

# **Rajasthan Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2017**

RAJASTHAN

India

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### **Act 38 of 2017**

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Rajasthan Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2017(Act No. 38 of 2017)Statement of Objects and Reasons. - Article 38 of the Constitution enjoins upon the State that it shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political shall inform all the institutions of the national life. It further mandates that the State shall, in particular, strive to minimize inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 46 of the Constitution also mandates that the State shall promote, with special care, the educational and economic interests of the weaker sections of the people. In order to translate into action the pious hopes of our Founding Fathers invested in the above directive principles of state policy, the State of Rajasthan is implementing the policy of reservation for the social, economic and educational advancement of the people belonging to backward classes of Citizens like Scheduled Castes, Scheduled Tribes and other Backward Classes in admissions and appointments and a large section of citizens suffering from social and educational backwardness for many years have started enjoying the fruits of the reservation policy and have been able to improve their lot and attain a higher standard of living. The Backward Classes other than Scheduled Castes and Scheduled Tribes were provided reservation in admissions and appointments first time in the Year 1994. At that time 52 castes were enlisted as other backward classes. Thereafter various sections of the society represented before the State Backward Classes Commission for their inclusion in the category of backward classes. The Commission after carrying out the study of their

social and educational status recommended time to time more castes to be added in the list of backward classes. At present total 91 castes stand included in the list of backward classes and they represent approximate 52% of the total population of the State. Though the principle of proportionality is not applicable to the reservation under Article 16 as it is applicable under Articles 330 and 332, however, the proportion of the backward classes to the total population of the State is a relevant factor while determining the extent of reservation. And in fact, this principle has been followed by Central Government while granting reservation to Scheduled Castes and Scheduled Tribes. When the Central Government provided reservation to backward classes in the Year of 1993, the proportion of the population of backward classes at national level was about 52% and the reservation was provided 27%. Since the population of backward classes in the State of Rajasthan is estimated by the State Backward Classes Commission to be about 52%, therefore looking to the volume of population, the percentage of reservation for backward classes need to be increased. The High Power Committee, headed by Hon'ble Justice (Retd.) Sunil Kumar Garg, appointed by the State Government as well as the State Backward Classes Commission has unequivocally concluded in their reports, which is based on extensive studies conducted by them, that special circumstances envisaged in the Indra Sawhny's case do exist in the State and there are reasonable grounds to exceed the limit of 50% laid down in that case to ensure adequate representation of Backward Classes in admissions and appointments. Since all the castes included in the list of Backward Classes are at different stages of social and educational development and therefore the objectives of the directive principles of State policy mandated in the above referred Articles of the Constitution cannot be fully achieved unless these classes are sub-divided in backward and more backward classes according to the level of their social and educational development. In order to ensure class equality, the matter was referred to the then State Backward Classes Commission, headed by Hon'ble Justice (Retd.) Indersen Ishrani. The Commission in its report submitted in the Year 2012 recommended that certain castes namely Banjara/Baldiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/Rebari/Debasi, Gadariya/ Gadri/Gayari are extremely backward and need special care and protection for their rapid social and educational advancement. On the basis of that recommendation, the above castes were constituted in a separate class and they were provided 5% reservation in the Year of 2015 by a separate Act. The Act was challenged before the Hon'ble Rajasthan High Court and the Hon'ble Court, while indicating certain deficiencies in the report of the State Backward Classes Commission, struck down the Act. Since the main reason behind striking down of the Act of 2015 was the deficiencies in the report of the State Backward Classes Commission, the State Government appointed a High Power Committee in the Chairmanship of the Hon'ble Justice (Retd.) Sunil Kumar Garg to revisit the impugned report. The High Power Committee, after carrying out extensive study including field study of various sections of the society submitted its report on 10th July, 2017 which comprises in three Volumes. This report was referred to the State Backward Classes Commission for examination and its recommendation. The State Backward Classes Commission submitted its report on 16th July, 2017. Both the State Backward Classes Commission and the High Power Committee have unequivocally recommended that special circumstances as contemplated in the Indra Sawhny's case do exist and certain castes like Banjara/Baldiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/ Rebari/Debasi. Gadariya/Gadri/Gayari are extremely backward classes and need separate reservation. They have also recommended that these castes should be categorized as a separate class as More Backward Classes and they should be provided 1% reservation from within the limit of 50% laid down in the

