

Govt. of India's instructions on various matters concerning Scheduled Caste and Scheduled Tribes including those on issue of caste certificates

No. 1

Issuing Authority: O. K. MOORTHY,
Director-General, BCW
Ministry of Home Affairs

Addressee: Chief Secretaries
of all State Govts and
Union Territory
Administration

No. 35/1/72-R.U. (SCT.V)

Dt. New Delhi, the 2nd May 1975

Subject: Issue of Scheduled Castes and Scheduled Tribes Certificate

Sir,

I am directed to state that complaints are often received that Scheduled Caste and Scheduled Tribe certificates are given to persons who do not in fact belong to a Scheduled Caste or Scheduled Tribe. It is necessary, therefore, that the Certificate issuing authorities should make a proper verification before they actually issue such a certificate.

2. In this connection a set of points which should be taken into account are enclosed for the guidance of those empowered to issue Scheduled Caste and Scheduled Tribe certificates. It is requested that these instructions may be circulated amongst them.

Yours faithfully,

(O. K. MOORTHY)

Issue of Scheduled Caste and Tribe Certificate—Points to be observed.

1. *General:* (Applicable in all cases)

Where a person claims to belong to a Scheduled Caste or a Scheduled Tribe by birth it should be verified: --

- (i) that the person and his parents actually belong to the community claimed;
- (ii) that this community is included in the Presidential Orders specifying the Scheduled Castes and Scheduled Tribes in relation to the concerned State
- (iii) that the person belongs to that State and to the area within that State in respect of which the community has been scheduled;
- (iv) if the person claims to be a Scheduled Caste, he should profess either the Hindu or the Sikh religion;
- (v) if the person claims to be a Scheduled Tribe, he may profess any religion.

2. Cases of migration;

- (i) Where a person migrates from the portion of the State in respect of which his community is scheduled to another part of the same State in respect of which his community is not scheduled, he will continue to be deemed to be a member of the Scheduled Caste or the Scheduled Tribe, as the case may be, in relation to that State;
- (ii) Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated.

3. Claims through marriage:

The guiding principle is that no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or a Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Caste or a Scheduled Tribe.

Similarly a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe.

4. Cases of conversion and re-conversion:

- (i) Where a Scheduled Caste person gets converted to a religion other than Hinduism or Sikhism and then reconverts himself back to Hinduism or Sikhism, he will be deemed to have reverted to his original Scheduled Caste, if he is accepted by the members of that particular caste as one among them.
- (ii) In the case of a descendent of a Scheduled Caste convert, the mere fact of conversion to Hinduism or Sikhism will not be sufficient to entitle him to be regarded as a member of the Scheduled Caste to which his forefathers belonged. It will have to be established that such a convert has been accepted by members of the caste claimed as one among themselves and has thus become a member of that caste.

5. Cases of adoption:

Great care has to be exercised in dealing with cases where a person claims to be a Scheduled Caste on the ground that he has been adopted by a Scheduled Caste person. The validity of the adoption has to be clearly established before any caste certificate can be given. It is for the party to prove his claim by cogent and reliable evidence.

- (i) The requirements of valid adoption are given in section 6 to 11 of the Hindu Adoption and Maintenance Act, 1956 (relevant extracts of which are attached). The actual giving and taking of the child in adoption is a mandatory requirement and thereafter the adopted child is deemed to be the child of his adoptive father or mother for all purposes and the child severs all ties with the family of his or her birth. Ordinarily, no child who has attained the age of 15 years or who is married can be given in adoption unless there is a custom or usage applicable to the parties.
- (ii) In deciding whether an adoption is valid, the certificate issuing authority should satisfy himself that all the requirements of Law have

been complied with. He should also take into account the behaviour of the child after adoption whether he physically lives with and is supported by his adoptive parents and receives no financial help from his original parents. In case these conditions are not satisfied, the certificate should be refused.

- (iii) Where the case relates to an adoption of a married person or of a person of the age of 15 years and above, the certificate shall be required to be given by the District Magistrate who shall, after making due enquiries as to the validity of the adoption and as to whether such adoption is permitted by a custom or usage applicable to the parties, make an endorsement to that effect on the certificate. Such custom or usage should have been continuously and uniformly observed for a long time and obtained the force of law among the Hindus of that particular area, or that community, group or family provided that the custom or usage is certain and not unreasonable or apposed to public policy and in the case of custom or usage in respect of a particular family, that the custom or usage has not been discontinued. In addition it should be verified that all other conditions for a valid adoption, including the physical transfer of the adopted, person to the family of the adoptive parents and that he has severed all ties with the original parents are fulfilled.

**Extracts from ‘The Hindu Adoptions and Maintenance Act, 1956’
(78 of 1956)**

CHAPTER II—Adoption

Requisites of a valid adoption

6. No adoption shall be valid unless—

- (i) The person adopting has the capacity, and also the right, to take in adoption;
- (ii) The person giving in adoption has the capacity to do so;
- (iii) The person adopted is capable of being taken in adoption; and
- (iv) The adoption is made in compliance with the other conditions mentioned in this chapter.

Capacity of a male Hindu to take in adoption

7. Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption.

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

EXPLANATION: If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

Capacity of a female Hindu to take in adoption

8. Any female Hindu—

- (a) who is of sound mind,
- (b) who is not a minor, and
- (c) who is not married or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

Persons capable of giving in adoption

9 (1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub-section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of a competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person had made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation—For the purposes of this section—

- (i) the expression “father” and “mother” do not include an adoptive father and an adoptive mother.
 - (ia) “guardian” means a person having the care of the person of a child or both his person and property and includes—
 - (a) a guardian appointed by the will of the child’s father or mother,
 - and

- (b) a guardian appointed or declared by a court;
- (ii) “court” means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

Persons who may be adopted.

10. No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely: --

- (i) he or she is a Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Other complied Conditions for a valid adoption

11. In every adoption, the following conditions must be complied with: --

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son’s son or son’s son’s son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son’s daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted.
- (v) The same child may not be adopted simultaneously by two or more persons;
- (vi) The child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of *datta homam* shall not be essential to the validity of an adoption.

No. 2

Issuing Authority: O.R. SRINIVASAN
Under Secretary to the
Government of India
New Delhi-110 001.

Addressee: The Chief Secretaries
to All State Governments/
Union Territory Administrations.

