

Bill No. 146 of 2021

THE SCHEDULED TRIBES (RESERVATION IN POSTS AND
SERVICES AND FILLING UP OF VACANCIES IN A
TIME BOUND MANNER) BILL, 2021

By

DR. HEENA VJAYKUMAR GAVIT, M.P.

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BILL

*to provide for reservation in posts and services under the Central
Government and private sector for persons belonging to the
Scheduled Tribes and timely filling up of vacancies meant
for Scheduled Tribes to ensure their equal representation
and for matters connected therewith or
incidental thereto.*

BE it enacted by Parliament in the Seventy-second Year of the Republic of
India as follows:—

1. (1) This Act may be called the Scheduled Tribes (Reservation in Posts and
Services and Filling up of Vacancies in a Time Bound Manner) Act, 2021.

Short title
and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by
notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appointing authority”, in relation to a service or post in an establishment, means the authority empowered to make appointment to such service or post;

(b) “establishment” means every such establishment owned, established, 5 controlled, managed or financed by the Government and includes—

(i) a Ministry or department or subordinate office or attached office of the Government;

(ii) a public sector undertaking or statutory authority constituted 10 under any Central Act;

(iii) a corporation in which not less than fifty-one per cent. of the paid-up share capital is held by the Government;

(iv) a university established by a Central Act and its affiliated colleges, including medical and engineering colleges and institutions;

(v) a primary or secondary school or any other educational 15 institution including private unaided and aided institutions;

(vi) an industry, trade or business;

(vii) a Government company as defined under section 2(45) of the Companies Act, 2013; and 18 of 2014.

(viii) an autonomous body, organisation or institution receiving 20 grant or aid from the Consolidated Fund of India;

(c) “Government” means the Central Government;

(d) “private sector” means any organisation or establishment which is not owned by the Central Government;

(e) “prescribed” means prescribed by rules made under this Act; 25

(f) “promotion by non-selection” means promotion made on the basis of seniority cum-fitness;

(g) “promotion by selection” means promotion made on the basis of merit-cum seniority;

(h) “recruitment year” means the calendar year for which the recruitment 30 is made; and

(i) “Scheduled Tribes” shall have the same meaning as assigned to them in clause (25) of article 366 of the Constitution.

Reservation in appointment by direct recruitment and promotion.

3. (1) The Government shall reserve such percentage of posts for persons belonging to the Scheduled Tribes for appointment in establishments and private 35 sector by direct recruitment and promotion, as may be prescribed.

(2) The posts reserved under sub-section (1) shall be filled in such manner, as may be prescribed.

Inclusion of Scheduled Tribes officers in select list in case of promotion within Group ‘A’.

4. In the case of promotion by selection from one Group ‘A’ post to another Group ‘A’ post in Government which carries the scale of pay, the maximum of which 40 is equal to or less than the maximum of the scale of pay of a Director in the Central Secretariat Service or equivalent posts in other establishments, the officers belonging to the Scheduled Tribes shall be considered for appointment.

