

Reservation Discrepancies in Admissions in Jammu and Kashmir

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Abstract:

Reservation in admissions as affirmative actions has survived on different reasons: one to drive diversity in educational institutions and policy sectors and another to compensate for historical injustice. The utilitarian's, libertarians and Rawlsians have debated and often justified such reservation by their philosophical overtures. These philosophical justifications for reservations find place in the form provisions which run across constitutions of nations. The Indian Constitution envisages this either expressly or impliedly under different provisions indicating adequate representation in the state administration of all as its basis. The Jammu and Kashmir having its own constitution, approved on 26th Jan, 1957, enables the state legislature to ensure reservation to different deserving classes. The Jammu and Kashmir has well knitted reservation policy in admission under the Jammu and Kashmir Reservation Act, 2004 and SRO 294 of 2005. This reservation is based on recommendations of various commissions appointed on time to time. However, the agony is that the higher educational institutions established under different statutes by the government have drafted their own reservation policy in admissions keeping state reservation policy at bay. Such reservation quota in admission is no way reflective of the demographic structure of the state. The paper intends to reflect the reservation disparity in admission in different higher educational in the state and to suggest some valuable inputs to render the deserving classes their due as per the state laws.

Keywords: Reservation, Admission, professional Courses, Disparity, Inconsistency, Rural Backward Area, Actual Line of Control, Other Backward Classes, SRO-294 of 2005, Scheduled Castes, Scheduled Tribes

I. INTRODUCTION

The spirit of equality pervades the provisions of the Constitution of India, as the main aim of the founders of the Constitution was to create an egalitarian society wherein social, economic and political justice prevailed and equality of status and opportunity are made available to all. The historical discrimination prevailing in India can be curbed by providing equality of opportunity. This discrimination can be curbed by erecting several bridges. One of the bridges is reservation of seats in educational institutions and posts in services in the state. Education was the first and foremost commandment of Dr BR Ambedkar and he called it the "milk of the lioness"³. Hence any society which excludes a major portion from access to higher education cannot be said to be providing equality of opportunity a constitutional goal.⁴ With a view to uplift the socially and educationally deprived sections of Indian society constitutional provisions enable the government to create special laws for their welfare. Reservation in education had extensively helped the government to realise this objective and to undo historical discrimination. Reservation for SCs and STs was debated and granted from pre-independence era and finally settled as 15% for Schedules Castes and 7.5% for Scheduled Tribes in 1982. The affirmative action in the form of reservation in education for OBCs is a recent attempt recommended by Oversight Committee in 2006. While reservation for Scheduled Castes and Scheduled Tribes is generally fixed in proportion to the population of SCs and STs, for OBC's it is fixed taking into account the proportion of their population subject to a maximum of 27% although their population is estimated as 52%. This subjection comes from the ruling of Apex Court in *Balaji v State of Mysore*⁵. Gajendra Gadkar CJ

projected the idea that, in the interest of efficiency, the percentage of reservation should not exceed fifty. This view was borrowed from Article 335 and subsequent upheld in a number cases including *Indra Sawhney v. Union of India*⁶.

Even after the well-crafted reservation at national level, the reservation in admission in the state of Jammu and Kashmir is overwhelmed by inconsistencies and disparities. The reservation policy as laid down in SRO-294 of 2005 is contradictory and reflects deviation from the set policy at the national level. The implementation of reservation in higher education by state institutes of excellence also shows disparity within their reservation quotas for different sections. The universities statutes except SKAUST are not in conformity with state reservation policy. Every university has adopted its own reservation policy and none resembles the other. The university reservation policies are mostly tainted with regionalism. The reservation depicts a bias towards the particular group of population in the region in which university is situated. This trend cannot be found in other universities which are directly controlled by Central Government. The national reservation policies apply uniformly to all universities e.g., Central Universities irrespective of their location except a few which have different character. The state universities are also bound to follow the state reservation policy unless created with a different object. The reservation in admission will ensure equal representation of all in the higher educational institutions and then in the administration.. Education is the means to achieve the mandate of creating an egalitarian society. Education qualification, not illiteracy,

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rules the present recruitment policies. Keeping much deserving classes away from education will lead to frustration of constitutional goal of social justice.