No. BC, 12025/2/76- SCT.I

Dated, New Delhi, the 22nd March 1977

*Subject: -- Issue of Scheduled Caste and Scheduled Tribe certificates—
Clarifications regarding.*

Sir,

I am directed to say that many instances have come to the notice of this Ministry wherein certificates of belonging to a particular Scheduled Caste/Tribe have not been issued strictly in accordance with the principles governing the issue of such certificates. This is presumably due to inadequate appreciation of the legal position regarding the concept of the term "residence" on the part of the authorities empowered to issue such certificates.

2. As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in different States /U.Ts may not both be treated to belong to Scheduled Caste/Tribe or *vice-versa*. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that Order in relation to his State/UT. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

3. It is to ensure the veracity of this permanent residence of a person and that of the caste /tribe to which he claims to belong that the Government of India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to the deserving persons it is necessary that proper verification based primarily on revenue records and if need be, through reliable enquiries, is made before such

certificates are issued. As it is only the Revenue Authorities who, besides having access to relevant revenue records are in a position to make reliable enquiries, Government of India insists upon the production of certificates from such authorities only. In order to be competent to issue such certificates, therefore, the authority mentioned in the Government of India (Department of Personnel and Administrative Reforms) letter No. 13/2/74-Est (SCT), dated the 5th August, 1975, (copy enclosed) should be the one concerned with the locality in which the person applying for the certificate and his place of permanent abode at the time of the notification of the relevant Presidential Order. Thus, the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/UT issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/Union Territory. In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a Caste/Tribe.

4. It is understood that some State Governments/Union Territory Administrations have empowered all their Gazetted Officers to issue such certificates and even Revenue Authorities issue certificates on the basis of the certificates issued by Gazetted Officers, M.P.s and M.L.A.s etc. If such a practice is followed, there is a clear danger of wrong certificates being issued, because in the absence of proper means of verification such authorities can hardly assure the intrinsic correctness of the facts stated in such certificates. In order to check the issuance of false certificates, the question of verification assumes all the more importance.

5. All the State Governments/Union Territory Administrations are, therefore, requested to streamline their respective procedures for issuing such certificates so as to conform to the above instructions as well as to those issued from time to time. Where Revenue Authorities have been empowered to issue certificates on the basis of a certificate issued by an M.P., M.L.A, Gazetted Officer, etc., they would do so only after having made proper verifications and after having satisfied themselves of the correctness of such certificates.

No. 3

Issuing Authority: J.S. Ahluwalia
Under Secretary to the
Govt. of India.
Cabinet Secretariat
Deptt. of Personnel and
Administrative Reforms
New Delhi- 110 001.

Addressee: Chief Secretaries of
all State Governments
and Union Territory
Administrations

Letter No. 13/2/74-Est. (SCT)
1975

New Delhi-110 001, the 5th August,

Subject: - *Verification of claims of candidates belonging to Scheduled Castes and Scheduled Tribes—Form of caste certificate—amendments to.*

Sir,

I am directed to say that candidates belonging to Scheduled Castes and Scheduled Tribes seeking employment to posts/services under the Central Government are required to produce a certificate in the prescribed form from one of the prescribed authorities in support of their claim. A list of the prescribed authorities in this regard is enclosed for information. The form of caste certificate has now been slightly revised. The revised form of caste certificate is enclosed. I am to request that the revised form of caste certificate may please be brought to the notice of the authorities under the State Government who are empowered to issue such certificates.

No. 13/2/74-Est. (SCT) *New Delhi-110 001, 5th August 1975*

Copy forwarded to U.P.S.C. for information with ref. to their letter No. 26/43/74-EI (B), dated 28-1-1975.

List of authorities empowered to issue certificates of verification.

1. District Magistrate/Additional District Magistrate/Collector/Deputy Commissioner/Additional Deputy Commission/Deputy Collector/1st Class Stipendary Magistrate/City Magistrate/*Sub-Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant Commissioner. (*not below the rank of 1st Class Stipendary Magistrate)
 2. Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.
 3. Revenue Officers not below the rank of Tehsildar.
 4. Sub-Divisional Officer of the area where the candidate and/or his family normally resides.
 5. Administrator/Secretary to Administrators/Development Officer (Lakshadweep Islands)
-

Form of certificate to be produced by a candidate belonging to a Scheduled Caste or Scheduled Tribe in support of his claim.

Form of Caste certificate

This is to certify that Shri/Shrimati*/Kumari*.....
..... son/daughter* of.....
Village/town..... In District/Division*.....
.....of the State/Union Territory*.....
belonging to the.....Caste/Tribe* which is recognised as
Scheduled Caste* /Scheduled Tribe* under:-

The Constitution (Scheduled Castes) Order, 1950;
The Constitution (Scheduled Tribes) Order, 1950;
The Constitution (Scheduled Castes) (Union Territories) Order, 1951;
[as amended by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956,
the Bombay Reorganisation Act, 1960, the Punjab Reorganisation Act, 1966, the State of Himachal Pradesh Act,
1970 and the North Eastern Areas (Reorganisation) Act, 1971]
The Constitution (Jammu and Kashmir) Scheduled Castes*Order, 1956;
The Constitution (Andaman and Nicobar Islands) Scheduled Tribes *Order, 1959;
The Constitution (Dadra and Nagar Haveli) Sch. Castes *Order, 1962;
The Constitution (Dadra and Nagar Haveli) Sch. Tribes *Order, 1962;
The Constitution (Pondicherry) Scheduled Castes *Order, 1964;
The Constitution (Scheduled Tribes) (Uttar Pradesh) *Order, 1967;
The Constitution (Goa, Daman and Diu) Scheduled Caste *Order, 1968;
The Constitution (Goa, Daman and Diu) Scheduled Tribes *Order, 1968;
The Constitution (Nagaland) Scheduled Tribes *Order, 1970.

2. Shri/Shrimati/Kumari*.....
....and his/her* family ordinarily reside(s) in village/town.....
..... of..... District/Division* of the State/Union
Territory* of.....

Signature.....

Designation.....
(With seal of Office)

Place.....State/Union Territory*

Date.....

*Please delete the words which are not applicable.

Note: - The term "Ordinarily resides" used here will have the same meaning as in Section 20 of the Representation of the Peoples Act, 1950.

No. 4

No. 39/37/73-SCT. I

Issuing Authority: O.R. Srinivasan

Under Secretary to the
Government of India
Ministry of Home
Affairs.

Addressee: The Chief Secretaries of all
State Governments &
Union Territory
Administrations.

New Delhi-11001, the 21 May, 1977/31Baisak, 1899

Subject: --Caste status of the offspring of inter-caste married couples.

