

# CADRE MANAGEMENT IN DISTRICT JUDICIARY

- RECRUITMENT PROCESS: APTITUDE TEST
- IDENTIFYING & FILLING OF VACANCIES.
- HUMAN RESOURCE PLANNING AND MANAGEMENT.

***THE MORAL ARC OF THE UNIVERSE  
IS LONG BUT IT BENDS TOWARD  
JUSTICE.***

**MARTIN LUTHER KING**

***“THE QUALITIES THAT ONE SHOULD LOOK FOR IN A  
JUDGE ARE A BURNING DESIRE TO BE FAIR AND  
IMPARTIAL; THE COURAGE TO UPHOLD THE LAW  
AND STRIKE DOWN INJUSTICE; COMPASSION,  
COUPLED WITH AN UNDERSTANDING OF HUMAN  
FRAILTIES; AND LASTLY, LOVE FOR THE LAW”.***

***-WEE CHONG JIN,  
THE FIRST CHIEF JUSTICE OF SINGAPORE.***

## INTRODUCTION:

“Access to Justice is a Constitutional right”.

- ▶ An Independent and Efficient Judiciary is one of the basic structures of the Constitution.
- ▶ A transparent and dynamic judicial system capable of attracting proficient, zealous and meritorious candidates is one of the priorities of constitutional democracy.

# *BEFORE INDEPENDENCE:*

- ▶ The Magistracy was under the control of the District Magistrates who were also the Chief Officers of the Police in the districts.
- ▶ The Magistracy therefore was not capable to take any view independent of the executive wing of the state as District Magistrate had all the powers to call Magistrates in his Court as a matter of supervision.
- ▶ The Magistrate also had the fear of police as police was authorised to submit report against them which can affect their promotion.

↖ (Pandit Thakur Das Bhargava.)

# *CONSTITUENT ASSEMBLY*

While framing Articles 233 to 237 of Constitution of India (referred in the Constitution Assembly as Article 209 A to 209D) dealing with the matters of appointment, promotion and other service condition of Judges of District Judiciary, the concern of the members of the Constitutional Assembly was ensuring the independence of District Judiciary by removing the absolute control of State executives on it is visible.

## **OBJECTIVE TO BE ACHIEVED:-**

- To safeguard the civil liberties of the people of this country.

# *ON WAY TO THE INDEPENDENCE:*

- ▶ The Constitutional Scheme brought the District Judiciary under the supervision of High Courts and interference of executives in Judicial domain was stopped.
- ▶ Separation of power insisted by some members of Constituent Assembly at the most fundamental level opened new possibilities of Judicial review to executive powers even at the basic level.
- ▶ Obligation on Magistracy is to ensure rule of law in the administration of Justice at District Level.

# What is Cadre Management

The system of organization of **cadre management** refers to the setup of **cadre-management** organs and the System of division of **management** jurisdiction.

# *Constitutional scheme of Judicial appointment / Promotion & Service Conditions:*

- ▶ Our constitution vests the High Courts with overarching power and control over matters relating to the subordinate judiciary.
- ▶ Articles 233 and 234 accord powers to High Courts in matters of appointments to the subordinate judiciary while,
- ▶ Article 235 places control over the district courts and courts subordinate thereto with the High Court.
- ▶ Article 227 vests High Courts with powers of administrative superintendence of subordinate courts.



# SOME VITAL LAW COMMISSION REPORTS ON JUDGES' STRENGTH AND DELAY AND ARREARS

- ▶ 14<sup>TH</sup> Law Commission Report on “Reform of Judicial Administration” 1958. Which primarily focuses on ‘Delay & Arrears’ and shows the ‘root cause’ in the delivery of justice is due to ‘Inadequate strength of Judges’.
- ▶ 77<sup>th</sup> Law Commission Report (November 1978) :- On “Delay and Arrears in Trial Court”.
- ▶ 78<sup>th</sup> Law Commission Report (February 1979) :- On “Congestion of Under-Trial Prisoners in Jails”.
- ▶ 79<sup>th</sup> Law Commission Report (March 1979) :- On “Delay & Arrears in the High Courts and other Appellate Courts”.
- ▶ 120<sup>th</sup> Law Commission Report (July 1987) :- On “Manpower Planning in Judiciary- A Blueprint” for fixing the Strength of Judges.
- ▶ 121<sup>st</sup> Law Commission Report (July 1987) :- On “A New Forum for Judicial Appointments”.
- ▶ 124<sup>th</sup> Law Commission Report (1988):- On “The High Court Arrears- A Fresh Look”.
- ▶ 85<sup>th</sup> Report of Parliamentary Standing Committee on Arrears of Courts’ (2002) accepts demographic Norm as the part of initiation for deciding Judges’ strength.

# Present Judicial Service Recruitment Process

- **CADRE OF CIVIL JUDGES:** Filled by conducting the Competitive Examination from the Law Graduates. Conducted either by the High Courts or by the Public Service Commissions.
- **CIVIL JUDGE (SENIOR DIVISION):** Those officers who have already served for 5 to 7 years in judicial service and are appointed as the Chief Judicial Magistrate or Additional Chief Judicial Magistrate.
- **DISTRICT JUDGE:**
  1. Limited Competitive Examination 10% from the Judicial Officers,
  2. Direct Recruitment of about 25% from the persons having seven or more years of experience at Bar.
  3. Promotional Quota of 75% from Senior Civil Judges as per rules.

# **RECRUITMENT: SELECTION OF JUDGES/ DISTRICT JUDICIARY: AN EDIFICE OF JUDICIAL SYSTEM**

- Law Commission of India in its 116<sup>th</sup> report in 1986 recommended for the formation of All India Judicial Services(AIJS).**
- Article 312 of the Constitution was amended in 1976 for the purpose of establishment of the Indian Judicial Service.**
- The Shetty Commission was established to make recommendations for improvement of Work Conditions of Judicial Service.**

# *ALL INDIA JUDGE'S ASSOCIATION Vs UNION OF INDIA (2002) 4 SCC 247 :*

The Honourable Supreme Court had discussed in the said judgement :-






- ▶ That the Judge-population ratio in different countries and has adversely commented on the Judge-population ratio of 10.5 Judges per 10 lakh people in India. The report recommends the acceptance, in the first instance, of increasing the Judge strength to 50 Judges per 10 lakh people as was recommended by the 120th Law Commission Report.”
- ▶ THREE WAYS DIRECTED FOR APPOINTMENT:-
  - 1) Via Promotion based on merit-cum-seniority from Civil Judge(SD);
  - 2) Via promotion based strictly on merit, through competitive exams to be held amongst SD judges;
  - 3) Direct recruitment from amongst advocates of the Bar.

# *ALL INDIA JUDGE'S ASSOCIATION Vs UNION OF INDIA (2010) 15 SCC 170 :*

- ▶ The Hon'ble Supreme Court held that under article 233 and 234 of the Constitution on India, in the Judiciary timely appointment plays a very crucial role, and according to the compliance with the recommendation of the Shetty Commission for the rationalisation of the cadre structure and base structure, assured careers promotion of Civil Judges (Senior Division) and Civil Judges (Junior Division) is necessary.
- ▶ 25% of cadre posts District Judges are being filled up by limited departmental competitive examination but many High Courts find it difficult to fill up 25% posts. Most of the states were in favour of reducing the percentage from 25% posts by departmental examination. Hence, the cadre structure directed to be amended as follows:
  1. 25% seats for direct recruitment from the Bar.
  2. 65% seats to be filled up by regular promotion of Civil Judges (Senior Judges) .
  3. 10% seats to be filled up by departmental competitive examination.
- ▶ Supreme Court also directed the High courts to take steps to see that existing Service Rules be amended positively with effect from 1-1-2011.
- ▶ All vacancies are to be filled up in that particular year and there shall not be any carry forward of unfilled posts. Respective states to take urgent steps to fill up vacancies at the earliest, and create all infrastructural facilities.