The object of imparting special care for socially and educationally backward sections of the society is enshrined both in Indian Constitution and Jammu and Kashmir Constitution which apply simultaneously to the state. Article 15(4)⁷ which was inserted in order to undo the Supreme Court decision in *State of Madras v. Smt. Champakam Dorairajan*⁸ enables the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. Article 46 of the Indian Constitution stipulates that the states shall promote with special care the educational and economic conditions of the weaker sections of the people and in particular of SCs and STs and shall protect them from social injustice and all forms of exploitation. This affirmative action in favour of socially and educationally backward classes is also envisaged in the Constitution of Jammu and Kashmir. The Constitution of Jammu & Kashmir under section 23 provides that the State shall guarantee to the socially & educationally backward sections of the people special care in the promotion of their educational, material and cultural interests and protection against special injustice. With an intention to uplift the socially and educationally backward sections, reservation in admission was envisaged as fruitful means. Although percentage of 15% for SC and 7.5% for STs in educational sectors got sanctified earlier, 27% reservation for other backward classes of the society was recommended by Moily Commission only in 2006. However, this picture of reservation has no sign in the state of Jammu and Kashmir. The state reservation policy, although with its own lacunae's, is implemented partially and highest seats of learning flout them easily. This paper will bring forth inconsistencies in the state reservation policy and also highlight disparity in the reservation of different state university amidst of the fact of one demographic structure in the state. The paper analyse reservation of four state universities two from Jammu region and two from Kashmir selected on random basis with care of one old and one new from each region.

II. HISTORICAL BACKGROUND

A permanent body namely Jammu and Kashmir State Commission for Backward Classes was appointed in 1997 to examine the requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the Government as it deems appropriate⁹. Before this, reservation chapter in Jammu and Kashmir passed through different commissions and committees and first serious attempt in this direction was made in June 14, 1956 when state government promulgated the Jammu and Kashmir Civil Services (Classification Control and Appeals) Rules, 1956. These rules were promulgated as consequence of non-implementation of recommendations of First Backward Classes Commission popularly known as Kakasaheb Kalelkar Commission¹⁰ by Central Government which considered caste based reservations a retrograde step¹¹. Notwithstanding these rules,

the state followed communal pattern of appoints and promotions reserving 50% of the posts for muslims, 40% mainly to Hindus of Jammu and 10% for Sikhs, Kashmiri Pandits and other minority communities. The said rules were challenged on the basis that reservation was made on communal lines viz., 50% for muslims, 40% for Hindus of Jammu and 10% for Sikhs, Kashmiri Pandits and other minorities. The Hon'ble Supreme Court of India held:

"...that on the material before it, it was clear that there was no reservation as permitted by Article 16(4) but that the posts had been distributed on the basis of community or place of residence"¹².

It was in 1967, that the state Government appointed a commission of inquiry headed by Dr. P. B. Gajendragadkar to examine the recruitment policies and policy of admission to higher educational institutions and suggest measures for equitable distribution as well as equitable share of employment to various regions and communities¹³. Dr. P.B. Gajendragadkar Commission in 1967 which made a number of recommendations and evolved criteria to be adopted for determining the backward classes in the state.

Pursuant to its one recommendation¹⁴ government of Jammu & Kashmir appointed a Committee under the Chairmanship of Justice J.N. Wazir to draw the list of Backward Classes of Jammu and Kashmir on the basis of criteria relating to social, educational & economical backwardness. Acting substantially on the recommendations of the Committee the state government issued on April 18, 1970 "*The J&K Schedule Castes and Backward Classes (Reservation Rules) 1970*". These rules purported to make provision for reservations of appointments and posts in favour of certain classes of permanent residents¹⁵ of the state who were backward and not adequately represented in such services and posts. The government also passed Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation of Appointments by Promotion) Rules, 1970 extending *mutatis mutandis* the principles of appoints to promotions. The net result of the recommendations was to make reservations in appointments and promotions as:

- a) Schedule Castes-8%
- b) Backward Classes- 42% inclusive of 2% reserved for Ladakh District

However, Supreme Court in *Janki Prasad Parimo and Ors v. State of Jammu and Kashmir and Ors*¹⁶ stayed the implementation of these rules until certain defects, pinpointed by the Court, are not removed. This task was assigned to a Committee under the chairmanship of Justice A. S. Anand which came with its report in 1977. The Committee made two broad categories viz., i) twenty-two weak and underprivileged class and ii) residents of the bad pockets and areas near line of actual control. On the recommendation of the Committee a Government issued notification¹⁷ reserving seats for different categories in the state viz., Scheduled Castes (8%), Gujjar and Bakerwals (4%), Other Social Castes (2%), Residents of Backward Areas including Leh and Kargil (24%), Areas near Actual Line of Control (3%), Children of Freedom Fighters (2%), Children of Permanent Residents of Defence Personnel (3%) and Candidates possessing outstanding proficiency in Sports (3%).

In order to establish a uniform criteria for the determination of socially and educationally backward classes in India, the President appointed the Second backward Classes Commission Known as Mandal Commission (appointed on 1st Jan, 1979 and submitted its report on 12 Dec, 1980 and identified as many as 3743 as socially and educationally backward. Out of 3743, the commission identified 63 castes as socially and educationally backward in Jammu and Kashmir. The most important recommendation of the Mandal Commission was the reservation of 27% posts in the government employment for socially and educationally backward classes. The recommendation received much authenticity when in *Indira Sawhney & Ors v. Union of India*¹⁸ the hon'ble Supreme Court upheld the constitutionality of Office Memoranda issued by central government for implementation of Mandal Commission recommendations. In pursuance of this development and also at directions of Central Government to states, the J&K Government appointed the Justice K. K. Gupta Commission which unfortunately turned out to be mockery for 63 castes as termed socially and educationally backward (OBCs) within the state of Jammu and Kashmir by Mandal Commission. The Other Backward Classes were renamed as Weak and Underprivileged Classes and 2% of seats have been reserved for them. The proposal of Commission to make reservation for different categories and which was later notified¹⁹ are:-

- 1) Schedule Castes-8%
- 2) Schedule Tribes- 10%
- 3) Socially and Educationally Backward Classes:
 - i) Residents of Backward Area- 20% (lions share)
 - ii) Residents of area adjoining Actual Line of Control- 3%
 - iii) Weak and Underprivileged Classes(social castes)-2%
- 4) Handicapped persons-2%
- 5) Ex Serviceman and Children of Defence Personnel- 5%

The state government while recognizing different categories completely ignored the constitutional mandate that a class must be socially and educationally backward and economic backwardness alone is not the parameter. It was also in derogation of observation of Supreme Court in case of *Janki Prasad Parimoo v. State of Jammu & Kashmir*.²⁰ The court had observed as:

"Mere educational backwardness or social backwardness which makes a class of citizens as backward is not enough. The class identified as backward class must be both socially and educationally backward... Backward class must be comparable to the schedule castes and schedule tribes"

The state government framed The Jammu and Kashmir Reservation Act, 2004 and Jammu and Kashmir Reservation Rules, 2005 to provide statutory framework for the implementation the reservations in the state.

III. STATUTORY FRAMEWORK

The Jammu and Kashmir Reservation Act, 2004

The Jammu and Kashmir Reservation Act, 2004 was enacted with an object to reservation in appointments, and admissions in Professional institutions for the members of Scheduled