Sir,

I am directed to say that enquiries about the caste status of the offsprings of the inter-caste married couples, have been sought from this Ministry by various State Governments/Union Territory Administrations from time to time. Accordingly, this question has been receiving the attention of this Ministry for quite some time. A set of legal views on the caste status of such offsprings was already brought out vide this Ministry's letter of even number dated the 4th March 1975. The matter has, however, been further examined and the comprehensive legal position about the status of the offsprings born to couples where one or both of the spouses is/are member(s) of Scheduled Castes and or Scheduled Tribes, is given in the enclosed Annexures (A to D).

2. It is requested that these instructions may be circulated among all the authorities empowered to issue Scheduled Caste and Scheduled Tribes certificates.

Yours faithfully
(O.R. Srinivasan)

ANNEXURE—A

Legal views on the status of the offspring of a couple where one of the spouses is a member of a Scheduled Caste.

The general position of Law as to that effect of marriage between parties who are Hindus and one of whom belongs to the Scheduled Castes in that under the ancient Hindu law, generally, inter-caste marriage was looked down upon by the propounders and commentators. Some of the authorities, however, reluctantly permitted marriage between a male caste Hindu with a Shudra female and included it in the list of Anuloma marriages although it was stated that in the wedding with a Shudra wife, the ceremony should be performed without Mantras. The children born out of such marriage by a caste Hindu with a woman of an inferior caste had neither the caste of the father nor the status of his Savarn Aurasas—meaning the son born of a caste Hindu wife. They were termed as Anulomaja and belonged to an intermediate caste higher than that of their mother and lower than that of their father. Yajnavalkya omits the son of Brahmin by a Shudra wife from the list of sons mentioned by Manu. Pratiloma marriages, i. e. marriages between woman of a superior caste with a man of an inferior caste, were altogether forbidden and no rites were prescribed for them in Grihya Sutra and persons entering into such marriages were degraded from the caste.

2. After the passing of various statutory enactments relating to Hindu law, such as, the Hindu Marriages Act, 1955, the Hindu Succession Act, 1956 and the Hindu Minority and Guardianship Act, 1956 customary ban on inter caste marriages in either way, has been lifted by the statutory enactments. Under the Hindu Marriage Act, any two Hindus of different sex, irrespective of their caste may enter into a valid marriage unless such marriage is prohibited by the Statute itself. According to the above three Statutes, all children either legitimate, or illegitimate, one of whose parents is a Hindu, a Buddhist, a Jain or a Sikh by religion and who are brought up as members of the tribe, community, group or family to which their parents belong or belonged, are to be treated as Hindus. In view of the above, the off-springs of marriage between the caste Hindu and a member of the Scheduled Caste community, are Hindus and like the off-spring of marriage in the same caste, are entitled to succeed to the properties of their parents. But the status of his or her parent belonging to the higher caste or a question arises as to whether such a child will acquire the property that of the parent belonging to the Scheduled Caste. On this point we have not come across any direct case law. But we feel that the ratio of the decision in *Wilson Read vs C. S. Booth* reported in AIR 1958 Assam 128 would apply to such cases. It is stated at p.182, —

“ The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe; the way in which he was treated by the community and the practice amongst the tribal people in the matter of dealing with the tribal people in the matter of dealing with the persons whose mother was a Khasi and father was a European.”

Similarly, in the case of *Muthusamy Mudaliar v Masilamam Mudaliar*, reported in ILR 33, Madras, 342, the Court held—

“It is not uncommon process for a class or tribe outside the pale of caste to another pale and if other communities recognised their claim, they are treated as of that class or castes. The process of adoption into the Hindu hierarchy through caste is common both in the North and in the South India. As we have already pointed out, in the past there have been cases where people who judge from the purity of blood could not be Khasis, were taken into their fold or the orthodoxy did not stand in the way of their assimilation into the Khasi community.”

3. The Supreme Court in *V. V. Giri v D. S. Dora* reported in AIR 1959 SC 1318 (1327) held, --

“.... The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry. There is no evidence on this point at all. Besides the evidence produced by the appellant merely shows some acts by respondent 1 which no doubt were intended to assert a higher status; but unilateral acts of this character cannot be easily taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken and in our opinion the High Court is absolutely right.”

In view of the above observations by superior Courts, it can safely be concluded that the crucial test to determine is to whether a child born out of such a wedlock has been accepted by the Scheduled Caste community as a member of their community and has been brought up in that surrounding and in that community or not. The nexus between the child and the community or class or caste is a real test irrespective of the fact whether the

accommodating class or caste or community is Scheduled Caste community or a caste Hindu community. Even if the mother of the child is a member of the Scheduled Caste community, it is possible that the child is accepted by the community of his father and brought up in the surroundings of his father's relations. In that case, such a child cannot be treated as a member of the Scheduled Caste community and cannot get any benefit as such. Similarly, when the mother belongs to a higher caste and the father is a Scheduled Caste, the father may remain away from the Scheduled Caste Community and the child may be brought up in a different surrounding under the influence of his mother's relations and her community members. In such cases also, the child cannot be said to be a member of the Scheduled Caste community. In the alternative, where the child irrespective of the fact whether the father or the mother is a member of Scheduled Caste community, is brought up on the Scheduled Caste community as a member of such community, then he has to be treated as a member of the Scheduled Caste community and would be entitled to receive benefits as such.

4. As regards the marriages not registered and marriages not legally valid, it may be pointed out that registration is not mandatory for marriages under the Hindu law. Even under the Hindu Marriage Act, 1955, registration under Section 8 is optional and sub-section (5) provides that the validity of any Hindu marriage shall, in no way, be affected by the omission to make entry in the Marriages Register maintained under this Section. Section 7 provides that Hindu marriages may be solemnised in accordance with the customary rites and the ceremonies of either party thereto and, if such ceremony includes the Saptapadi, the marriage becomes complete and binding when the seventh step is taken. In view thereof, all those marriages though not registered by which have been solemnised in accordance with the procedure mentioned in this Section, are to be treated as valid marriages and our opinion mentioned in para 3 above will apply to the children born out of such valid but undersigned marriages.

5. As regards marriages which are not legally valid, it is clear that such children are illegitimate unless invalidity of marriages is due to grant of a decree of nullity by a Court in which case, provisions of Section 16 of the Hindu Marriage Act, 1955, will apply. Under Section 6(b) of the Hindu Minority and Guardianship Act, 1956 the natural guardian of a Hindu minor has been stated to be—

“in case of an illegitimate boy or an illegitimate girl—the mother and after her the father”

6. It can be derived from this that the illegitimate children are generally brought up by the mother and in her own surroundings. Therefore, if the mother belongs to the Scheduled Caste and brings up the child within a Scheduled Caste community, the child can be taken as a member of the Scheduled Caste community. But in this case also the major factor for consideration is whether the child has been accepted by the Scheduled Caste community as a member of their community and he has been brought up as such.