# STRENGTH & WEAKNESS

DESPITE COURTS DISPOSING OF A HUGE NUMBER OF CASES EVERY YEAR,  
PENDING CASES KEEP GROWING

COUNTRY-WISE JUDGES' RATIO	
	<b>INDIA 18 JUDGES PER MILLION POPULATION</b>
	<b>CHINA 147 JUDGES PER MILLION</b>
	<b>US 102 JUDGES PER MILLION PEOPLE</b>
	<b>ENGLAND 56 JUDGES PER MILLION</b>
	<b>AUSTRALIA 48 JUDGES PER MILLION</b>

LONG-LIST OF PENDING CASES	
<b>OVER 3 CRORE CASES PENDING</b>	
<b>85lakh</b> CASES PENDING FOR THREE YEARS	<b>46.35lakh</b> CASES PENDING FOR 5 TO 10 YEARS
<b>43.4lakh</b> CASES PENDING FOR 3 TO 5 YEARS.	<b>20.7lakh</b> CASES PENDING FOR 10 TO 20 YEARS
<b>3.8lakh</b> CASES PENDING FOR 20 TO 30 YEARS	
<b>76,902</b> CASES PENDING ABOVE 30 YEARS.	

1,776 respectively

## JUSTICE DELAYED

### STATISTICS



### BURDEN OF CASES ON INDIAN COURTS

	Oct-Dec 2013	Oct-Dec 2012	Oct-Dec 2011	Oct-Dec 2010*	Oct-Dec 2009	Oct-Dec 2008	Oct-Dec 2007	Oct-Dec 2006
<b>All Courts</b> Total Pending cases (cr)	<b>3.1</b>	<b>3.1</b>	<b>3.1</b>	<b>3.2</b>	<b>3.1</b>	<b>3.0</b>	<b>2.9</b>	<b>2.9</b>
<b>Supreme Court</b>								
Working Strength	29	27	27	29	27	24	24	24
Pending Cases (000)	66.3	66.7	58.5	54.6	55.8	49.8	46.9	39.8
Burden per Judge	2,288	2,470	2,167	1,881	2,066	2,076	1,955	1,658
<b>High Courts</b>								
Working Strength	640	614	621	604	630	606	593	611
Pending Cases (lakh)	44.6	44.4	43.3	42.5	40.6	38.7	37.4	36.5
Burden per Judge	6,963	7,226	6,969	7,035	6,446	6,393	6,312	5,982
<b>District and Subordinate Courts</b>								
Working Strength	15115	14353	14275	13962	14095	13556	12549	11957
Pending Cases (cr)	2.7	2.7	2.7	2.8	2.7	2.6	2.5	2.5
Burden per Judge	1,776	1,878	1,890	1,988	1,935	1,948	2,026	2,097

Source: Supreme Court, working strength and pending cases at the end of the quarter, \*working strength in SC and HC as on 1-2-2011

# *USHERING A NEW ERA:*

*(MALIK MAZHAR SULTAN & ANR VS U.P.PUBLIC SERVICE COMMISSION) [(2006) 9 SCC 507]*

- 1) filling up of vacancies of various Cadres of Judicial Officers in a timely manner; and
- 1) To constitute a Recruitment Cell in each High Court.

*Malik Mazhar Sultan vs Uttar Pradesh Public Service Commission [(2008) 17 SCC 703]*

The Hon'ble Supreme Court prescribed a time schedule for filling up of posts by direct recruitment and promotion in subordinate courts in all states under article 233, 234 and 265 of the Constitution of India. , except in State like Sikkim where cadre of judicial officers is very small.

Also held that constitution of Selection Committees by respective High Courts to monitor timely appointment of Judicial Officers at subordinate/ district level.



# ***WHY RECRUITMENT ON THE REGULAR BASIS:***

- a) Completing the examination in a time bound manner is a marker of an efficient, transparent and accountable recruitment process.
- b) Helps the aspirants to prepare themselves.

## MALIK MAZHAR SULTAN & ANR. V/S U.P.PUBLIC SERVICE COMMISSION & ORS.

SCHEDULE REQUIRED TO BE ADHERED TO WHILE UNDERTAKING RECRUITMENT PROCESS FOR THE JUDICIAL OFFICERS							
Broad Stage No.	Description of Event as per directions / stage	Civil Judge (Direct)	Senior Civil Judge (Promotion)	District Judge	25% (from Bar)	10% (Accelerated Promotion)	65% (Regular Promotion)
					25% (from Bar)	10% (Accelerated Promotion)	65% (Regular Promotion)
(i)	Number of vacancies to be notified by the High Court	15th January	31st March	31st March			31st March
(ii)	Advertisement inviting Applications from eligible Candidates	1st February	-	15th April			-
	Last date for receipt of Application	1st March	-	30th April			-
	Publication of list of eligible Applicants / Officers [Zone of consideration should be 1 : 3 of the number of Vacancies]	2nd April	15th May	15th May			15th May
(iii)	Issuance of Admit Cards to eligible Candidates	2nd April to 30th April	-	16th May to 15th June			-

(iv)	Preliminary Written Examination (MCQs - Objective type) (For Civil Judges)	15th May	-	-	-
			-	30th June	
(v)	Written Examination (Elimination Test) MCQs - Computer Based Objective Test (For District Judges : 25% Quota from Bar) Receipt of Judgments from eligible officers (for Promotion Quota / Cadres)	-	30th May	-	30th May
	Evaluation Criteria (a) ACRs for last five years; (b) Evaluation of Judgments furnished; [and (c) Assessment of Disposal of last 5 years]	-		-	
(vi)	Declaration of result of Preliminary Written Examination (MCQs - Objective type) [The ratio of 1:10 for Civil Judges]	15th June	-	-	-
	Declaration of result of Written Examination (Elimination Test) MCQs - Computer Based Objective Test [1:3 for District Judge (25%) of the available vacancies to the successful candidates.]			16th August	
(vii)	Final Written Examination (Subjective / narrative)	15th July	-	-	-
				30th June	
(viii)	Written Examination (Subjective / Narrative) (For District Judges : 25% Quota from Bar & 10% Accelerated Promotion Quota) Declaration of result of Final Written Examination [The ratio of 1:3 of the available vacancies to the successful candidates.]	30th August	-	16th August	-

(ix)	Viva Voce	1st to 15th October	-	1st to 7th September		-
(x)	Declaration of Final Select-List and communication to the Appointing Authority	1st November	15th September	15th September		31st August
(xi)	Issuance of Appointment letter by the Appointing Authority	1st December	30th September	30th September		30th September
(xii)	Last date for Joining	2nd January of the following year	31st October	31st October		31st October

# *ALL INDIA JUDICIAL SERVICE:*

- ▶ 116<sup>th</sup> report there was any specific provision on the subject of the subordinate judiciary. This omission was specially noticed and mentioned by the conference of the Judges of the Apex Court and Chief Justice of High Courts held in March 1948.
- ▶ Their memorandum observed: “so long as” the subordinate judiciary, including the District Judges have to depend on the provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties.