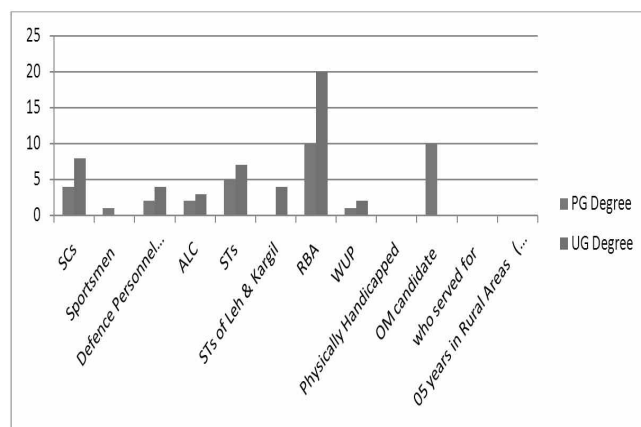
Castes, Scheduled Tribes and Socially and Educationally Backward Classes. Chapter-IV of the Act deals with reservation in professional institutions. Section 9 of the Act empowers the government to reserve seats in professional institutions for candidates belonging to reserved categories and such other classes and categories as may be notified from time to time provided that total percentage in no case shall exceed 50%. It further empowers governments to prescribe the percentage of reservation for each category in admission in professional institutes provided that different percentage may be prescribed for different course²¹. The Act makes provisions for horizontal reservation for women for admission to MBBS and BDS in each category including open category²². The unfilled seats in any category shall be filled from amongst the candidates belonging to open merit category²³. Section 10 of the Act puts emphasis on merit. It states that irrespective of the category to which a candidate belongs he/she shall be selected in the open category on the basis of merit²⁴.

Jammu and Kashmir Reservation Rules, 2005

In pursuance of section 23 J&K Reservation Act, 2004 and section 22 of J&K Persons with Disabilities Act, 1998 which empower the government to make rules to give effect to reservations laws government made SRO-294 in 2005. These rules are called as Jammu and Kashmir Reservation Rules, 2005. Part IV of these rule deal with reservation in professional institutes. The seats reserved against each category under as per SRO-294 of 2005 are as:

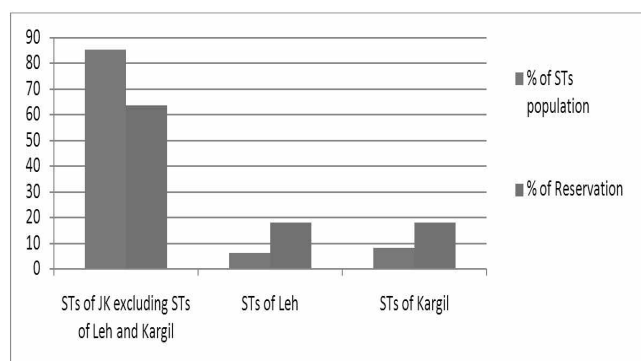
Reservation in Professional Institutions (SRO 294 of 2005)
(RULE 13, 14 & 15)

Category	PG Degree (Rule-15) OM=65% Reservation =35%	UG Degree (Rule 13 & 14) OM=50% Reservation=50%
Scheduled Castes (SCs)	4	8
Sportsmen	1	2
Children of Defence Personnel/Para-military forces and State Police Personnel	2	4
Actual Line of Control	2	3
Scheduled Tribes (STs)	5	7
STs of Leh & Kargil	0	4
Rural Back Area (RBA)	10	20
Weak and Under-Privileged (WUP)	1	2
Physically Handicapped	0	0
OM candidate who served for 05 years in Rural Areas (Other than selected under S.No. 1 i.e., OM)	10	0
Total	35%	50%



Source: Drawn as per SRO-924 of 2005

The above bar chart shows disparity in reservations at PG and UG level within the state reservation policy i.e., SRO-295 of 2005. The figures clearly indicate that reservation at UG level is 50% while as at PG level it is only 35%. Almost percentage of reservation for each category at PG level is half of what is provided at UG level. The reservation of percentage for STs at PG level is 11% which including reservation for STs of Leh and Kargil. Thus the ST category reservation has been subcategorized into STs of Leh and STs of Kargil without any substantive justifications. However, what is more perplexing is that at PG level STs of Leh and Kargil had not been provided any separate quota of reservation but reservation of STs had been reduced to 5%. It is pertinent to mention here that as per the population census of 2011 the STs population of Leh and Kargil is 95,587 and 1,22,336 respectively. The total population of STs in the state of Jammu and Kashmir is 14,93,299. The STs of Leh constitute 6.40% and that of Kargil constitute 8.19% population of STs of whole state of Jammu and Kashmir. This distribution of 11% reservation of STs among three sub-categories viz., STs (7%), STs of Kargil (2%) and STs of Leh (2%) does not fulfil the constitutional mandate of adequate share to all. This is discriminatory to other STs which constitute 85.40% of all STs in the State of Jammu and Kashmir. Thus 85.40% of STs population of Jammu and Kashmir take 63.63% of reservation meant for STs while as STs of Leh and Kargil which constitute 14.59% population of STs of the state of Jammu & Kashmir take a lion's share of 36% in reservation at UG level professional examination of the state of Jammu and Kashmir.



