

Issuance of Caste Certificates of SC / STs, Certain Guidelines To Competent Authorities

GOI, Ministry of Home Affairs,

No.BC 12025/2/76

Sub: Issue of SC/ST Certificates- regarding –GOI, MHA, No.35/1/72-RU(SCT-V) dated 02.05.1975

- 1. SC/ST certificates have not been issued strictly in accordance with the principles governing the issue of such certificates by the competent authorities.
- 2. This is due to inadequate appreciation of legal position and the concept of residence (Ordinary place of residence)
- 3. The inter state area restrictions have been deliberately imposed residing in a specific area.
- 4. Same castes of STs, but living in different states/UT may not suffer from the same disabilities.
- 5. Residence of a person in a particular locality assumes special significance.
- 6. The residence, connotes the permanent resident of a person on the date of notification of the presidential order in relation to his locality.
- 7. Then a person who is temporarily away from his permanent place of abode at the time of notification of Presidential order applicable in his case.

8. But the person 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.

* 9. Thus the Revenue authorities of one district would not be competent to issue caste certificates in respect of persons belonging to another district.
10. In case a person born after the date of notification of a relevant Presidential order, the place of residents for the purpose is to be the place of permanent abode of his parents.

Note : 1. The state/ UT Administration have been empowered (competent authorities) to issue such caste certificates.

2. In order to check the false certificates, the question of verification assumes more importance.

3. Usually the caste is in relation to the state/ UT.

The following are the critical factors to establish ST community

- The claim of ST should be from the original ST people alone with reference to their parentage and kith and kin and also their anthropological, ethnological, social and cultural background.
- Specification/ categorization of scheduled tribes was made under COI Article 366 and Article 342.
- Refer all original constitution(ST) orders
- Modifications/ Amendments made in some of the original constitutional orders.
- Reorganization of State's Act and also important to decide the issue of certificate.
- Applicability of the Constitutional order/amendment order in each case to be examined .
- Matters relating to scheduled tribes and their synonyms and sub tribes shall be verified properly.
- Amended list of STs, clarifications issued in different courts.
- Prescribed format for the issue of scheduled tribe and also sub tribe to be indicated in the certificate.
- The list of competent authorities should also be indicated to issue certificates.
- DOPT guidelines to be circulated to all the competent authorities to issue certificates of caste to STs and their children.

Different situations to issue caste certificates to schedule tribes

- ✓ Claims with reference to the place of ordinary residence
- ✓ Status with regard to the professing of religion
- ✓ Claims on migration to another State/ UT
- ✓ Status of the off springs of inter caste married couple
- ✓ Status of Children born on illegal marriages
- ✓ Critical analysis of and impact of migration of tribal from original habitat
- ✓ Reduction of Geographical isolation

Punishments for officials issuing ST certificates without proper verification

Constitution of scrutiny committee for verification/ validation of the community at State and District level

Note : The issue of language of the certificates especially in South India should be issued in English or Hindi as per the official languages Act of 1963.

Definition of Scheduled Tribes

The Constitution of India makes special provisions for safeguarding and promoting the rights of Scheduled Tribes and for their development. There are also several schemes and orders of the Government for the welfare and development of the Scheduled Tribes.

In order to avail such rights and benefits the claimant has to identify himself as belonging to one of the Scheduled Tribes. As per Article 366 (25) of the Constitution, Scheduled Tribes means such tribes or tribal communities as are deemed under Article 342 of the Constitution to be Scheduled Tribes

The provisions under Article 342 read as follows:

Art.342(1) **Scheduled Tribes --- the President may with respect to any State** or Union Territory, and where it is a State, after consultation with the Governor thereof, by a public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

Specification/ Categorisation of Scheduled Tribes

Articles 366 and 342 both refer to the term Scheduled Tribes but the Constitution is silent about criteria for specification of a community as a Scheduled Tribe. However, the words and the phrase 'tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to a State or Union Territory in Art. 342 relating to specification of Scheduled Tribes has a history.

Criteria for identifying the communities as (Scheduled Castes and) Scheduled Tribes was thus formulated by the Government on the basis of the references, observations, findings and recommendations contained in the report of the Lokur Committee. The same criteria was applied while examining the proposals for the revision of the lists of Scheduled Castes and Scheduled Tribes.