## Contd..

- ▶ Swaran Singh Committee, 1976 dealt with the question of organising Judicial Service at an All-India level. Without expressing any opinion, it referred the problem of All-India Judicial Service to the Government for their consideration and decision after consultation with the State Government.
- ▶ Chairman of the Law Commission expressed in his personal opinion “It may be said that practising lawyers joining Indian Judicial Service would form a small fragment of it as per the scheme envisaged in this report.
- ▶ Clause 45 of the Constitution (Forty-Fourth Amendment) Bill, 1976 dealt with amendment to Article 312 by introducing words ‘including an All-India Judicial Service’ after the words ‘All-India Service’.

# THE NATIONAL COURT MANAGEMENT SYSTEM COMMITTEE (NCMSC): LATEST & ONE OF THE MOST VISIONARY REFORMS PROPOSED

- ▶ In the case of *Imtiyaz Ahmed vs State of Uttar Pradesh [2017 SCC online 7]* the Apex Court termed the inadequacy of judges to be the root cause for the delay in disposal of cases resulting in huge backlog, established National Court Management Systems Committee (NCMSC) to formulate a scientific method for determining the basis for computing the required judge strength, in accordance with the prevailing ‘Unit system’ of the High Courts.
- ▶ The court also said that while prescribing units for disposal, a robust attempt must be made by the High Courts to ensure that due importance is given to the disposal of old cases. The enhancement in the strength of the district judiciary should be such that a ‘Five plus zero’ pendency is achieved i.e. wiping out the backlog within target period of five years.

## Issues:

- i. The large existing backlog of cases
- ii. Number of judges required to ensure that new filings get disposed off so as not create further backlog (backlog- is defined as the difference between institution and disposal of cases.)
  - ▶ Suggestions of NCMSC that the clearance of backlog is not the sole or central basis for determining judge strength.

Other critical parameters include:

- 1) Rate of case clearance; the number of cases disposed of as a percentage of institution;
- 2) On time disposal rate the percentage of cases resolved within established time frame;
- 3) Pre-trial custody periods wherein an under-trial is in custody pending trial of a criminal case;
- 4) Trial date certainty-the proportion of important case processing provisions that are held according to the schedule finalised.
- 5) Rate of disposal method- not a substantial departure from past approach.



# Contd.

- ▶ NCMSC is one of the major visionary Reform Proposals.
- ▶ It emphasizes on the establishment of the Comprehensive Court Management Systems with the Provisions of Constitution of India to be framed in Rules and with objectives to enhance:
  - Quality;**
  - Responsiveness;**
  - Timeliness of Courts**
- ▶ At the core of the Systems it may be formulated according to **Human Resource Development Strategy.**
- ▶ Human Resource management systems which may include Selection and Training of Performance Managers.
- ▶ Performance Managers may include the Judges as well as the Ministerial Staff.
- ▶ Human Resource Management System may be formulated on the basis of certain factors such as Ethics; Conduct of Advocate with accountability; Quality of Legal Education
- ▶ The need of such formulation is because there are about 3 crore cases in all over the country.

# NEED OF CHANGES IN SELECTION PROCESS

- ▶ To recognize talented, potential and deserving amongst the aspirants.
- ▶ Systems may not be clogged with sub standard Judges
- ▶ A committee may be organized to supervise and to monitor the Recruitment process, which may be comprising of
  - :- 2/3<sup>rd</sup> of present and sitting Judges of High Court
  - Retired Judges
  - Eminent Jurist
  - Retired Bureaucrat, for the process of selection.
- ▶ Need of committee for to ensure Fair, Transparent, Confidential and Impartial selection.

# NEED TOWARDS SPEEDY JUDICIAL PROCESS

- ▶ Increasing number of selections would require increasing infrastructure.
- ▶ Increase in number of Support and Ministerial Staff at work.
- ▶ Imparting training to the Judicial Officers at all Levels.
- ▶ Increasing clarity with regard to career Growth and Need to impart Specialized training to the selected persons or the trainees.

# CENTRALIZED RECRUITMENT PROCESS FOR MINISTERIAL STAFF

- ▶ As per the Resolution adopted by the Full Court (Chamber) Meeting decisions from time to time the Recruitment cell established in 2007 successfully conducted **four Centralized Recruitment Processes** for filling up the various Direct-entry posts in **Class II to IV Services** in the District Courts in the State.

# REQUISITION OF VACANCIES CALLED FROM ALL DISTRICT COURTS

- ▶ Requisitions of Vacancies are called for

**-Cadre wise**

**-Category wise**

from the concerned Administrative Departments,

- ▶ elections are made under directions of the **Selection Committee**
- ▶ Preparing the **Select List/Wait List.**

# *INITIATIVES OF RECRUITMENT CELL OF GUJARAT HIGH COURT:*

<b>1.</b>	<b>INTRODUCTION OF E-PAYMENT OF EXAMINATION FEES</b>
<b>2.</b>	<b>PROACTIVE DISCLOSURE</b>
<b>3.</b>	<b>03-TIER INVIGILATION/ SUPERVISION TEAMS</b>
<b>4.</b>	<b>THE IN-HOUSE SOFTWARE FOR EFFECTING THE INITIAL POSTINGS BASED ON MERIT, PREFERRED STATION AND RESERVATION</b>
<b>5.</b>	<b>WEB PORTAL FOR ATTENDANCE OF CANDIDATES</b>
<b>6.</b>	<b>ONLINE OPTION FOR RAISING OBJECTION AGAINST ANSWER KEY</b>

# Contd.

- ▶ ONLINE FILLING OF APPLICATION FORMS
- ▶ E-PAYMENT OF EXAMINATION FEES: requiring candidates to remit the Requisite Fee, online through ‘SBI ePAY’.
- ▶ PROACTIVE DISCLOSURE: INFORMATION with respect to marks obtained by each candidate at various stages is furnished upon conclusion of Recruitment Process
- ▶ a link to webpage on HC-OJAS at <https://hc-ojas.guj.nic.in> via SMS, with individual password.

# Contd.

## ▶ **03-TIER INVIGILATION/ SUPERVISION TEAMS:**

Recruitment cell has adopted Examination Process as effective as possible & fool-proof from loopholes and latches:

-**1<sup>st</sup> Tier [CHIEF TEST ADMINISTRATION TEAM(CTA)]** i.e. College team for Preliminary or Written Examination

-**2<sup>nd</sup> Tier [DISTRICT COURT TEAM(DCT)]** Ensures Monitoring; overall administration and Supervision of the Examination.

-**3<sup>rd</sup> Tier [HIGH COURT TEAM(HCT)] FLYING SQUAD TEAM,** to ensure Vigilance& Alertness of Examination Process.

▶ **The IN-HOUSE SOFTWARE for affecting the INITIAL POSTINGS:** For affecting the 'Initial postings' of the Selected Candidates.

▶ **WEB PORTAL FOR ATTENDENCE OF CANDIDATES:** After completion of Examination, the attendance of the Candidates are being fed by the concerned court team.