7. The above are the general observations, however, each case has to be examined in the light of the circumstances prevalent in that case and final decisions has to be taken thereof.

ANNEXURE—B

Legal views on the status of the off-springs of a couple where one of the spouses is a member of a Scheduled Tribe

The question has arisen whether the Off-spring born out of wedlock between a couple one of whom is a member of Scheduled Tribe and other is not, should be treated as a Scheduled Tribe or not.

2. It may be stated at the outset that unlike members of Scheduled Castes the members of Scheduled Tribes continue as such even after their conversion to other religion. This is because while Constitution (Scheduled Castes) Order, 1950 provides in clause 3 that only a member of Hindu or Sikh religion shall be deemed to be a member of Scheduled Caste, the Constitution (Scheduled Tribes) Order, 1950 does not provide any such condition. This view has been upheld by the Supreme Court in the case reported in AIR 1964 S.C. at p. 201.

3. It may be stated that unlike members of Scheduled Castes, members of Scheduled Tribes remain in homogenous groups and quite distinct from any other group of Scheduled Tribes. Each Tribe live in a compact group under the care and supervision of the elders of the Society whose words are obeyed in all social matters. A member committing breach of any prescribed conduct is liable to be ex-communicated. The social custom has a greater binding force in their day-to-day life.

4. In the case of marriage between a tribal with a non-tribal, the main factor or consideration is whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as the case may be, is accepted by the Society then their children shall be deemed to be Scheduled Tribes. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, a circumstances may be there when a Scheduled Tribe woman may have children from marriage with a non-Scheduled Tribe man. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe Community accept them and treat them as members of their own community. This view has been held by the Assam High Court in *Wilson Read v. C.S. Booth* reported in AIR 1958 Assam at p. 128, where it has been held—

“The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe; the way in which he has been treated by the Community and the practice amongst the tribal people in the matter of dealing with persons whose mother was a Khasi and father was a European”.

Similarly, in the case of *Muthusamy Mudaliar v. Masilamam Mudaliar*, reported in ILR 33, Madras, 342, the Court held—

“It is not uncommon process for a class or tribe outside the pale of caste to another pale and if other communities recognised their claim they are treated as of that class or caste”.

Similarly, in *V. V. Giri v. D. S. Dora*, reported in AIR, 1959 S. C. 1318 (1327) the Court held—

“The Caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry”.

5. As mentioned above, it is the recognition and acceptance by the Society of the children borne out of a marriage between a member of Scheduled Tribe with an outsider, which is the main determining factor irrespective of whether the Tribe is matriarchal or patriarchal. The final result will always depend on whether the child was accepted as a member of the Scheduled Tribe or not.

6. The general position of law has been stated above. However, each individual case will have to be examined in the light of existing facts and circumstances in such cases.

ANNEXURE—C

Legal views on the status of the off-springs of a couple where both the spouses are members of Scheduled Caste/Scheduled Tribes but each belongs to a different sub-caste/sub-tribe.

1. Under the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, what is material is the residence of the member of the caste, race or tribe in the localities specified in the respective Schedule. In the case of a minor child the question arises whether his residence will go along with that of his father. Under the principles of prevailing International Law, the domicile of a minor child follows that of his father, and in certain cases of his mother and the minor child is incapable of changing his domicile by any voluntary act. The rule by no means is absolute. Suppose, for instance, a father deserts his son or he is divorced and the custody of his son is given to his wife. In such a case, the court may consider that the minor's domicile will be that of the mother.

2. Under Section 3 of the Hindu Minority and Guardianship Act, 1956 the natural guardian in the case of a minor boy or an unmarried girl is father and after him his mother. In the case of an illegitimate boy or an illegitimate unmarried girl, the natural guardian will be the mother and after her, the father.

3. In the above background it has to be seen as to which sub-caste or sub-tribe the off-spring would belong in case the parents belonging to two distinct communities within the same Scheduled Castes or Scheduled Tribes as the case may be. *Prima facie* it would appear that in such cases the children born of such parents could be treated as members of the Scheduled Castes or Scheduled Tribes, as the case may be. The *prima facie* presumption is also in favour of the child possessing the sub-caste or sub-tribe of the father in the large majority of cases, having regard to the concept of domicile mentioned above. Apart from this, it has to be seen whether the child has also been accepted and assimilated in the sub-caste or sub-tribe in that community. Each case has to be examined in the light of the circumstances pertaining to it.

ANNEXURE—D

Legal Views on the status of the off-springs of a couple where one of the spouses is a member of a Scheduled Caste and the other that of a Scheduled Tribe.

As regards the status of the off-spring whose father is a member of Scheduled Caste and mother of a Scheduled Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father in the large majority of cases, having regard to the concept of domicile explained in para 1 of Annexure C. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs.

2. The principle mentioned above would also apply to the case of an offspring whose mother is a member of a Scheduled Caste and father of a Scheduled Tribe.

3. This is the general position of law. Each case, however, has to be examined in the light of the attendant facts and circumstances.

No. 5

No. BC. 12025/1/82 SC & BCD IV

Issuing Authority: B.N.Srivastava,
Director,
Ministry of Home Affairs
Govt. of India
New Delhi- 110 001

Addressee: The Chief
Secretaries of all
State Governments/
Union Territory
Administrations.

New Delhi dated 29th June 1982.

Subject: --Issue of Scheduled Caste/Tribe Certificates—Providing for punishments for officials issuing such certificates without proper verification.

Sir,

I am directed to say that it was mentioned in the meeting of the Consultative Committee for the Ministry of Home Affairs held in Feb. 1982 that Scheduled Caste/Tribe certificates have been issued to ineligible persons, carelessly or deliberately without proper verification by the officials empowered to issue such certificates. This have resulted in some persons availing of the benefits meant for the Scheduled Castes and Scheduled Tribes on false pretext. The Consultative Committee has desired that suitable steps should be taken to prevent such wrong issue of certificates.