	5. (1) Appointment to an unreserved vacancy shall be open to all eligible persons including a person belonging to the Scheduled Tribes.	Unreserved vacancies to be open to members of Scheduled Tribes.
5	(2) Where such unreserved vacancy is filled by direct recruitment or promotion by selection by a person belonging to the Scheduled Tribes on the basis of merit, then, such person shall be appointed against the unreserved vacancy.	
	6. (1) The maximum age limit fixed for direct recruitment to a service or post shall be relaxed by five years for persons belonging to the Scheduled Tribes.	Relaxation of age.
	(2) The maximum age limit fixed for promotion to a post, if any, shall be relaxed by five years for persons belonging to the Scheduled Tribes.	
10	7. The examination fee or application fee, determined for recruitment to a service or post through competitive examination or otherwise, shall be reduced to such extent for persons belonging to the Scheduled Tribes, as may be prescribed.	Fee concession.
15	8. (1) Any standard of suitability, excluding the essential and desirable qualifications, required for appointment by direct recruitment to a post shall be relaxed for persons belonging to the Scheduled Tribes, if sufficient number of such candidates possessing requisite standards are not available to fill the vacancies reserved for them.	Relaxation in qualifications and experience.
20	(2) The experience required for appointment by direct recruitment to a post shall be relaxed for persons belonging to the Scheduled Tribes, if at any stage of selection, sufficient number of such candidates possessing the requisite experience are not available to fill the vacancies reserved for them.	
25	9. (1) Where a qualifying examination is held to determine fitness of eligible persons for promotion by non-selection and sufficient number of persons belonging to the Scheduled Tribes fulfilling the qualifying standards are not available to fill the vacancies reserved for them, such qualifying standards shall be relaxed, consistent with the minimum standards of fitness required for appointment to the post, in the case of persons belonging to the Scheduled Tribes.	Reservation in case of promotion.
30	(2) Where qualifying examination is held to determine merit of eligible persons for promotion by selection and sufficient number of persons belonging to the Scheduled Tribes fulfilling the qualifying standards are not available to fill the vacancies reserved for them, such qualifying standards shall be relaxed, consistent with the minimum standards of merit required for appointment to the posts, in the case of persons belonging to the Scheduled Tribes.	
35	10. The vacancies reserved for persons belonging to the Scheduled Tribes shall be filled by persons belonging to the Scheduled Tribes only.	Reserved vacancies to be filled by persons belonging to the Scheduled Tribes only.
40	11. Where posts in an establishment are to be abolished and as a result thereof, the services of certain persons are required to be either surrendered or terminated, no such surrender or termination shall be made in respect of persons belonging to the Scheduled Tribes, if it results in lowering their representation in relation to the percentage of reservation fixed for them.	Abolition of posts not to affect the representation of members of Scheduled Tribes.
	12. (1) Every establishment shall designate an officer of such rank, as may be prescribed, to function as a liaison officer for the purpose of ensuring that the provisions of this Act or the rules made thereunder or any direction or instruction issued by the Government regarding reservation are not contravened.	Liaison officer.

	(2) The liaison officer shall, from time to time, inspect and verify the documents, records and reports with respect to appointments of persons belonging to the Scheduled Tribes made by the appointing authority by direct recruitment or promotion.	
	(3) Where the liaison officer is satisfied that the establishment of which he is the liaison officer has contravened the provisions of this Act or the rules made thereunder or any direction or instruction issued, he shall report such contravention to such authority as the Central Government may by notification designate.	5
	(4) On receipt of report of contravention under sub-section (3), the designated authority shall take such action against the person responsible for such contravention as may be prescribed.	10
Maintenance of documents and records and furnishing of report by appointing authority.	13. (1) Every appointing authority, or an officer authorised by him in this behalf, shall maintain such documents and records, and furnish every year a report on the appointments of persons belonging to the Scheduled Tribes made by direct recruitment and promotion, in such manner and at such time, as may be prescribed.	
	(2) The appointing authority or any other officer authorised by him shall make available such documents and records for inspection, furnish such information, and render such assistance, to the liaison officer, as may be necessary, to enable him to carry out his functions under this Act.	15
Training programme for Scheduled Tribes.	14. The Government shall, subject to the availability of finance and other resources, develop and organise training programmes to advance the competence of persons belonging to the Scheduled Tribes for appointment to services and posts.	20
Penalty for making false claim.	15. Whoever knowingly makes a false claim that he is a member of the Scheduled Tribe shall be liable to punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.	
Penalty for issuing false caste certificate.	16. Whoever knowingly issues a false Scheduled Tribe certificate shall be liable for punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.	25
Compulsory notification of vacancies reserved for the Scheduled Tribes.	17. (1) Every appointing Authority shall, within one month of the existence of a vacancy, compulsorily notify that vacancy. (2) The vacancies referred to in sub-section (1),— (a) besides being notified by the Employment Exchange, shall also be notified in such newspapers, including vernacular newspapers, as may be prescribed; and (b) shall be given wide publicity on State run and other media channels.	30
Compulsory filling of vacancies reserved for the Scheduled Tribes.	18. (1) Every vacancy notified under section 17 shall be filled within six months from the date of notification. (2) Every unfilled vacancy shall be carried forward till such vacancy is filled and in no case shall be de-reserved.	35
Penalty for not notifying or filling vacancies.	19. Whoever, intentionally contravenes the provisions of section 18 shall be liable to punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.	40
Existing office memoranda to continue.	20. All memoranda issued or purported to have been issued by the Government in relation to reservation of posts in civil services for members of the Scheduled Tribes, immediately before the commencement of this Act, shall, in so far as they relate to the matters for which provisions have been made in this Act and are not inconsistent therewith, be deemed to have been issued under this Act as if this Act had been in force on the date on which such memoranda were issued.	45