# **NEED FOR HUMAN RESOURCE DEVELOPMENT PLANNING AND MANAGEMENT: AT THE CORE OF THE SYSTEM**

- ▶ **With 3 Crore pending cases in various courts the Indian judiciary is facing with a serious problem of clearing the backlog.**
- ▶ **Causes of delay and finding out solutions to clear cases as expeditiously as possible are matters of frequent discussion.**
- ▶ **The success of any reform initiative depends on the people who manage the system sought to be reformed.**
- ▶ **It is essential that the judiciary's human resources are well capacitated to address the demands of implementing the envisaged judicial reforms.**

# Contd.

- ▶ To assess human resource requirement, Workload has to be analyzed scientifically considering various factors like:

**-SELECTION**

**-TRAINING**

**-PERFORMANCE MANAGEMENT**

**-ETHICS**

**-CONDUCT OF ADVOCATES WITH  
ACCOUNTABILITY**

**-QUALITY OF LEGAL EDUCATION**

# MEASURES WHICH MAY BE ADOPTED

- ▶ **For newly recruited employee of any organization, induction & onboarding is a stepping stone to quality contribution.**
  - It familiarize them with the nature of work and culture of the institute.
  - Experience of colleagues enriches them.
  - It also tells them of expectations of Institute from employees.
  - Duty List to be prepared from each Table which also help immensely litigants whom the ministerial staff serves.
- ▶ **Learning is a Continuous Process:**
  - Ongoing Training for the Skill enhancement and
  - for the updating with the changing needs of the Organization & Stakeholders and
  - to keep pace with technological advancements of law as
  - also for feeling of Self Enrichment.

# Contd.

▶ **Performance Appraisal and Performance Feedback:**

-Test for both employer and employee for Evaluating/ Correction/ Achievement of Goals.

-A very vital stage providing opportunity to introspect and also appreciate the hard work for better Productivity.

▶ **Creation of Permanent post or Cadre:**

-Security of job empowers the employees.

-Ad hocism serves no institute in a long run.

-Sense of belonging unless created, contributing towards organizational goals is always not possible.

▶ **Goal setting/ Vision/ Future Planning:**

-Ownership of decision generates actions.

-Fraternity is a bridge between the individual and everyone.

# NATIONAL CRIME RECORDS BUREAU DATA & REPORT:

- ▶ The report notes that the strength of Judicial Officers is able to complete trial in approximately 13% of cases brought for trial under the Indian Penal Code during each year. The ratio of cases brought for trial to the number of cases in which trial is completed stands close to the figure of 7 over the past 5 years.

# Measures adopted for speedy justice and reduce delays.

1. Appointment of Court Managers in High Courts and District Courts.
2. Vision Statement and Action Plan adopted by the National Consultation for Strengthening the Judiciary towards reducing pendency and delays.
3. Preparation of National Arrears Grid.
4. National Mission for Justice Delivery and Legal Reforms.
5. National and State Legal Service Authorities constituted under Legal Service Authorities Act, 1987.
6. National Court Management System.

Law Commission could be requested to address on the basis of a scientific study, on the issue of setting up additional courts and providing additional infrastructure for ensuring access to justice and speedy disposal of cases.

- ▶ The rate of disposal method suggested by the Law Commission seeks to access the judge strength required in the District Judiciary to clear backlog of cases as well as to ensure that a fresh backlog is not created. The two major concerns are:
  - 1) The large existing backlog cases; and
  - 2) The number of Judges required to ensure that new fillings are disposed of in such a manner that further backlog is not created.

# Contd..

- ▶ NCMSC has suggested that the clearance of backlog is not the sole or central basis for determining judge strength. Several other critical parameters include:
  - 1) Rate of case clearance; the number of cases disposed of as a percentage of institution;
  - 2) On time disposal rate the percentage of cases resolved within established time frame;
  - 3) Pre-trial custody periods wherein an under-trial is in custody pending trial of a criminal case;
  - 4) Trial date certainty the proportion of important case processing provisions that are held according to schedule finalised.



# Central Selection Mechanism (CSM)

## Critical Need for filling up vacancies

- ▶ Letter dated 28/04/2017 from Ministry of Law & Justice written treated as PIL by the Supreme Court
- ▶ Vacancy of District and other level Judges in the District Judiciary was 22.85% i.e. 4800 of 21000
- ▶ All India Judges Association vs. UoI (2010) 15 SCC 170 - 25% to be recruited i.e. 300 vacancies to be filled in every year
- ▶ Conducted in ad hoc fashion - DJ Direct exams
- ▶ No syllabus to prepare in advance
- ▶ Uncertainties and irregularities in District Judges Recruitment (DJURE)

# CSM & AIJS

## A comparison

- ▶ Autonomy of the State not compromised - all existing rules, reservation, service conditions would continue to be in force
- ▶ Appointment under the State by the Government - Pool would be presented to the Court, no appointment to be made by the DJURE
- ▶ Eligibility criteria of the State not to be changed
- ▶ No change in reservation
- ▶ Requirement of specialised knowledge about State laws/language would remain

# CSM - an overview

- ▶ **Candidates would be tested on**
  - ▶ Legal Aptitude
  - ▶ Local Laws
  - ▶ Language
  - ▶ Customs & Practice
- ▶ **Scheme of the Exam:**
  - ▶ Law I - Civil Laws & Allied Subjects = 100 Marks
  - ▶ Law II - Criminal Law & Allied Subjects = 100 Marks
  - ▶ Law III - Miscellaneous Subjects = 100 Marks
  - ▶ Law IV - Local Laws, Customs & Practices, Local Language = 100 Marks
  - ▶ Interview = 200 Marks
- ▶ Entire MCQ Format or conventional exam type
- ▶ Cumulative ranking comprising National & State Rank
  - ▶ First 3 papers - National Rank
  - ▶ 4th Paper - State Rank
- ▶ 2.5/5 times of the posts advertised (vacancy available to be called for interview)

# Central Selection Committee (CSC)

- ▶ Of five members
- ▶ Chairperson to be nominated by the Honourable Chief Justice of India
- ▶ Four Members from each region preferably
- ▶ Shall interact with the High Courts
- ▶ Will have a Secretariat for conducting DJURE

# CSC Secretariat Functions

- ▶ Setting up papers
- ▶ Add or revise proposed syllabus
- ▶ Conduct examination on regular basis
- ▶ Constitute Interview Boards giving adequate representation to the respective High Court of the State
- ▶ Declaring Results and providing rank lists to the Registrar General of the State H. C.
- ▶ Prepare wait list for potential candidates (wait list to be available for 3 months)
- ▶ Interview Boards:
  - ▶ To also have Psychologists & other experts to examine legal aptitude
  - ▶ Characteristics like integrity, work ethics to be examined
- ▶ CSM to be funded by Central Government with adequate provision of external budget

# Tentative Schedule - CSM

<b>Specific tasks</b>	<b>Schedule for completion</b>
Intimation of Vacancies by the High Court to the Secretariat	15 <sup>th</sup> March
Issue of Examination Notification by the Secretariat	1 <sup>st</sup> April
Last date for submission of application forms for Examination	1 <sup>st</sup> May
Issuance of admit cards	15 <sup>th</sup> May
Written examination on legal aptitude (Law I to III)	1 <sup>st</sup> June

# Tentative Schedule - CSM

Written examination on State-specific aspects (Law IV for various States)	Between 2nd and 15th June
Declaration of National and State ranks	25th June
Declaration of candidates selected for Interview	1st July
Conduct of Interviews by Interview Boards	Between 15th and 22nd July
Intimation of final list of selected candidates (total of marks obtained in examination and Interview) by the Registrar Generals of the respective High Courts	31st July
Publication of result on the Official Website and issue of appointment letters to selected candidates	31st August

# RECRUITMENT CELL:

- ▶ The Recruitment Cell of High Court of Gujarat had been constituted in August, 2007 as the Recruiting Agency for Higher Judicial Service Officers, pursuant to the directions of the Hon'ble Supreme Court, in the Malik Mazhar case, originally, to undertake the Recruitment Process for the Judicial Officers as per the directions therein.
- ▶ The Recruitment Cell is headed by an **Appellate level Judicial Officer (District Judge Cadre)** with nomenclature "Registrar", being posted on the establishment of this High Court to ensure compliance with the *Time Schedule* and directions laid down by Hon'ble SC.