Indra Sawhny's case and 4% from beyond that limit for which compelling circumstances do exist. Thus the total reservation of these castes should be 5% and total reservation of backward classes as a whole should be 26%. Not less than four Commissions and Committees, each one headed by a person who has been a Judge of the High Court, have concurrently concluded that Banjara/Baldiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/Rebari/Debasi, Gadariya/Gadri/Gayari are extremely backward classes and they need special and immediate attention for their social and educational advancement and providing them adequate reservation in the matters of admissions and appointments and circumstances exist which justify to slightly exceed the 50% limit of the reservation. In these circumstances, the State Government is satisfied rather feel obliged to implement the recommendations of the State Backward Classes Commission immediately so as to secure the more backward classes justice, social and economic and to ensure equalities of status, facilities and opportunities to them and also to promote the educational and economic interests of these sections of the people. The proposed Bill seeks to achieve the aforesaid objectives. Hence the Bill. [Dated 17.11.2017] No. F. 2 (48) Vidhi/2/2017. - In pursuance of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to authorise the publication in the Rajasthan Gazette of the following translation in the English language of Rajasthan Pichhada Varg (Rajya Ki Shaikshik Sansthaon Mein Seeton Aur Rajya Ke Adheen Seyaon Mein Niyuktikon Aur Padon ka Aarakshan) Adhiniyam, 2017 (2017 ka Adhiniyam Shankhyank 38) :- [Received the assent of the Governor on the 8th day of November, 2017] An Act to provide for the reservation of seats in educational institutions in the State and of appointments and posts in the services under the State for the category of more backward classes within the backward classes and for Clatters connected therewith or incidental thereto. Whereas, the pollen of reservation for the social, economic and educational advancement of the people belonging to Backward Classes of Citizens in admissions to educational institutions in the State and for reservation of appointments and posts in the services under the State has been under implementation in the State of Rajasthan for a long time: And Whereas, a large percentage of the population of Rajasthan suffering from social and educational backwardness for many years have started enjoying the fruits of the reservation policy and have been able to improve their lot and attain a higher standard of living, And Whereas; the Rajasthan State Commission for Backward Classes has time and again recommended to the State Government, that certain backward classes like Banjara/Baldiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/Rebari/Debasi, Gadariya/Gadri/Gayari are extremely backward and need special care and protection for their rapid educational and social advancement; And Whereas, under clause (1) of Article 38 of the Constitution, the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political shall inform all the institution of the national life; And Whereas, under clause (2) of Article 38 of the Constitution, the State shall, in particular, stave to minimize inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations; And Whereas, under Article 46 of the Constitution, the State shall promote, with special care, the educational and economic interests of the weaker sections of the people; And Whereas, looking to the recommendations made by the Rajasthan State Commission for Backward classes, from time to time, it is expedient that the extremely backward classes within the backward classes like the Banjara/Baldiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/Rebari/Debasi, Gadariya/Gadri/Gayari should be classified within backward classes as a separate category as more

backward classes and they should be given special care and protection for their rapid educational and social advancement. Now, therefore, be it enacted by the Rajasthan State Legislature in the Sixty-eighth Year of the Republic of India; as follows:-

## **1. Short title, extent and commencement.**

(1) This Act may be called the Rajasthan Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2017. (2) It shall extend to the whole of the State of Rajasthan. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