2. Attention is invited to this Ministry's letter No. BC 12025/3/78-SCT-I dated 29th March 1976 addressed to the Chief Secretaries of all the State Governments/U.T. Administrations requesting them to take deterrent action against officials who issued certificates carelessly or deliberately without proper verification. The State Governments/U.T. Administrations were requested to issue necessary instructions to all the officials under their control who are empowered to issue certificates to take proper care before issuing them. These officials were also to be informed that action would be taken against them under the relevant provisions of the Indian Penal Code (Section 420 etc.) if any of them is found to have issued certificates carelessly and without proper verification in addition to the action to which they are liable under the appropriate disciplinary rules applicable to them.

3. It is requested that the action taken in the matter by the State Governments/U.T. Administrations may kindly be intimated to this Ministry urgently with regard to the following points: --

- (i) Number of bogus certificates detected during the last 2 years (1980 and 1981).
- (ii) Action taken against the erring officials.
 - (a) Under the relevant provision of the I.P.C.
 - (b) Under the appropriate disciplinary rules applicable to them.
- (iii) Action taken against persons who obtained such bogus Certificates under I.P.C. etc.
- (iv) Details of the steps taken to curb such malpractices in future.

4. The State Governments and U.T. Administrations are also requested to take strict measures to detect such cases of non-Scheduled Caste and non-Scheduled Tribe persons holding false S.C./S.T. Certificates, deprive them of benefits that they are not entitled to, and impose appropriate penalties and take legal action against them and against those who were responsible for the issue of such certificates, strictly and expeditiously. Further, it was suggested in the Consultative Committee meeting that the State Governments/U.T. Administrations may set up special courts for expeditiously trying the cases relating to the issue of bogus certificates with deterrent rapidity and give wide publicity to the names of persons who are convicted of this offence by the courts.

Yours faithfully,
(B.N. Srivastava)
Director.

No. 6

No. BC-16014/1/82-SC & BCD-I

Issuing Authority: B.K. Sarkar
Joint Secretary,
Ministry of Home
Affairs, Govt. of India.

Addressee: The Chief Secretaries to
all State Governments/
Union Territory
Administrations.

New Delhi, dated the 18th November, 1982.

Subject: --Issue of Scheduled Caste/Scheduled Tribe
Certificate to migrants from other States/Union Territories.

Sir,

I am directed to say that it has been represented to this Ministry that persons belonging to Scheduled Castes/Scheduled Tribes, who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste/tribe certificate from the State from which they have migrated. In order to remove this difficulty, it has been decided in modification of the instructions issued in letter No. BC-12025/2/76-SCT-1, dated 22.03.1977 and letter No. BC-12025/11/79-SC & BCD-I/IV, dated 29.03.1982 that the prescribed authority of a State Government/Union Territory Administration may issue the Scheduled Caste/Tribe certificate to a person who has migrated from another State, on the production of the genuine certificate issued to his father/mother by the prescribed authority of the State of the father's/mother's origin except where the prescribed authority feels that detailed enquiry is necessary through the State of origin before issue of the certificate. The certificate will be issued irrespective of whether the Caste/Tribe in question is scheduled or not in relation to the State/Union Territory to which the person has migrated. This facility does not alter the Scheduled Caste/Scheduled Tribes status of the person in relation to the one or the other State. The revised form of the Scheduled Caste/Tribe certificate is enclosed.

Yours faithfully,
Sd/- (B.K. Sarkar)

Form of certificate to be produced by a candidate belonging to a Scheduled Castes or Scheduled Tribes in support of his claim.

Form of Caste certificate

This is to certify that Shri/Shrimati/Kumari.....son/
Daughter of..... Of village/town.....
..... in district/Division/Division.....
..... Of the State/Union Territory.....
..... belongs to the Caste/Tribe which is
recognised as Scheduled Caste under :
Scheduled Tribe

The Constitution (Scheduled Castes) Order, 1950.

The Constitution (Scheduled Tribes) Order, 1950.

The Constitution (Scheduled Castes)(Union Territories) Order, 1951. *

The Constitution (Scheduled Tribes) (Union Territories) Order, 1951. *

(as amended by the Scheduled Castes and Scheduled Tribes lists (Modification) Order, 1956, the Bombay Reorganisation Act, 1960, the Punjab Reorganisation Act, 1966, the State of Himachal Pradesh Act, 1970 and the North Eastern Areas (Reorganisation) Act, 1971 and the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976).

The Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956. *

The Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959. *

The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 *

The Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962. *

The Constitution (Pondicherry) Scheduled Castes Order, 1964. *

The Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967. *

The Constitution (Goa, Daman and Diu) Scheduled Caste Order, 1968. *

The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968. *

The Constitution (Nagaland) Scheduled Tribes Order, 1970. *

The Constitution (Sikkim) Scheduled Castes Order, 1978. *

The Constitution (Sikkim) Scheduled Tribes Order, 1978. *

2. This certificate is issued on the basis of the Scheduled Caste/Scheduled Tribe certificate issued to Shri/Shrimati..... father/mother of Shri/Shrimati/Kumari..... Of village/town..... in District/Division.....of the State/ Union Territory.....

* Please quote specific Presidential order.

who belongs to the caste/tribe which is recognised as a Scheduled Caste
Scheduled Tribe
in the State/Union Territory..... issued by
the (name of prescribed authority) *vide* their
No..... dated.....

Signature.....
Designation.....
(with seal of Office)

Place..... State
Union Territory

Date.....

No. 7

No. BC-16014/1/82-SC & BCD-I

Issuing Authority: B.K. Sarkar,
Joint Secretary,
Ministry of Home
Affairs, Govt. of India.

Addressee: The Chief Secretaries
of All State Govts. and
U.T. Administrations.

New Delhi, the 6th August, 1984.

Subject: - Verification of claim of candidates belonging to Scheduled Castes and Scheduled Tribes and migrants from other States/Union Territories—Form of certificate—Amendment to.

Sir,

I am directed to refer to this Ministry's letter of even number dated the 18.11.1982 and the Department of Personnel and Administrative Reforms letter No. 36012/6/76/Est. (SCT), dated the 29/10/1977 on the above subject and to say that the form of Scheduled Caste/Scheduled Tribe certificate enclosed with the aforesaid letters has been further revised consequent upon coming into force of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and keeping in view the difficulty being experienced by the persons belonging to the Scheduled Castes and Scheduled Tribes in obtaining community certificates on migration from their States of origin to another for the purpose of employment, education etc. The revised caste/tribe form of certificate is enclosed herewith. It is requested that a copy of the revised form of certificate may please be brought to the notice of all the competent authorities who have been empowered to issue such certificates. The list of competent authorities who have been empowered to issue the Scheduled Caste/Scheduled Tribe certificates circulated by the Department of Personnel and Administrative Reforms in their letter No. 13/2/74-Est. (SCT), dated, the 05/08/1975 has also been incorporated in the enclosed revised form.