The bar chart shows the ratio of reservation to that of population of STs at UG level in Medical Sciences

Reservation of 10% at PG level for the Open Merit candidates on basis that they must have served in rural areas²⁵ for a period of 5 years had no constitutional justification. Rather it runs contrary to constitutional mandate which is targeting for advancement of socially and educationally backward class of citizen or the scheduled castes and scheduled tribes. Article 15(4) empowers the state to take affirmative action like reservation for advancement of socially and educationally backward classes and not for advancing the advanced merely on the basis that they have served the people living in remote areas for the remuneration paid by the state. Not only so this category had been exclusively created for the forward classes which run deep contrary to constitutional norms. The Supreme Court has also struck down the institutional and discipline wise reservation in *AIIMS Students Union v AIIMS*²⁶. In this case in regard to admission to the postgraduate courses, there was an institutional reservation of 33 per cent coupled with 50 per cent reservation discipline-wise. The court held that the reservation was not permissible as it went outside the reservation guaranteed by the constitution in respect of Backward Classes and Scheduled Castes.

The admission process to professional colleges is conducted by the Jammu and Kashmir Board of Professional Entrance Examination. This board had adopted the SRO-294 of 2005 with no variation anywhere. However the statutes of highest seat of learning in the state i.e., various universities show huge disparity in the reservation rules. All except Sheri-Kashmir University of Agricultural Science and Technology (SKUAST) had adopted their own reservation policy while as SKUAST had followed State reservation policy as laid down in SRO-294 of 2005.

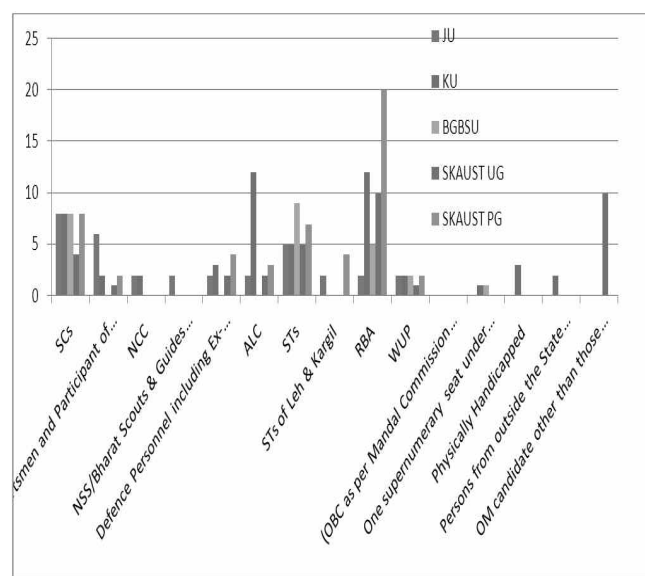
IV. DISPARITY IN RESERVATION IN STATE UNIVERSITIES

The state government had crafted its state reservation policy on the basis of recommendation of various commission/committees appointed from time to time which culminated in policy as laid down under SRO-294 of 2005. However, when it comes to implementation the statutes of higher seats of learning completely vary from state reservation policy and also reflect disparities among themselves. The break-up of reservation of seats of a few universities is shown below:

Break-up of the Reservation of few State universities: - (%)