# FILLING UP OF VACANCIES OF DISTRICT JUDGE

1.	By way of Promotion	65% QUOTA
2.	By way of Direct Recruitment	25% QUOTA
3.	By way of Accelerated Promotion	10% QUOTA

Type of Issue	Description
a) Age Cut-offs	Age limits are prescribed in the rules. However, because recruitment may not be conducted annually, some otherwise eligible candidates lose out on the opportunity for appearing in these exams.
b) General qualifications prescribed	For District Judges, the requirement of having seven years' <i>continuous</i> practice proves onerous and disqualifies several potentially good candidates.
c) Faulty question papers	Errors in the questions in the question papers leads to avoidable litigation.
d) Out of syllabus questions	Sometimes certain subject matters are tested despite not being a part of the prescribed syllabus.
e) Qualifying Marks	Minimum qualifying marks are sometimes introduced after the commencement of the examination. This amounts to changing the rules of the game after it has already begun.
f) Moderation/ Scaling procedures adopted	In order to bring parity between various answer scripts that might have been evaluated by different examiners, certain moderation techniques are employed. These techniques are not prescribed in the rules and therefore get challenged as being arbitrary.
f) Re-evaluation and demand for answer scripts	Sometimes candidates want to self-evaluate the marks obtained by them in their answer-scripts since they fear they have been given low marks or that there may be totalling mistakes. For getting access to their answer scripts they have to file a Re-evaluation application.

# Contd...

	<p>Information application. When the same is rejected by the requisite authorities, they have to approach the courts.</p>
<p>g) Non-filing of vacancies</p>	<p>Certain seats are reserved for candidates who are disabled, or belong to the Scheduled Caste/ Scheduled Tribe/ Other Backward Castes. On occasion, when these seats go unfilled in a particular recruitment cycle, there are demands to de-reserve the seats to make them available to general category candidates. Similarly, when certain seats are repeatedly carried over multiple recruitment cycles there are demands to make those seats available to others who may have qualified but do not belong to the category for whom the seats are reserved.</p>
<p>h) Vacancies not notified correctly</p>	<p>Candidates have challenged the manner of notifying vacancies since they feel that they are often not calculated keeping in mind future anticipated vacancies. Thus, there is underreporting of the number of actual vacancies.</p>

# Contd..

- ▶ An average taken over the last ten years of seven states that follow a *two-tier recruitment system* reveals that it takes 196.28 days to complete cycle.
- ▶ Similarly, the average amongst ten states that follow a *three-tier system of recruitment* to complete one recruitment cycle is 335.9 days.

# STATUS REPORT OF GUJARAT & BOMBAY HIGH COURTS:

## ► Year 2019

SR NO	STATE	CADRE	SANTIONE D STRENGTH	WORKING STRENGTH	VACANCIE S
1	GUJARAT	DISTRICT JUDGE	335	283	72
		ADHOC DISTRICT JUDGE	-	18	+18
2	BOMBAY	DISTRICT JUDGE	392	337	55
		ADHOC DISTRICT JUDGE	100	82	18

# PSYCHOLOGICAL ASSESSMENT AND TESTS

## What is a psychological test?

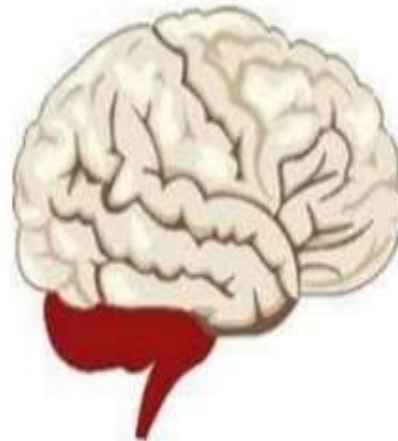
- A psychological test is a structured technique to generate carefully selected sample of behavior.
- . It is used to derive inference about someone's behavior on basis of results of the tests.
- We can judge the level of attributes like intelligence , self-esteem , aptitude in an individual.



# PSYCHOLOGICAL ASSESSMENT AND TESTS

## Psychological tests are as:

- **cognitive functioning:** Intelligence, Aptitude, & Achievement
- **Personality:** Objective, Projective
- **Neuropsychological**



# PERSONNEL SELECTION IN INDIAN HISTORY

- ▶ The introduction of psychological techniques in the process of selection is a development of this the system. The psychological tests were first used for selection personnel by the American Army in the year 1917.
- ▶ Psychological tests provided quick diagnosis. Large numbers could be handled and a verdict given on them in a short time.
- ▶ the American Psychologists at that time were making selection to the officer rank purely on the basis of the level of intelligence and no attempts made to assess the emotional and volitional aspects.
- ▶ The present method the selection of Armed Forces has been made more elaborate, systematic, definite and accurate.



# TYPES OF TESTS:

## ON THE BASIS OF TEST OF KNOWLEDGE, SKILLS AND ABILITY

1. ACHIEVEMENT TESTS
2. APTITUDE TESTS
3. INTELLIGENCE TESTS AND COGNITIVE ABILITY TESTS
4. INTEREST TESTS
5. NEUROPSYCHOLOGICAL TESTS
6. OCCUPATIONAL TESTS
7. PERSONALITY TESTS
8. SPECIFIC CLINIC TESTS

# Different types of Biological Tests for the workplace:

- 1. Biographical data instruments:** which often seek information on a candidate's leadership and teamwork skills, interpersonal skills, extraversion, and creativity through the use of questions.
- 2. Cognitive ability tests:** which typically use questions or problems to measure a candidate's ability to learn quickly, and use logic, reasoning, reading and other mental abilities.
- 3. Personality tests:** which try to measure a person's extraversion, conscientiousness, openness to new experiences, optimism, agreeableness, stress tolerance, emotional stability and proactivity.

# CHARACTERISTICS OF PSYCHOLOGICAL TESTS:

1. VALIDITY
2. RELIABILITY
3. PRACTICABILITY
4. USABILITY
5. UNIFORM: as different testers will follow same test steps anywhere.
6. Biases due to personal reasons are reduced.
7. Norms are set to work with.

# What are Types of Psychological Assessment?

## 1. MYERS BRIGGS

### 1. Big Five(OCEAN)

- ▶ Openness- Openness to experience, unconventional ideas and beliefs
- ▶ Conscientiousness- goal-oriented behaviour.
- ▶ Extroversion- introversion-extraversion, psychic energy
- ▶ Agreeableness- co-operative, likeable and altruistic
- ▶ Neuroticism- emotional stability to emotional instability.