2. The instructions issued in this Ministry's letter of even number dated the 18.11.1982 will continue. It is, however, clarified that the Scheduled Caste/Scheduled Tribe person on migration from the State of his origin to another State will not lose his status as Scheduled Caste/Scheduled Tribes but he will be entitled to the concessions/benefits admissible to the Scheduled Castes/Scheduled Tribes from the State of his origin and not from the State where he has migrated. All competent authorities may be advised under intimation to this Ministry to issue the Scheduled Caste/Scheduled Tribe certificates on the revised form of certificate henceforth after satisfying themselves of correctness of the certificate after proper verification based on the revenue records/through reliable enquiries. The list of the competent authorities empowered and incorporated in the form may please be followed strictly. No other authority may be authorized to issue the Scheduled Caste/Scheduled Tribe certificates. .

Yours faithfully,
Sd/- BK Sarkar
Jt. Secy to Govt. of India

**Please delete the words which are not applicabl*

Form of certificate to be produced by a candidate belonging to a Scheduled Caste or Scheduled Tribe in support of his claim

FORM OF CASTE CERTIFICATE

This is to certify that Shri/Shrimati*/Kumari*
.....son/daughter* of
.....of village*/town* in
district/Division*of the State/Union
Territory*belongs to the.....
.....Caste/Tribe* which is recognised as a Scheduled Caste
Scheduled Tribe*

Under:

- @The Constitution (Scheduled Castes) Order, 1950.
- @ The Constitution (Scheduled Tribes) Order, 1950.
- @ The Constitution (Scheduled Caste) (Union Territories) Order, 1951.
- @ The Constitution (Scheduled Tribes) (Union Territories) Order, 1951.
- [as amended by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, the Bombay Reorganisation Act, 1960, the Punjab Reorganisation Act, 1966, the State of Himachal Pradesh Act, 1970, the North Eastern Areas (Reorganisation) Act, 1971 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976].
- @The Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956.
- @ The Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959.
- @ The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962.
- @ The Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962.
- @ The Constitution (Pondicherry) Scheduled Castes Order, 1964.
- @ The Constitution Scheduled Tribes (Uttar Pradesh) Order, 1967.
- @ The Constitution (Goa, Daman & Diu) Scheduled Castes Order, 1968.
- @ The Constitution (Goa, Daman & Diu) Scheduled Tribes Order, 1968.
- @ The Constitution (Nagaland) Scheduled Tribes Order, 1970.
- @ The Constitution (Sikkim) Scheduled Castes Order, 1978.
- @ The Constitution (Sikkim) Scheduled Tribes Order, 1978.

%2. Application in the case of Scheduled Castes/Scheduled Tribes persons who have migrated from one State/Union Territory Administration:

This certificate is issued on the basis of the Scheduled Caste/Scheduled Tribe certificate issued to Shri/Shrimati*
.....father/mother of
Shri/Shrimati/Kumari*of
village/town* in
District/Division.....of the State / Union
Territory* who belongs to the
.....Caste/Tribe* which is recognised as a Scheduled Caste
Scheduled Tribe

* Please delete the words which are not applicable
@ Please quote specific Presidential Order
% Delete the paragraph which is not applicable.

in the State/Union Territory* issued by the
..... (name of prescribed authority)
vide their No..... dated.....
.....

%3. Shri*/Shrimati*/Kumari* and/or his /her*
Family ordinarily reside(s) in village/town*
..... of
..... District/Division of the State/Union Territory of
.....

Signature
**Designation
(With Seal of Office)

Place State
Union Territory

Date

Note: The term "Ordinarily resides(s)" used here will have the same meaning as in Section 20 of the Representation of the People Act, 1950.

*Please delete the words which are not applicable

%Delete the paragraph which is not applicable.

** List of authorities empowered to issue Scheduled Caste / Scheduled Tribe Certificates.

1. District Magistrate/ Additional District Magistrate/Collector/Deputy Commissioner/ Additional Deputy commissioner/ Deputy Collector / 1st Class Stipendiary Magistrate / City Magistrate / Sub-Divisional Magistrate/ Taluk Magistrate / Executive Magistrate / Extra Assistant Commissioner.. (not below the rank of 1st Class Stipendiary Magistrate)
2. Chief Presidency Magistrate/ Additional Chief Presidency Magistrate / Presidency Magistrate.
3. Revenue Officers not below the rank of Tehsildar.
4. Sub-Divisional Officer of the area where the candidate and /orhis family normally resides.
5. Administrator / Secretary to Administrator/Devlopment Officer (Lakshadweep Islands).

No. 8

**Extracts from Representation of the People Act, 1950
on definition of ordinary resident**

(PART II – Acts of Parliament)

20. **Meaning of “ordinarily resident”** .- ¹[(1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns. or is in possession of, a dwelling house therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.]

(2) A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein.

²[(3) Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.]

(4) Any person holding any office in India declared³ by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply, ¹shall be deemed to be ordinarily resident ²on any date in the constituency in

¹ Subs. by Act 58 of 1958, s. 8 for sub-section (1)

² Subs. by Act 47 of 1966, s. 8, for sub-section (3) (w. e. f. 14-12-1966)

³ The following offices have been declared by the President by Notification No. S. O. 959, dated the 18th April, 1960:-

- (1) The President of India
- (2) The Vice-President of India
- (3) Governors of States
- (4) Cabinet Ministers of the Union or of any State
- (5) The Deputy Chairman and Members of the Planning Commission
- (6) The Ministers of State of the Union or of any State
- (7) Deputy Ministers of the Union or of any State
- (8) The Speaker of the House of the People or of any State Legislative Assembly
- (9) The Chairman of any State Legislative Council
- (10) Lieutenant Governors of Union territories
- (11) The Deputy Speaker of the House of the People or of any State Legislative Assembly
- (12) The Deputy Chairman of the Council of States or of any State Legislative Council
- (13) Parliamentary Secretaries of the Union or of any State.

which, but for the holding of any such office³ he would have been ordinarily resident⁴ on that date.