	JU	KU	BGSB U	SKAUST	
	OM=67% Reserved=33%	OM=61% Reserved=39%		PG Degree OM=65% Reserved=35%	UG Degree OM=50% Reserved=50%
SCs	8	SC/ST=8	8	4	8
Sportsmen and Participant of Literary and Cultural Activities	6	Sports = 2	0	1	2
NCC	2	2	0	0	0
NSS Bharat Scouts & Guides Activity	2	0	0	0	0
Defence Personnel including Ex-servicemen	2	3	0	DPJKP M=2	3 JKPM=1

STs	STs(Gujjar, Bakerwals, Gaddies, Baltis)= 5	Gujjar, Bakerwals = 5	9	5	STGB= 6 STO= 1
STs of Leh & Kargil	2	0	0	0	ST(L)= 2 ST(K)= 2
RBA	RBA excluding Kargil and Leh = 2	RBA/ALC= 12	05	10	20
WUP (OBC as per Mandal Commission Report)	As notified in S.R.O. by the State from time to time. (2)	2	WUP +DP = 2	1	2
One supernumerary seat under the category 'Children of Permanent Employees of the University'	0	01	01	0	0
Physically Handicapped	0	3	0	0	0
Persons from outside the State including foreign nationals and graduates of Jammu University (OSJ)	0	2	0	0	0
OM candidate other than those selected under S.no.1. who served for a minimum period of 05 years in Rural Areas	0	0	0	10	0
Permanent residents of Rajouri and Poonch districts			25		
	33	39	50	35	50



Source: Drawn as per data taken from different state universities.

The above pie chart and table reflects the huge disparities in the reservation in admissions in different state universities. The Sheri-Kashmir Agricultural University of Science and Technology is the only university which has followed the state reservation policy as laid down in SRO-294 of 2005 although that is not devoid of discrepancies. This also markedly varies from the national reservation policy. The percentage of reservation as revised in 1982 is 15% for

Scheduled Tribes and 7.5% for Scheduled Castes. The Other Classes get a 27% reservation in the institution run by the Central Government. In this paper the reservation SKAUST will reflect the reservation policy of state too as there is no difference between the two.

Scheduled Castess: All universities except SKAUST at PG level have reserved 8% of seats for Scheduled Castes (SCs). At PG level the reservation is only 4% i.e., half of what is for SCs at UG level. As per Population Census 2011, the percentage of SCs population in Jammu and Kashmir is 7.37% somewhat reflective of reservation earmarked by different State universities. However, it is more akin to national policy which allots SCs 7.5% in admissions.

Scheduled Tribes: As per SRO-294 of 2005, sixteen tribes have been specified as schedule tribes by Constitution (Jammu and Kashmir) Tribes Order, 1989²⁷. Out of these sixteen tribes four tribes namely Gujjarwal, Bakerwal, Gaddi and Sippi were included in 1991²⁸. The total population of Schedules Tribes in the state is 11.90%. The reservation percentage in admissions for STs varies in the state universities. The Jammu University (JU) and Kashmir University (KU) have reserved 5% of seats while Baba Ghulam Shah Badshah University had reserved a quota of 9% for STs. The SKAUST as per SRO-294 of 2005 had reserved a quota of 5% for STs at PG level and 11% at UG level. There is not only disparity in reservation with STs in the state universities but also discrimination within STs of the state. The Jammu University and Kashmir University have reserved 5% of seats for STs in admission. However, the reservation in Jammu University is available to only four schedule tribes namely Gujjar, Bakkerwals, Gaddies and Balties while this reservation in Kashmir University is extend to only two tribes namely Gujjar and Bakerwals. The reservation in SKAUST for STs is 5% at PG level while as at UG level the reservation for STs has been sub-categorized into four categories viz., STs of Gujjar and Bakerwal (6%), STs of Leh (2%), STs of Kargil (2%) and Other STs (1%). In case of Baba Gulam Shah Badshah University (BGBSU) reservation of 9% has not specified to any particular tribe, but open to all STs. This is also somewhat reflective of their total population percentage in the state. However, further 25% reservation for permanent residents of Poonch and Rajouri is highly discriminatory to all categories in general and to other STs in particular. The reservation smells the regional bias because of universities location at Rajouri. Such reservation only on the basis of region to the exclusion of all other categories is discriminatory and hence violates constitutional mandate. The permanent residents of Poonch and Rajouri are unascertained as statute is silent about this term. The Constitution of India and Jammu and Kashmir Constitution refers to term permanent residents of Jammu and Kashmir (commonly called as State Subjects) but the permanent residents of Rajouri and Poonch is yet to be defined. Since as per population Census of 2011 the STs population of Poonch (Punch) and Rajouri to their respective district is 36.93% and 36.24% respectively, the reservation of 25% for permanent residents Rajouri and Poonch is discriminatory to STs of both district because most of STs shift from place to place hence can't permanent.