	21. The Government may, for giving effect to the provisions of this Act or the rules made thereunder, issue such directions to establishments, as it deems fit.	Power to issue directions.
5	22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	Act to have overriding effect.
	23. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.	Power to make rules.
	(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—	
10	(a) the percentage of posts for reservation and the manner of reservation under sub-section (1) of section 3;	
	(b) the manner of filling vacancies under sub-section (2) of section 3;	
15	(c) the extent of reduction in examination fee and application fee under section 7;	
	(d) the rank of the officer to be designated as the liaison officer under sub-section (1) of section 12;	
	(e) the documents and records to be maintained and the time and manner of furnishing report under sub-section (1) of section 13.	
20	(3) Every rule made by the Central Government under this section shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making	
25	any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.	

STATEMENT OF OBJECTS AND REASONS

In spite of various measures taken by the Government including special drive launched to fill the vacancies reserved for the persons belonging to the Scheduled Tribes, it has been observed that the vacancies meant for these persons remain unfilled and after some attempts, vacancies are de-reserved on the ground that eligible candidates are not available to fill the vacancies.

At present administrative instructions issued by the Central Government, from time to time, provide for reservation in appointments or posts in favour of the persons belonging to the Scheduled Tribes in Civil Services under the control of the Central Government.

Objective of providing reservations to Scheduled Tribes in services is not only to give jobs to some persons belonging to these communities but also ensuring their upliftment. 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. 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.

The tribal population in India, though a numerically small minority, represents an enormous diversity of groups. They vary among themselves in respect of language and linguistic traits, ecological settings in which they live, physical features, size of the population, the extent of acculturation, dominant modes of making a livelihood, level of development and social stratification.

As per an affidavit submitted by the Government of India before Supreme Court in October 2021, Scheduled Tribes comprise of 6.18 per cent. of a workforce of 1,23,155. As per the data from the Department of Personnel & Training (DoPT), the backlog vacancies in Scheduled Tribes category was 6,955 in the year 2016 and it increased to 12,612 in the year 2019. The data also disclosed that more than 50 per cent. of posts in the Scheduled Castes/ Scheduled Tribes category are lying vacant in the year 2019. The data on backlog vacancies said that in Scheduled Tribes category there were 9,404 filled up posts and 12,612 unfilled as against the total vacancies of 22,016.

These figures point towards a dismal picture of the representation of members of Scheduled Tribes in Government services. This Bill intends to streamline and provide a procedure for timely filling of vacancies for persons belonging to the Scheduled Tribes alongwith other methods to increase the representation of Scheduled Tribes population.

Hence this Bill.

NEW DELHI;
November 17, 2021.

HEENA VIJAYKUMAR GAVIT

FINANCIAL MEMORANDUM

Clause 17 of the Bill provides for compulsory notification and publicity of vacancies reserved for persons belonging to the Scheduled Tribes. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure of about rupees one hundred crore is likely to be involved per annum.

No non-recurring expenditure will be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 of the Bill empowers the Central Government to prescribe the extent and manner of reservation by direct recruitment and promotion in civil services for persons belonging to the Scheduled Tribes. Sub-clause (2) thereof empowers the Central Government to prescribe the manner of filling such vacancy.

2. Clause 7 of the Bill empowers the Central Government to prescribe the extent of fee concession for persons belonging to the Scheduled Tribes.

3. Sub-clause (1) of clause 12 of the Bill empowers the Central Government to prescribe the rank of the officer who may be designated as the liaison officer.

4. Sub-clause (1) of clause 13 of the Bill empowers the Central Government to prescribe the manner of maintaining documents and records, and the manner and time of furnishing report on appointments of the members of the Scheduled Tribes made by direct recruitment and promotion, by the appointing authority.

5. The matters in respect of which rules may be made or notification may be issued are essentially matters of detail or procedure. The delegation of legislative power is, therefore, of a normal character.

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to provide for reservation in posts and services under the Central Government and private sector for persons belonging to the Scheduled Tribes and timely filling up of vacancies meant for Scheduled Tribes to ensure their equal representation and for matters connected therewith or incidental thereto.

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