### 3. OCCUPATIONAL INTEREST INVENTORIES

### 3. DISC BEHAVIOR INVENTORY

### 3. SITUATION JUDGEMENT TESTS

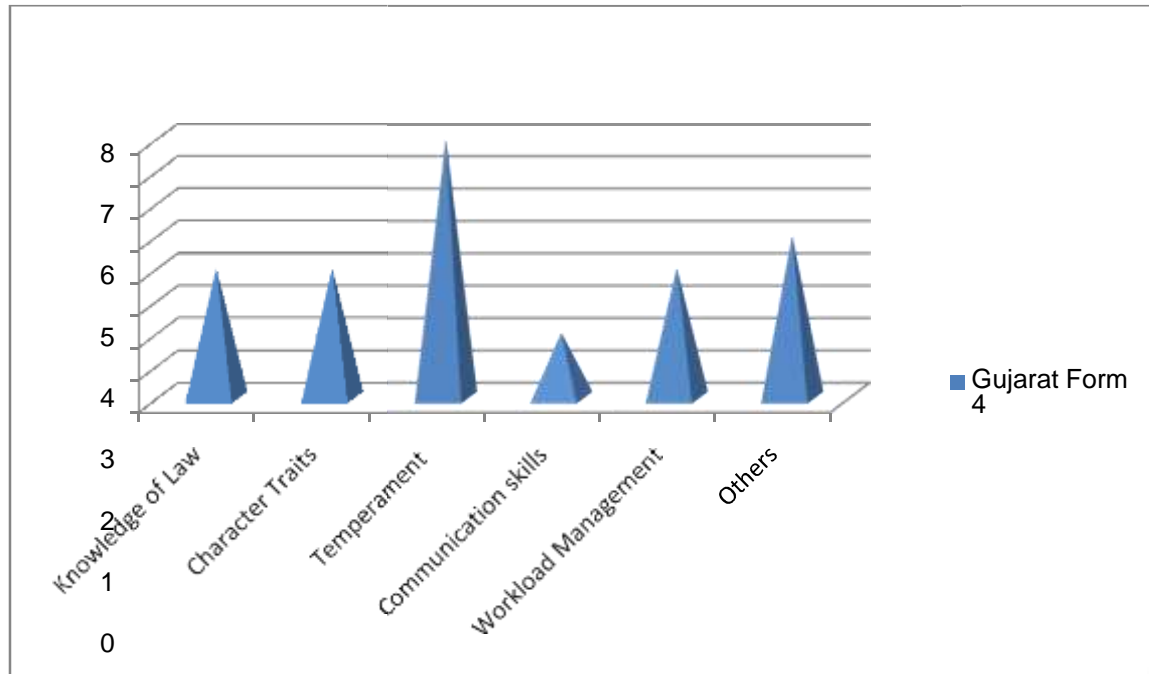
- ▶ CONCLUSION: Unstructured tailored made tests necessary for Judiciary Selection.

# LIMITATIONS OF PSYCHOLOGICAL TESTING PROGRAMS

- ▶ **Uncritical use**
- ▶ **Faking**
- ▶ **Attitudes toward testing**
- ▶ **Effects of negative attitudes**
- ▶ **Ethical issues**
  - Test users
  - Test security
  - Test interpretation
  - Test publication
- ▶ **Privacy issues**

# PERFORMANCE ASSESSMENT IN INTERVIEW:

Gujarat:



# THE SUPREME COURT: SOME VITAL DECISIONS

- ▶ The Apex Court has been trying to create uniformity and to streamline the process of selection of lower court judges by issuing directions, although the directions have been more of a patchwork, being given on a case to case basis.
  
- 1) ***Brij Mohan Lal v. Union of India***, [(2010) 3 SCC 119]  
the Supreme Court, in view of the need for additional judges, and the constitutional mandate to provide a fair and expeditious trial, directed for the creation of an additional ten percent posts of the existing cadre. Ideally, such an initiative should have been taken by State Governments and/or the High Courts.
  
- 1) ***Jitendra Kumar Singh & Anr Vs. State of Uttar Pradesh***, [(2011) 8 SCC 108]  
The Supreme Court held that, a candidate belonging to reserved category, who having availed the concession of relaxation in age-limit, if they find a place in Select Lists, they would have to be considered against their respective category.

## Contd..

- 3) ***Orissa Public Service Commission Vs. Rupashree Chowdhary & Anr.***, [AIR 1993 SC 477]

Regarding relaxation or rounding off of the aggregate marks obtained cannot be permitted.

- 4) ***The State of Haryana Vs Suresh Chander Marwad & ORS.***: [(2014) 8 SCC 1]

“The existence of vacancies does not give a right to candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration”.



# Contd..

- 6) ***R.K.SABHARWAL Vs STATE OF PUNJAB*** [(1995) 2 SCC 745]  
:

The Roster point which is reserved for the backward class has to be filled by way of appointment promotion of the member of the said class and no general category candidate.

- 7) ***RAJESH KUMAR DARIA Vs RAJASTHAN PUBLIC SERVICE COMMISSION*** [AIR 2007 SC 3127] :

The reservations in favour of SC, ST and OBC [under Article 16 (4)] may be called Vertical Reservations whereas the reservation made for physically handicapped [under clause (1) of Article 16] can be referred as Horizontal Reservation. Horizontal reservations cut across vertical reservation is called Interlocking Reservations.

- 8) ***RAKHI RAY & ORS Vs THE HIGH COURT OF DELHI*** [AIR 2010 SC 932]:

A person whose name appears in the Select List does not require any indefeasible right of appointment.

- 9) ***M.R.BALAJI Vs STAE OF MYSORE*** [AIR 1963 SC 649] :

No reservation in Higher Judiciary.

