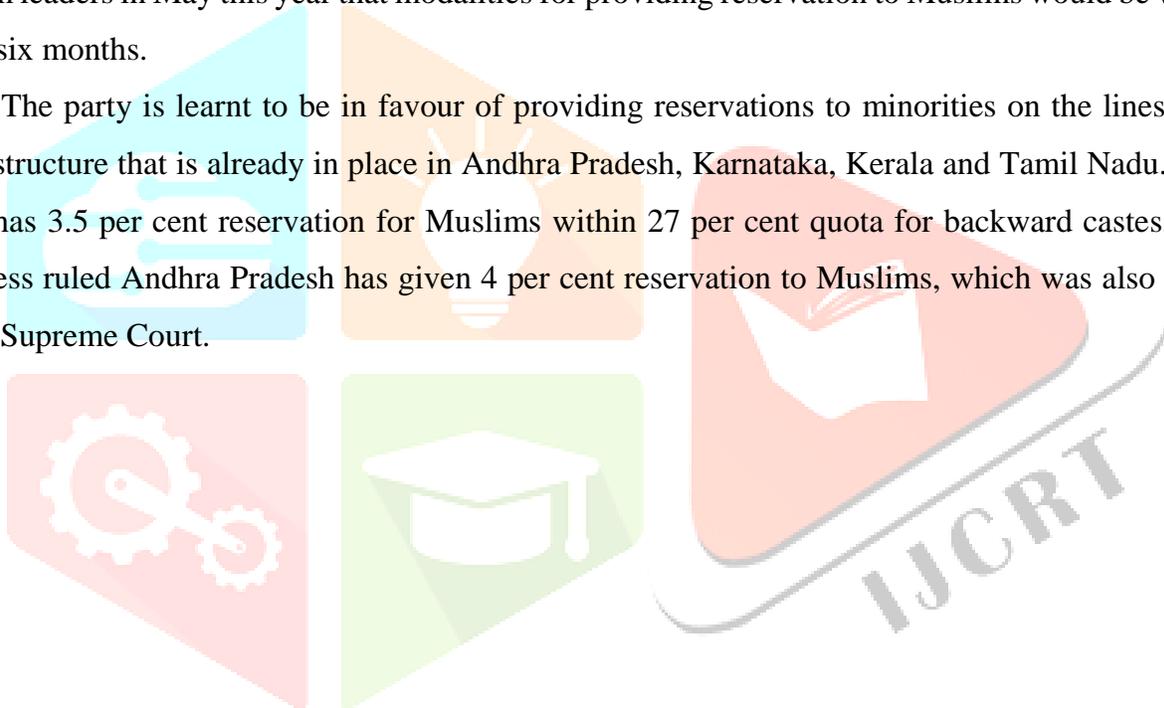
Government Considering Reservation for Muslims Through OBC Quota

Government is actively considering reservation for Muslims through the Other Backward Castes (OBC) route, minority affairs minister Salman Khurshid has said. “We are actively looking at the reservation issue. We have a commitment in our (Congress) manifesto. I am pushing for it all the time.... Congress leadership is committed to the issue and there is no shred of doubt about it,” he told PTI in an interview here. Khurshid was replying to questions on whether the government is ready to implement the recommendations of the Ranganath Mishra Commission for reservation to Minorities. The Commission, whose report was tabled in Parliament in December last year, had recommended 10 per cent reservation for Muslims and five per cent for other minorities in government jobs. The Commission had also suggested an alternative route for reservation to minorities if there is “insurmountable difficulty” in implementing the recommendation for 15 per cent reservation. According to the Mandal Commission report, minorities constitute 8.4 per cent of the total OBC

population. So in the 27 per cent OBC quota, an 8.4 per cent sub quota should be earmarked for minorities of which 6 per cent should be for Muslims. “They (Mishra Commission) are saying either do it as 15 per cent or as share of 27 per cent. We are moving on the second option,” Khurshid said, adding that this option was also recommended by the Sachar Committee, which looked into the issue of the backwardness of Muslims. Asked whether the UPA is ruling out the first option of giving 15 per cent reservation to minorities as a while, Khurshid said, “Not ruling out the first option, we are moving on the second option.”

The minority affairs minister said that though his ministry is not the one to decide over the issue, he was in constant touch with the Ministry of Social Justice and Empowerment as they are the ones who have to do it. Congress president Sonia Gandhi had reportedly assured a delegation of Muslim leaders in May this year that modalities for providing reservation to Muslims would be worked out in six months.

The party is learnt to be in favour of providing reservations to minorities on the lines of the quota structure that is already in place in Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. Tamil Nadu has 3.5 per cent reservation for Muslims within 27 per cent quota for backward castes, while Congress ruled Andhra Pradesh has given 4 per cent reservation to Muslims, which was also upheld by the Supreme Court.



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