## **2. Definitions.**

- In this Act, unless the context otherwise requires, - (a) "backward classes" means the backward classes as defined in the Rajasthan Scheduled Castes, Scheduled Tribes and Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (Act No. 12 of 2009); (b) "Commission" means the Rajasthan State Commission for Backward Classes constituted under section 3 of the Rajasthan State Commission for Backward Classes Act, 2017 (Act No. 4 of 2017); (c) "creamy layer" means such class of persons within the more backward classes, as the State Government may notify, in the Official Gazette for the purposes of this Act; (d) "more backward classes" means the backward classes specified in the Schedule; (e) "prescribed" means prescribed by rules made under this Act; (f) "Schedule" means the Schedule to this Act; (g) "services under the State", means the public services and posts in connection with the affairs of the State and includes the services and posts in - (i) any local authority; (ii) any corporation or company owned or controlled, wholly or substantially, by the State Government; (iii) any other authority or body constituted by or under an Act of the State Legislature and funded, wholly or substantially, by the State; and (iv) respect of which reservation was applicable by Government orders on the date of commencement of this Act and which are not covered under sub-clauses (i) to (iii),

## **3. Reservation of seats in educational institutions in the State.**

- [(1) The reservation in respect of the annual permitted strength for admission into such educational institutions and courses in the State, as may be prescribed, for the More Backward Classes shall be five percent.] [Substituted by Act No. 2 of 2019, 13.2.2019.] (2) Notwithstanding anything contained in sub-section (1), persons belonging to creamy layer shall not be eligible for consideration against the reserved quota of, seats in any educational institution in the State:

## **4. Reservation, of appointments and posts in the services under the State.**

- [(1) The reservation of appointments and posts in the , services under the State for the More Backward Classes shall be five percent.] [Substituted by Act No. 2 of 2019, 13.2.2019.] (2) Notwithstanding anything contained in sub-section (1), persons belonging to creamy

layer shall not be eligible for consideration against the reserved quota in the appointments and posts under the State.

## **5. No reservation in certain cases.**

- Notwithstanding anything contained in section 4, there shall be no reservation in respect of the following posts, namely :-(a)the posts to be filled by transfer, promotion or deputation; and(b)the post which is single (isolated) in any cadre or grade.

## **6. Power to make rules.**

(1)The State Government may make rules for carrying out the purposes of this Act.(2)All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days; which may comprise in one session or in two successive sessions and, if before the expiry of the sessions in which they are so laid or of the sessions immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

## **7. Power to amend the Schedule.**

(1)The State Government may, in consultation with the Commission, add, amend or delete any entry of the Schedule by notification published in the Official Gazette and on and from the date of such publication, the Schedule shall stand amended accordingly.(2)Every notification issued under sub-section (1) shall be laid, as soon as may be, after it is so issued, before the House of the State Legislature and the provisions of sub-section (2) of section 6 shall mutatis mutandis apply to such notification.

## **8. Removal of difficulties.**

(1)If any difficulty arises, in giving effect to the provisions of this Act, the State Government may, by an order, published in the Official Gazette, do anything not inconsistent with the provisions of this Act, Which appears to it to be necessary or expedient for removing the difficulty :Provided that no order under this section shall be made after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under this section shall be laid, as soon as may be, after it is so made, before the House of the State Legislature.

## **9. Protection of action taken in good faith.**

- No suit, prosecution or other legal proceedings shall lie against any authority or person for anything done or purported to have been done in good faith in pursuance of the provisions of this

Act or the rules made thereunder.

## **10. Act not to derogate from other laws.**

- Nothing contained in this Act shall derogate from any other law for the time being in force. However a more backward class receiving the benefit of reservation under this Act shall not be entitled to receive the benefit of reservation as backward class.

## **11. Repeal and saving.**

(1)The Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015 (Act No. 32 of 2015) is hereby repealed and the provisions of the Rajasthan General Clauses Act, 1955 (Act No. 8 of 1955) shall apply to such repeal.(2)Nothing in this Act shall be deemed to have affected any orders made by the Governor in exercise of his powers under the Fifth Schedule of the Constitution of India in respect of the Scheduled Areas.

## **Schedule**

(See section 2(f))

S.No. Classes

- 1 Banjara, Baldiya, Labana .
- 2 Gadiya Lohar, Gadoliya.
- 3 Gujar, Gurjar.
- 4 Raika, Rebari, Debasi.
- 5 Gadariya, Gadri, Gayari.