- (5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed form and verified in the prescribed manner, that⁵ [but for his having the service qualification] or but for his holding any such office⁶ as is referred to in sub-section (4) he would have been ordinarily resident in a specified place⁷ on any date, shall, in the absence of evidence to the contrary, be⁸ [accepted as correct].
- (6) The wife of any such person as is referred to in sub-section (3) or sub-section (4) shall if she be ordinarily residing with such person⁹ be deemed to be ordinarily resident on¹⁰ in the constituency specified by such person under sub-section (5).
- ¹¹[(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission.
- (8) In sub-sections (3) and (5) “ service qualification” means-
- (a) being a member of the armed forces of the Union; or
 - (b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modifications; or
 - (c) being a member of an armed police force of a State, who is serving outside that State; or
 - (d) being a person who is employed under the government of India, in a post outside India.

⁴Certain words omitted by Act 47 of 1966, s. 8 (w.e.f. 14-12-1966

⁵ The words “during any period or” omitted by Act 2 of 1956, s. 14.

⁶The words “or employment” omitted by Act 47 of 1966, s. 8 (w.e.f. 14-12-1966)

⁷ The words “during that period or” omitted by Act 2 of 1956, s. 14.

⁸Subs. by Act 47 of 1966, s. 8, for certain words (w.e.f. 14-12-1966)

⁹ Certain words omitted by s. 8, *ibid.* (w.e.f. 14-12-1966)

¹⁰ The words “during any period or” omitted by Act 2 of 1956, s. 14

¹¹Subs. by Act 47 of 1966, s. 8, for certain words w. e. f. 14-12-1966

¹²The words “during any period” omitted by Act 2 of 1956, s.14

¹³The words “during that period” omitted by s. 14, *ibid*

¹⁴ Ins. by Act 47 of 1966, s. 8 (w.e.f 14-12-1966). Original sub-section (7) was omitted by Act 2 of 1956, s.14.

No. 9

Issuing Authority:

T. Munivenkatappa
Joint Secy. to Govt. of India.
Ministry of Welfare

Addressee:

Parthasarathi Chaudhuri
Secretary,
Scheduled Castes and Sched Tribes
Welfare Department
Govt. of West Bengal

D.O. No. 12017/11/89-SCD(R. CELL)

Dated 8th January, 1990

Kindly refer to Chief Minister's D. O. letter No. 257-CM dated 30th September, 1989, regarding the difficulties being experienced by the State Government in the issue of Scheduled Caste/Scheduled Tribe certificates.

2. A large number of persons after migration from Bangladesh (formerly East Pakistan) belonging to Namasudra, Poundra, etc. communities have settled in the States of West Bengal, Orissa, Bihar, Madhya Pradesh, Maharastra and Andhra Pradesh. All these persons were required to get registration certificates from the Transit Camp set up by the Ministry of Rehabilitation after their entering in India. For example, if a person belonging to Namasudra community had obtained registration certificate to that effect after remaining in the Transit Camp set up by the Ministry of Rehabilitation in the State of West Bengal, he will be treated as a Scheduled Caste in relation to the State of West Bengal and for all purposes he will be treated as permanent resident of that State even after his migration to another State. It was obligatory on the part of the refugees from Bangladesh to get themselves first registered in the transit camp set up by the Ministry of Rehabilitation otherwise such entries would not be regularised. In addition to this, they are required to produce citizenship certificates for obtaining caste certificates. The Government of India insist on the above certificates since these persons were not citizens in India when the first Presidential Order i. e. Constitution (Scheduled Caste) Order, 1950 came into force.

3. Regarding the problem being faced by Scheduled Caste/Scheduled Tribe migrants, it may be stated that according to the guidelines issued by this Ministry from time to time, the Scheduled Caste and Scheduled Tribe persons on migration from the State of their origin to another State will not lose their status as Scheduled Castes/Scheduled Tribes, but they will be entitled to the concessions/benefits admissible to the Scheduled Castes and Scheduled Tribes from the States of their origin and not from the States to which they had migrated. The cases of all the Scheduled Caste/Scheduled Tribe persons migrated to the State of West Bengal from other States after the issue of first Presidential Order, therefore, can be decided accordingly.

4. Further, according to Article 341(2) and 342(2) of the Constitution, the Scheduled Castes/Scheduled Tribes are specified in relation to a particular State. The residence contemplated under the various Presidential Orders issued so far, is interpreted as the permanent residence of that locality. Since permanent residence is one of the conditions to confer the benefit of the order and a person cannot claim to be a permanent residence of more than one State. In view of this, determination of ordinary place of residence of a Scheduled Caste/ Scheduled Tribe person for the purpose of issuing a Scheduled Caste/ Scheduled

Tribe certificate to him is absolutely essential. In view of this a person who has migrated from his State of origin to another State after the issue of the Presidential Order cannot be treated an ordinary resident of the later State merely on the ground that he has permanently settled in the later State. However, he can obtain a Scheduled Caste/Scheduled tribe certificate from the State of Migration on the production of a genuine certificate issued to his father by the State of his father's origin. If he does not have any such certificate issued to his parent, a certificate can only be issued by the State/Union Territory from where the person had migrated after enquiry in the normal course.

5. In view of the position explained above, it may be appreciated, if the stipulations of a Registration Certificate, an Indian Citizenship certificate and ordinary place of residence are not followed in the case of persons who had migrated from Bangladesh (Earlier East Pakistan) and from other States of India, there is every possibility that the non- Scheduled Caste/Scheduled Tribe persons will have undue scope to have bogus certificates and corner the benefits meant for genuine Scheduled Castes/Scheduled Tribes.

No. 10

No. 36012/5/97-Estt. (Res.) Vol. II
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
Estt. (Reservation) Section

OFFICE MEMORANDUM

North Block, New Delhi-110 001

Dated the 20th July, 2000.

Subject : Treatment of backlog vacancies reserved for SCs & STs as a distinct group and non-applicability of 50 per cent ceiling thereon.

The undersigned is directed to invite a reference to Department of Personnel & Training's O.M. No. 36012/5/97-Estt. (Res.), dated 29th August, 1997 wherein it was laid down that 50 per cent limit on reservation shall apply to current as well as backlog vacancies and that backlog of reserved vacancies shall not be treated as distinct group for the purpose of 50 per cent limit on reservation and to say that the matter has been reviewed. Consequently, article 16(4B) has been incorporated in the Constitution by the Constitution (Eighty-First Amendment) Act, 2000, which provides as under:-

“Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”

2. In pursuance of the provisions of Article 16(4B) of the Constitution, it has been decided that in partial modification of the instructions issued vide this Department's O.M. No. 36012/5/97-Estt.(Res.), dated the 29th August, 1997, the reserved vacancies for Scheduled Castes and Scheduled Tribes in all cases of direct recruitment and promotion, wherever applicable, which have remained unfilled in the earlier year(s) i.e. backlog and/or carried forward vacancies would be treated as a separate and distinct group and will not be considered together with the reserved vacancies of the year in which they are being filled up for determining the ceiling of 50 per cent reservation on total number of vacancies of that year. In other words, the ceiling of 50 per cent on filling up of reserved vacancies would apply only on the reserved vacancies which arise in the current year and the backlog/carried forward reserved vacancies for SCs/STs of earlier years would be treated as a separate and distinct group and would not be subject to any ceiling. However, backlog and/or carried forward reservation will automatically lapse in a cadre as soon as combined representation of a reserved category in direct recruitment as well as promotion is either equal to or more than the prescribed number of reserved posts in the relevant post-based rosters.