Actual Line of Control: Areas near the Actual Line of Control are 285 which are situated in six Tehsils viz.,

Akhnoor, Kupwara, Haveli, Mendhar, Rajouri and Nowshera²⁹. The SRO-294 of 2005 has reserved a 3% seats at UG level and 2% at PG level in admissions for professional degrees. Jammu University (JU) statutes have prescribed a quota of 2% reservation while as Kashmir University statutes have clubbed ALC category with RBA and have prescribed a quota of 12% to both categories which is in dereliction to state reservation policy. The BGSBU had not reserved any seat for ALC category.

Rural Backward Area: The rural backward area category takes a major share in admission as per state reservation policy i.e., 20% at UG level and 10% at PG level. Jammu University had allocated only 2% of reservation to this category with rider that RBA's of Leh and Kargil shall not be considered. BGSBU had reserved 5% while as Kashmir University had reserved 12% of seats for RBA clubbed with ALC. It is pertinent to mention here that the Jammu and Kashmir Government had mostly recently increased the number of district and tehsils³⁰ thus making state administration at stones through from some areas which still enjoy reservation under this category. Much politics is done on this category. More and more areas have been enlisted under this category because of political pressure irrespective of existence of Permanent Backward Commission³¹.

Weak and Under-Privileged: The worst suffers of reservation policy in Jammu and Kashmir is the weak and under-privileged class. This category deserves a 27% as per Mandal Commission but get a quota of only 2% under the state reservation policy. They are the socially and educationally backward classes in Jammu and Kashmir as per Mandal Commission Report but the state backward commission had followed their predecessor temporary commission which have diluted this category (OBCs) in sub-categorizes giving meagre share to weak and under-privileged. More recently State Backward Commission has recommended the state government to give a share of 27% to OBC i.e., weak and under-privileged under the state reservation policy. However, no prompt action or assurance in this regard had come so far from the successive governments.

Other Categories: The other categories include Sportmen and participants of literary and cultural activities, NSS/Bharat Scouts and Guides Activity, One supernumerary seat under the category "Children of Permanent Employees of the University, Physically Handicapped, Persons from outside state including foreigner national and graduates of Jammu University. The reservation rules depict a huge disparity in allocating seats to them. The details of each such category are shown against respective university above in the Chart. The Jammu University has reserved 6% seats for Sportsmen and Participants of literary and cultural categories while as Kashmir University has allotted only 2%, BGSBU none and SKAUST 2% and 1% at UG and PG level respectively. The Kashmir University and BGSBU has reserved one seat as supernumerary for the children of permanent employees of the University. This supernumerary seat becomes questionable on the fact that head of department and fourth class employee cannot constitute the same class. Thus, this seat must be streamlined in view of the decision of courts delivered from time to time.

V. CONCLUSION AND SUGGESTIONS

Reservation in education is an affirmative action to achieve the greater constitutional goals like equality of opportunity, equal representation, and inclusive growth of the society. The reservation in admission in India has the created space for inclusive growth of the society. However, the Jammu and Kashmir reservation policy is still mired with inconsistencies and highest seats of excellence in the state have departed enormously from the basic objectives. Reservations in admissions to universities are married with regional bias and deserving lot had been kept at the bay. Jammu University has specified gorgeous quota for Scheduled Castes for the reasons of having more Schedules Caste population in Jammu region. Likewise the BGSBU University has reserved 25% seats of residents of Rajouri and Poonch. Kashmir University has reserved quota of 12% seats for RBA along with ALC category having high concentration rural backward area compared to Jammu region for which Jammu University had reserved only 2% seats. In order to set the wrong right reservation policy in the state and reservation in state universities must be rectified on the following lines:

- a) State reservation policy must be revisited and due consideration shall be paid to Mandal Commission recommendations with regard to state of Jammu and Kashmir.
- b) The relevance of reservation based on residence like RBA and ALC must be relooked in view of the fact the development had permeated to every nook and corner of Jammu and Kashmir.
- c) Reservation in admissions at PG and UG level must be kept same and must be in accordance with demographic structure of the state.
- d) Reservation of 10% at PG level in Professional College on the basis that they have served for 5 years in rural areas must be omitted forth with.
- e) The reservation for SCs and STs in the state reservation policy must be provided as per their population ratio according to the latest Population Census.
- f) The disparities in reservation must be undone and shall be based on a much prudent state reservation policy.
- g) Supernumerary Seats in the university be either provided to only children of deserving employees because gazetted and fourth class employee cannot constitute a same class.

VI. REFERENCES

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- 2 Reddy O Chinnappa; *The Court and the Constitution in India: Summits and Shallows*; Oxford University Press; 2012; p.101
- 3 *Report of the National Commission for Religious and Linguistic Minorities*; p.116; www.minorityaffairs.gov.in
- 4 Article 16(4), Constitution of India
- 5 AIR 1963 SC 649

- 6 AIR 1993 SC 477
- 7 Added by the Constitution (First Amendment) Act, 1951
- 8 AIR 1951 SC 226
- 9 Section 9, The Jammu and Kashmir State Commission for Backward Classes Act, 1997
- 10 Kakasaheb Kalelkar Commission was appointed on 29th Jan., 1953 and submitted its report on 30th March, 1955
- 11 *Report of the National Commission for Religious and Linguistic Minorities*; p.116; www.minorityaffairs.gov.in
- 12 *Triloki Nath v. State of J&K*, AIR 1969 SC 1; (1969) 1 SCR 103
- 13 Javeed Ahmed Bhat, *Assesment, Evolution aand the Politics of Reservation in Jammu and Kashmir*; The Anthropos (2013), p.70 retrived from www.airo.org.in
- 14 One of the recommendations was to appoint a high powered Committee to draw up the list of backward classes in the state of Jammu and Kashmir.
- 15 Provisions pertaining to Permanent residents are under section 6 -10 of the Jammu & Kashmir Constitution
- 16 AIR 1973 SC 930
- 17 Government notification vide SRO 272
- 18 AIR 1993 SC 477
- 19 Notified vide S.R.O.126 of 1994 dated 28-06-1994
- 20 AIR 1973 SC 930
- 21 Section 9, Jammu and Kashmir Reservation Act, 2004
- 22 Proviso to Section 9, Jammu and Kashmir Reservation Act, 2004
- 23 Proviso to Section 9, Jammu and Kashmir Reservation Act, 2004
- 24 Section 10, Jammu and Kashmir Reservation Act, 2004
“Nothing contained in section 9 shall bar admission of members of the reserved categories against seats other than, or in addition to, those reserved for them under the said section, if such members are qualified for admission on merit as compared with candidates not belonging to any reserved category.
- 25 Explanation to Rule 15: The rural service means service rendered in the areas at least 20 Kms away from municipal limits from the shortest possible route.
- 26 AIR 2011 SC 3262
- 27 Balti, Beda, Bot, Boto, Brokpa, Drokpa, Dard, Shin, Changpa, Garra, Mon, Purigpa, Gujjar, Bakerwal, Gaddi and Sippi
- 28 Inserted by Central Act No. 36 of 1991 w.e.f. 19.04.1991
- 29 Annexure A to SRO-294 of 2005
- 30 *8 New Districts in J&K, 13 New Tehsils*; July 7, 2006; available at www.greaterkashmir.com
- 31 *Jammu Badly Discriminated in Declaration of Backward Villages*, Daily Excelsior posted on 04/01/2014
available at <http://www.dailyexcelsior.com>:The state government formally notified as many as 45 villages³¹ as backward areas entitling them to 20% reservation in appointments and 10% in promotions