# PROTECTIVE DISCRIMINATION

## EQUALITY

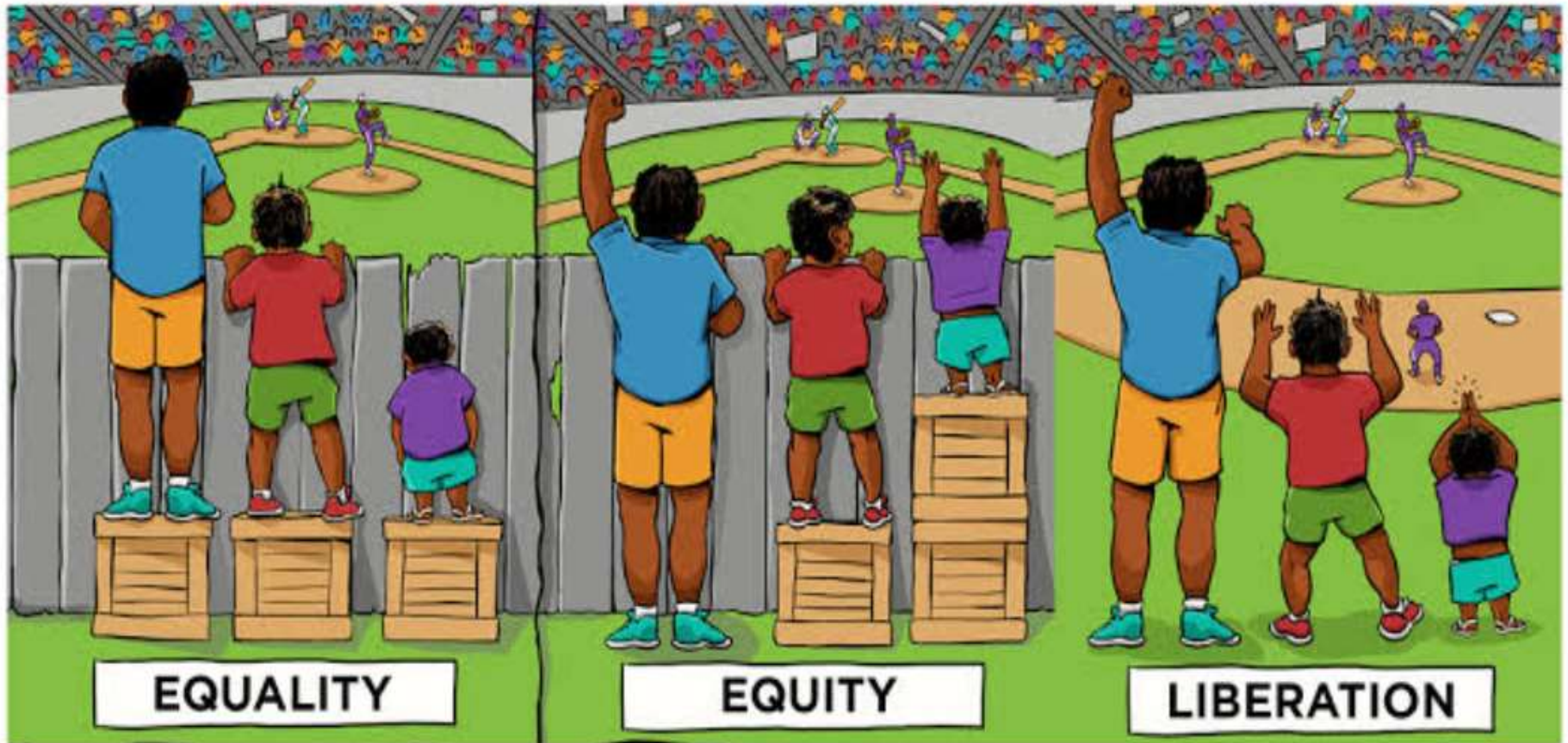
to a conservative



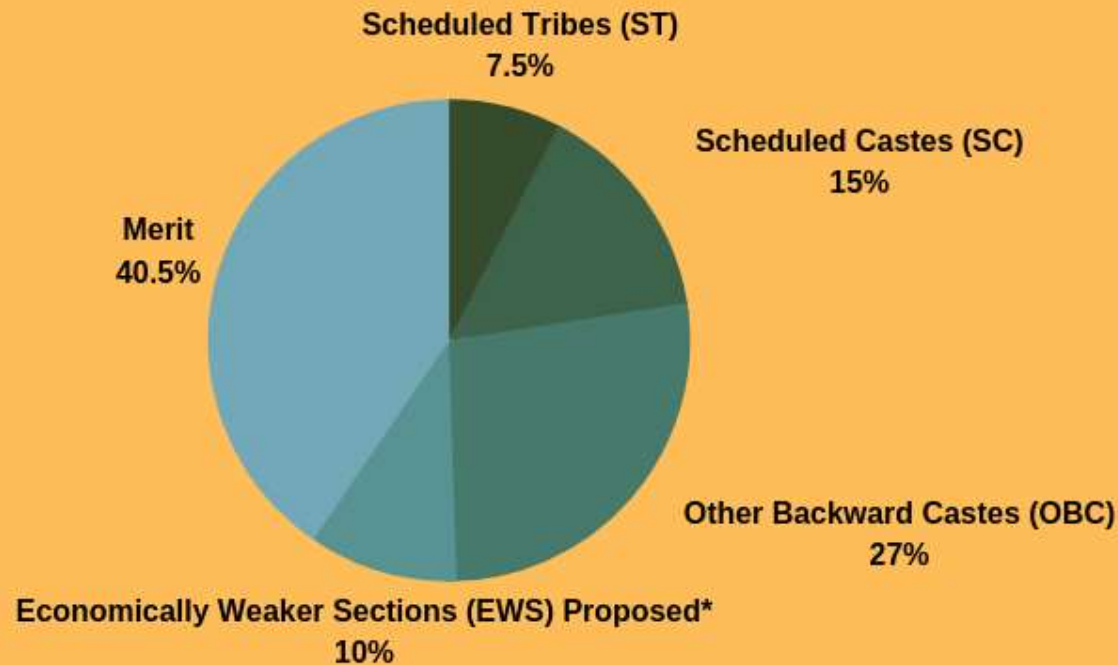
to a liberal



*Don't just tell a different version of the same story.*  
**Change The Story!**



# ECONOMICALLY WEAKER SECTION (EWS):- 124<sup>TH</sup> CONSTITUTIONAL AMENDMENT [Received PRESIDENT'S assent on January 12, 2019 Article 15(6) & Article 16(6)



# Historical Background of Reservation in India

1. “Reservations in favour of the backward classed (BCs) were introduced long before independence in a large area, comprising the presidency areas and the princely states in the south of the Vindhyas. **Chatrapati Sahuji Maharaj**, Maharaja of Kohlapur in Maharashtra, introduced **reservation in favour of backward classes** in as early as 1902 to eradicate poverty from amongst them and to give them their due share in the state administration. **The notification of 1902 created 50% reservation in services for different communities in the State.**
2. This notification was the first government order providing for reservation for the welfare of depressed classes in India (Resham, 2012)”.

## Cont...

- In the year **1942**, **Dr. B.R Ambedkar** established the **all India depressed classes' federation to support the advancement of the scheduled castes**. He demanded reservations for the Scheduled castes in government services as well as other sectors.
- However, in the year **1947**, **India obtained independence** and Dr. B.R. Ambedkar was appointed chairman of the drafting committee for Indian Constitution.
- The India Constitution prohibits discrimination on the grounds only of religion, race, caste, sex and place of birth. **While providing equality of opportunity for all citizens, the Constitution contains special clauses “for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”**.

## **ECONOMIC WEAKER SECTIONS RESERVATIONS** **ANDITS NEED**

1. Reservation Policy has been greatly helpful in raising economic condition and social status
2. Hence this policy must continue for the sake of promoting social equality in the country.
3. Lack of socially neutral process.
4. The institutions for higher learning are overly dominated by the candidates who are mostly from the upper caste as they are more associated and inclined towards education as well as they can afford them too.
5. The reservation for the higher education is on the basis of social competence grounds, which is quite separate from other arguments about creating a more democratic and inclusive education process in general.

# CHANGING TREND RESULTING IN TO ECONOMIC WEAKER SECTIONS RESERVATIONS

## ONCE ANTI-QUOTA, NOW WANT RESERVATION

**1981** » CM Madhavsinh Solanki implements job quotas for socially backward castes. Patels oppose quotas saying basis for job quotas should be economic status, not caste

➤ Gujarat has 146 communities listed as OBCs, including 17 Muslim. 27% seats reserved for OBCs, 7.5% for SCs and 15% for ST

**2012** » In Kanpur, at a meeting organized by UP-based Sardar Patel Mahasabha, there's talk of OBC status for Patidars

**2015** » **On July 6**, Patels rallied by Hardik, hold meetings at Mehsana. Sardar Patel Group headed by Lalji Patel, Patidar Sankalan Samiti and Patidar Arakshan Samiti join

➤ Stir spreads. At Visnagar on **July 23**, crowd turns violent. In Mehsana on July 28, 152 booked for violating prohibitory orders

➤ Rallies in quick succession at Dwarka, Gandhinagar, Jamnagar and Amreli

➤ Nearly 2 lakh attend Surat meeting on **August 17**. Youngsters, businessmen, professionals and elderly join

