

THE ANDHRA PRADESH RESERVATION OF SEATS IN THE  
EDUCATIONAL INSTITUTIONS AND OF APPOINTMENTS OR POSTS IN  
THE PUBLIC SERVICES UNDER THE STATE TO MUSLIM COMMUNITY  
ACT, 2005

(Act No. 21 of 2005)

ARRANGEMENT OF SECTIONS

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[25<sup>th</sup> October 2005]

AN ACT TO PROVIDE RESERVATION TO MUSLIM COMMUNITY IN THE MATTERS OF ADMISSION INTO EDUCATIONAL INSTITUTIONS AND APPOINTMENTS TO PUBLIC SERVICES IN THE STATE OF ANDHRA PRADESH AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Whereas, the Government provided 5% reservation to Muslims in the State in educational institutions and employment in the State vide G.O.Ms.No. 33, Backward Classes Welfare Department dated 12-7-2004;

And whereas, the above orders were challenged in the Andhra Pradesh High Court;

And whereas, Larger Bench of the Andhra Pradesh High Court in its judgement in W.P. No. 12239/2004 etc. dated 21-9-2004 held that the above orders are ultra vires inter alia on the ground that the State Government is bound to consult the Andhra Pradesh Backward Classes Commission before undertaking any revision of the Backward Classes List and they do not reflect formation of opinion as to adequacy of representation of Muslim Community in the services of the State and directed the Government to reconstitute the Andhra Pradesh Commission for Backward Classes to examine the matter;

And whereas, the Hon'ble High Court of Andhra Pradesh observed that the Muslims as a group are entitled to affirmative action / social reservations within the constitutional dispensation, provided they are identified as a socially and educationally backward class for the purpose of Article 15(4) and Backward Class of citizens for the purpose of Article 16(4) of the Constitution of India and providing social reservation to the Muslim Community or sections or groups amongst them in no manner militate against secularism which is a part of the basic structure of the Constitution;

And whereas, the High Court held that the creamy layer among the Muslim community are not entitled to the benefits of social reservation;

And whereas, the Andhra Pradesh Commission for Backward Classes found that the entire Muslim Community is socially, educationally and economically backward and therefore steps shall be taken for providing reservation to the members of the Muslim Community for improving their social, educational and economic conditions;

And whereas, the said commission held that Muslims are not adequately represented in State employment;

And whereas, the Commission further recommended that provision be made for providing 5% reservation to Muslim Community in all educational institutions and public services in the State;

And whereas, the existing reservation provided to the Scheduled Castes and Scheduled Tribes and Backward Classes is at 46%;

And whereas, the Supreme Court in Indra Sawney Vs. Union of India in W.P. (C) No. 97/1991 dated 16-11-1992 held that reservation under clause (4) of Article 16 of the Constitution of India shall not exceed 50% of the appointments or posts barring certain extraordinary situations;

And whereas, the Commission also considered that the percentage of population of total Scheduled Castes, Scheduled Tribes and Backward Classes in the State is exceeding 68% of the total population and the muslim population in the State of Andhra Pradesh is 9.2% of total population and further having regard to the fact that the existing Backward Classes have not attained the levels of advancement warranting a revision of existing reservations and felt that in the extra-ordinary situation prevalent in the State providing total reservation of 51% may be considered by the Government;

And whereas, the Backward Classes Commission also recommended that the creamy layer from among the Muslim Community would however have to be excluded from the benefits of recommended reservation by adopting the criteria laid down by the Government of India;

And whereas, Article 46 of the Constitution of India provides that the State shall promote with special care the educational and economic interest of the weaker sections of the people;

And whereas, the Backward Classes population in the State comes to more than 77% of total population and therefore, a further reservation of 5% in favour of Muslim Community in addition to existing 46% of social reservation is considered to be just and reasonable;

And whereas, the State Government accepted the recommendations of the Andhra Pradesh Commission for Backward Classes to provide 5% reservation to the Muslim Community for admission into the seats in educational institutions in the State and employment in the public services in the State of Andhra Pradesh and to exclude the creamy layer from the benefit of reservation;

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Fifty-sixth Year of the Republic of India as follows: -

1. Short title, extent and commencement - (1) This Act may be called the Andhra Pradesh Reservation of seats in the Educational Institutions and of appointments or posts in the Public Services under the State to Muslim Community Act, 2005.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall be deemed to have come into force with effect from the 20th June, 2005.

2. Definitions - In this Act unless the context otherwise requires: -

(a) "*Educational Institutions*" means a college, a school imparting education upto and inclusive of tenth class or other institution by whatever name called, whether managed by Government, private body, local authority or University and carrying on the activity of imparting education therein, whether technical, professional including medical or otherwise, and includes a Polytechnic, Industrial Training Institute and Teachers' Training Institute.

(b) "*Government*" means State Government of Andhra Pradesh.

(c) "*Muslims*" means any person professing the faith of Islam but does not include for the purpose of this Act, persons belonging to Dudekula, Laddaf, Pinjari/Noorbash and Mehator groups who are already included in the list of Backward Classes in the State.

(d) "*Notification*" means a notification published in the Andhra Pradesh Gazette and the word 'Notified' shall be construed accordingly.

(e) "*Public Service*" means public service as defined in Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (A.P. Act No. 2 of 1994).

3. Declaration of Muslims as Backward Classes - Having regard to the social, educational and economic backwardness, the members of the Muslim Community residing in the State are hereby declared as Backward Classes and be included in the lists of Backward Classes prepared by the Government from time to time.

4. Reservation of seats for Muslims in the Educational Institutions - Notwithstanding anything in any other law for the time being in force, there shall be reservation of five percent of seats for admission into educational institutions in favour of Muslims residing in the State:

Provided that the members belonging to the creamy layer amongst Muslim Community shall not be entitled to such reservations.

5. Reservations in appointment or posts in the public services - Notwithstanding anything in any other law for the time being in force, there shall be reservation of five percent in appointments or posts in Public Services under the State in favour of Muslims residing in the State:

Provided that the members belonging to the creamy layer amongst Muslim Community shall not be entitled to such reservations.

*Explanation.* - For the purpose of this Act the creamy layer shall be such as may be determined by the State Government and till such determination takes place, the guidelines issued by the Government of India from time to time shall be followed.

6. Power to make provision by notification - The Government may, by notification make provision for carrying out all or any of the purposes of this Act.

7. Power to remove difficulties - If any difficulty arises in giving effect to the provisions of this Act, the Government may make such order not inconsistent with the provisions of the Act as may appear to them to be necessary or expedient for the purpose of removing such difficulty:

Provided that no such orders shall be issued after expiry of two years from the date of commencement of this Act.

8. Repeal of Ordinance 13 of 2005 - The Andhra Pradesh Reservation of seats in the Educational Institutions and of appointments or posts in the Public Services under the State to Muslim Community Ordinance, 2005 is hereby repealed.