3. As the Ministries are aware, reservation with effect from 02.07.1997 is linked to post based rosters. The backlog of vacancies would, be determined with reference to the post based rosters keeping in view the instructions issued vide this Department's O.M. No. 36012/2/96-Estt.(Res.), dated the 2nd July, 1997.
4. The Ministries/Departments etc. are requested to carry out a review for early assessment of the backlog vacancies in respect of SCs & STs both by way of direct recruitment and promotion and make concerted efforts to fill up backlog vacancies.
5. This order takes effect from the date of issue.
6. All Ministries/Departments are requested to bring these instructions also to the notice of their Attached/Subordinate Offices and Autonomous Bodies/Public Sector Undertakings under their control for compliance.
7. Hindi version will follow.

Sd/ J. Kumar
Deputy Secretary to the Government of India

No. 11

No. 36012/23/96-Estt.(Res.)-Vol. II
Government of India
Ministry of Personnel, Public Grievances & Pensions
(DEPARTMENT OF PERSONNEL & TRAINING)

North Block, New Delhi

Dated : The 3rd October, 2000.

OFFICE MEMORANDUM

Subject : Reservation in promotion – Prescription of lower qualifying marks/lesser standard of evaluation.

The undersigned is directed to refer to Department of Personnel & Training's O.M. No. 36012/23/96-Estt.(Res.), dated 22nd July, 1997 vide which various instructions of the Government providing for lower qualifying marks/lesser standards of evaluation in matters of promotion for candidates belonging to the Scheduled Castes and Scheduled Tribes had been withdrawn, on the basis of the Supreme Court's judgment in the case of S. Vinod Kumar Vs. Union of India.

2. The undersigned is further directed to say that the matter has been reviewed, consequent to which the following proviso to Article 335 has been incorporated in the Constitution by the Constitution (Eighty-Second Amendment) Act, 2000:-

“Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.”

3. In pursuance of the enabling proviso of Article 335 of the Constitution, it has now been decided to restore, with immediate effect, the relaxations/concessions in matters of promotion for candidates belonging to SCs/STs by way of lower qualifying marks, lesser standards of evaluation that existed prior to 22.07.1997 and as contained in the instructions issued by the Department of Personnel and Training from time to time including O.M. No. 8/12/69-Estt. (SCT), dated 23.12.1970, No. 36021/10/76-Estt.(SCT), dated 21.01.1977 and para 6.3.2 of the DPC guidelines contained in Department of Personnel and Training's O.M. No. 22011/5/86-Estt. (D), dated 10. 4.1089. In other words, the effect of these instructions would be that the Department of Personnel and Training's O.M. No. 36012/23/96-Estt.(Res.), dated 22nd July, 1997 becomes inoperative from the date of issue of this O.M..

4. These orders shall take effect in respect of selections to be made on or after the date of issue of this O.M., and selections finalised earlier shall not be disturbed.

5. All Ministries/Departments are requested to bring these instructions also to the notice of their Attached/Subordinate Offices and Autonomous Bodies/Public Sector Undertakings under their control for compliance.

Sd/ **J. Kumar**
Deputy Secretary to the Government of India

No. 12

MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT Modalities for inclusion, exclusion and other modifications in the Scheduled Castes and Scheduled Tribes Lists

Approved by Government of India on 15.06.1999

Modalities

- (a) Cases favoured by both the State Government and the Registrar General of India (RGI) (in their most recent reports) would be referred to the National Commission for Scheduled Castes and Scheduled Tribes for their opinion. They would be forwarded to the Commission individually or in batches, as may be practicable, along with the comments of the State Governments and the RGI as well as any relevant material/information furnished by them or by representationists. There are 314 such cases at present.
- (b) Some issues concern not one but several States e.g. the status of SC/ST migrants. These would also be referred to the National Commission if the RGI and majority of concerned States have supported modification.
- (c) It may be suggested to the Commission that, while examining the above cases, they should associate, through panels or other means, expert individuals, organisations and institutions in the fields of anthropology, ethnography and other social sciences, in addition to the State Governments, RGI and the Anthropological Survey of India, on a regional basis. They may also consider holding public hearings in areas relevant to the claims under examination. These guidelines cannot be binding on the Commission, but may be suggested in the interest of fuller examination of the cases. The Commission would also be requested to give priority to cases in which the Courts have given directives regarding decision within a stipulated time period. (In such cases, extension of time would be sought from the Courts where necessary, citing these modalities for the determination of claims). Such cases would be separately processed and sent for early decision.
- (d) Amending legislation would be proposed to the Cabinet in all cases in which the National Commission, RGI as well as State Governments have favoured modification. Those cases with which State Governments and the RGI are in agreement, but which the Commission have not supported, would be rejected at the level of Minister for Social Justice and Empowerment.
- (e) Claims for inclusion, exclusion or other modifications which neither the RGI nor the concerned State Government have supported would not be referred to the National Commission. These would be rejected at the level of the Minister for Social Justice and Empowerment. There are presently around 154 such cases.
- (f) In the case of claims recommended by the concerned State Governments, but not agreed to by the RGI, the State Governments would be asked to review or further justify their recommendations in the light of RGI's comments. Thereafter, they would be taken up again with RGI. These cases would remain under consideration

until agreement is reached between views of the RGI and the concerned States, at which time they would be disposed of in accordance with the modalities at (a) to (e) above. Cases which the RGI have recommended, but which the State Governments have not favoured, would be similarly processed. Such cases number around 532 at present.

- (g) Claims in respect of which the comments of either the RGI or the State Governments or of both are awaited—around 295 at present—would remain under consideration until their views are received. Thereafter, they would be dealt with in accordance with the modalities at (a) to (f) above.
- (h) Claims recommended suo-moto by the National Commission would be referred to RGI and the State Governments. Depending on their responses they would be disposed of in accordance with the modalities at (d) to (f) as may be applicable.