➤ Govt says no quotas for Patels

➤ Patels throng meetings in Surendranagar, Ankleshwar & Vodadara

➤ 5 lakh listen to Hardik at Ahmedabad on **August 25**. Violence breaks out

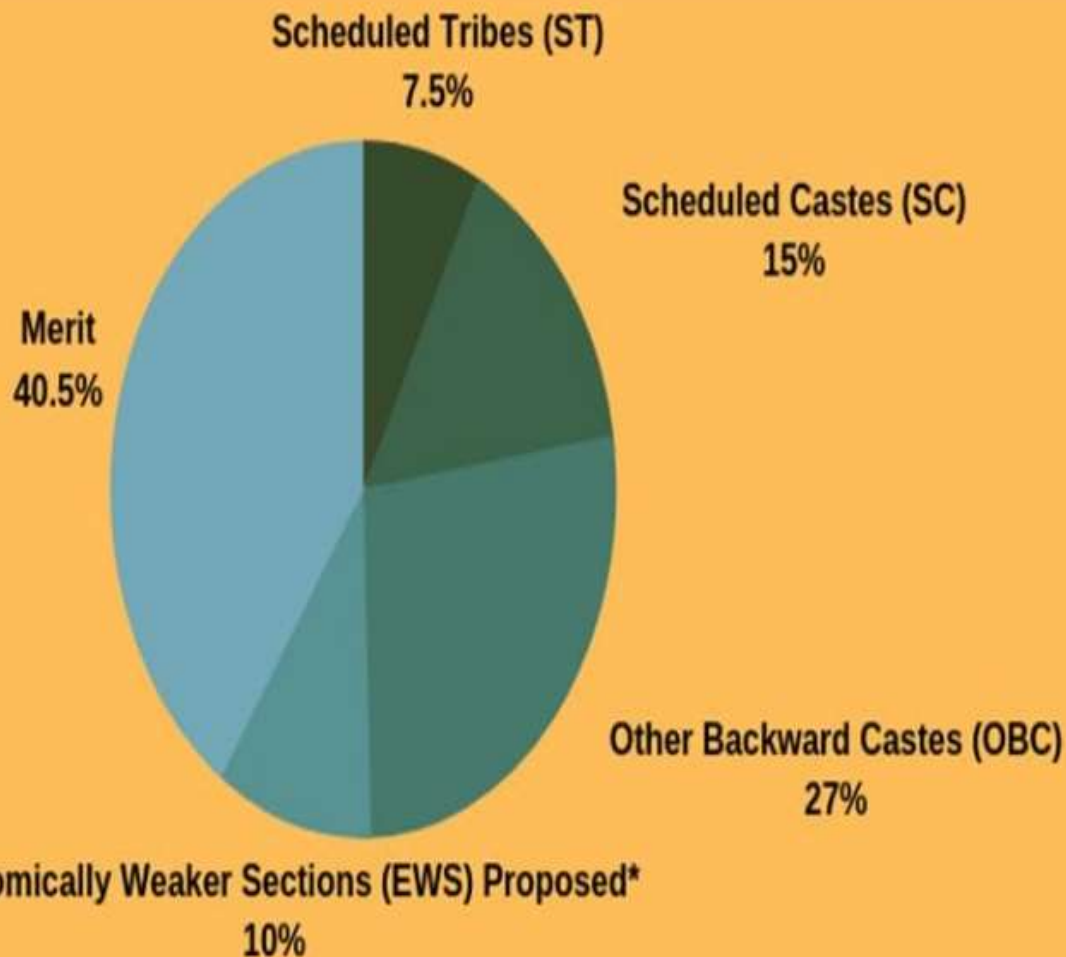
➤ Hardik arrested & released



# Constitution 124<sup>th</sup> Amendment Act 2019

- ▶ Constitution 124<sup>th</sup> Amendment Act 2019 provides for ten percent reservation to the economically weaker sections (EWS) in General Category.
- ▶ Facilitates reservation for EWS in direct recruitment in jobs and admission in higher educational institutions.
- ▶ The reservations of EWS of general category will be given without tampering with the existing quotas for SC,ST and OBCs people.
- ▶ Many High Courts have chosen not to recognize this enabling provision in the process of recruitment. High Court of Delhi & Rajasthan are the states to implement this.

# CHANGING TREND RESULTING IN TO ECONOMIC WEAKER SECTIONS RESERVATIONS



**Economically Weaker Sections (EWS) Proposed\***  
10%



“Genuine equality means not treating everyone the same, but attending equally to everyone’s different needs.”

- ▶ “RIGHTS ARE OPPORTUNITIES ESSENTIAL FOR DEVELOPMENT OF HUMAN DIGNITY”.
- ▶ The very concept of equality is valid classification for preferences in favour of disadvantaged classes of citizen to improve their conditions so as to enable them to raise their position of equality with other more fortunate classes of citizen.

# *THE FATE OF EWS horizontal or vertical?*

- ▶ A nine-Judge bench decision of the Supreme Court in the Indira Sawhney case (1992) had capped the upper limit of reservation at 50%.
- ▶ Can 10% EWS go beyond 50% reservation?
- ▶ ***RAJESH KUMAR DARIA Vs RAJASTHAN PUBLIC SERVICE COMMISSION***  
[AIR 2007 SC 3127] :

The reservations in favour of SC, ST and OBC [under Article 16 (4)] may be called Vertical Reservations whereas the reservation made for physically handicapped [under clause (1) of Article 16] can be referred as Horizontal Reservation. Horizontal reservations cut across vertical reservation is called Interlocking Reservations.

# DRAWBACKS IN AIJS:

## 1. THE PROBLEM OF LANGUAGE:-

*It is undoubtedly true that in exercise of the power conferred by Section 272 of the Code of Criminal Procedure, 1973 and sub-section 137 of the Code of Civil Procedure, 1908, most of the State Governments have declared local language of the court.*

- ▶ *Very vital to get familiarized with the local customs, traditions & language to do better Justice. Inadequate knowledge of regional language & familiarization with customs would affect Judicial efficiency.*

## 2. ANOTHER ARGUMENT:-

*The second ground on which the opposition is founded that the promotional avenues of the members of the State Judicial Service would be severely curtailed causing heart-burning and frustration and, in analysis, impairing the chances of recruitment bright young persons to the State Judicial Services.*

## 3. CONTROL OF HIGH COURT:-

*The third ground of objection is founded on a belief that upon the setting up of the Indian Judicial Service, the control of the High Court over district courts and courts subordinate thereto would be impaired or weakened and*

- ▶ The paramount object of the judiciary is to administer justice to the people, and to act as an instrument against oppression and unjustness.
- ▶ Men & women of this nation with impeccable character & sterling qualities would achieve the goals of the Constitution.
- ▶ ***“THE QUALITIES THAT ONE SHOULD LOOK FOR IN A JUDGE ARE A BURNING DESIRE TO BE FAIR AND IMPARTIAL; THE COURAGE TO UPHOLD THE LAW AND STRIKE DOWN INJUSTICE; COMPASSION, COUPLED WITH AN UNDERSTANDING OF HUMAN FRAILTIES; AND LASTLY, LOVE FOR THE LAW”.***

***-WEE CHONG JIN, THE FIRST***

***CHIEF JUSTICE OF***

# SOURCES

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3. Vidhi Legal Policy's article :- Discretion and delay.
4. Malik Mazhar Sulatan Vs. UPSC [2006 9 SCC 507] read with (2008) 17 SCC 703, order dated 04.01.2007.
5. One Hundred Sixteenth Report (116) on formation of AIJS November 1986.
6. Surveys and Reports on Gujarat District Judicial Recruitment process by Recruitment Cell of Gujarat High Court.
7. Performance Evaluation of Judicial Officers 's Article by Prof. Srikrishna Deva Rao, Dr. Rangin Pallav Tripathy and Ms. Eluckiaa A.
8. NUJS Law Report Rev. 4 2018.
9. 2010 3 SCC 119
10. 2011 8 SCC 108
11. AIR 1993 SC 477
12. 1974 3 SCC 220
13. 2014 8 SCC 1
14. EWS ppt by Rajashree J Jawale

***“THERE IS A HIGHER COURT THAN COURTS OF JUSTICE AND THAT IS THE COURT OF CONSCIENCE. IT SUPERSEDES ALL OTHER COURTS”.***

***-MAHATMA GANDHI.***



Thank  
you