Original Constitution (Scheduled Tribes) Orders :

So far following ten Constitution (Scheduled Tribes), Orders have been issued under Clause (1) of Article 342 of the Constitution

Sl.No.	Name of the Order	Date of notification of the Order	Name (s) of State (s)/UT(s) for which the Order is applicable
01.	The Constitution (Scheduled Tribes) Order, 1950	6 th Sep 1950	Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, West Bengal, Hyderabad, Madhya Bharat, Mysore, Rajasthan, Saurashtra and Travancore-Cochin.
02.	The Constitution (Scheduled Tribes) (Part C States) Order, 1951	20 th Sep 1951	Ajmer, Bhopal, Coorg, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh
03.	The Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959	31 st March 1959	Andaman & Nicobar Islands
04.	The Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962	30 th June 1962	Dadra & Nagar Haveli
05.	The Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967	24 th June 1967	Uttar Pradesh

Sl.No.	Name of the Order	Date of notification of the Order	Name (s) of State (s)/UT(s) for which the Order is applicable
06.	The Constitution (Goa, Daman & Diu) Scheduled Tribes Order, 1968	12 th Jan 1968	Goa, Daman & Diu
07.	The Constitution(Nagaland) Scheduled Tribes Order, 1970	27 th July 1970	Nagaland
08.	The Constitution (Sikkim) Scheduled Tribes Order, 1978	22 nd June 1978	Sikkim
09.	The Constitution (Jammu & Kashmir) Scheduled Tribes Order, 1989	7 th Oct 1989	Jammu & Kashmir
10.	The Constitution (Jammu & Kashmir) Scheduled Tribes Order, 1991	20 th August 1991	Jammu & Kashmir

Modifications/ amendments made in some of the original Constitution (Scheduled Tribes)

Orders

According to Clause (2) of Article 342 of the Constitution, any amendments in the lists of the Scheduled Tribes promulgated through the original Constitution (Scheduled Tribes) Orders issued under Clause (1) of Article 342 can be effected only through the Acts of Parliament. In pursuance of these provisions, comprehensive amendments have been made four times in the original orders in the year 1956, 1976, 2002 and 2003 through the following Orders/Acts:-

Sl.No.	Name of the Order	Date of notification of the order	Name (s) of State (s)/UT(s) for which the Order is applicable
01.	The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956	29 th Oct 1956	Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, West Bengal and then Part C States of (i) Himachal Pradesh, (ii) Manipur, (iii) Tripura and the (iv) Laccadive, Minicoy and Amindivi Islands.
02.	The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976	18 th Sep 1976	Andhra Pradesh, Assam, Bihar, Gujarat, HP, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Orissa, Rajasthan, Tamil Nadu, Tripura, West Bengal and UT of A&N Islands.
03.	The Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 2002	07 th Jan 2003	Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal.
04.	The Constitution (Scheduled Tribes) Order (Amendment) Act, 2003	19 th Sep 2003	Assam

Re-organisation of the States, 2000

The States of Bihar, MP and UP were bifurcated into 6 States. Vide the Bihar Reorganisation Act, 2000; the Bihar State was bifurcated into Bihar and Jharkhand States. Similarly, vide the Madhya Pradesh Reorganisation Act, 2000 the MP State was bifurcated into Madhya Pradesh and Chhattisgarh States and the State of Uttar Pradesh was bifurcated into Uttaranchal and Uttar Pradesh States vide the UP Reorganisation Act, 2000. Consequent upon re-organisation, the lists were further revised in respect of the States of Bihar, MP and UP. Vide the same Reorganisation Acts, the lists of Scheduled Tribes were also issued in respect of the newly carved out States of Jharkhand, Chhattisgarh and Uttaranchal (subsequently renamed as Uttarakhand) States.

Applicability of the Constitution Order/ Amendment Order specifying the communities as Scheduled Tribes

1.The Constitution Order specifying communities as Scheduled Tribes under Article 342 (1) of the Constitution in relation to certain States was issued in 1950. Another similar Order was issued in respect of the then Part 'C' States in 1951. However, Orders relating to U.P. were issued for the first time in 1967 and those relating to Jammu & Kashmir State were issued in the 1989.

The status of persons belonging to Scheduled Tribes in U.P. and J&K State has to be determined with reference to their places of ordinary residence as on date of issue of the particular Constitution Order. Similarly, in the context of removal of area restrictions in relation to certain communities which were specified vide the Constitution Orders issued in 1950 and 1951 and in the context of inclusion of new communities as Scheduled Tribes in the existing lists specified vide the original Constitutional Orders, the date of applicability of the amendment has to be the date of notification of the amendment Act but not the date of notification of the original Constitutional Order(s)

2. The problem has increased alarmingly in the recent past after reorganisation of the States of Bihar, Madhya Pradesh and Uttar Pradesh. The characteristics and socio-educational-economic conditions of original Scheduled Tribes of the undivided States have not changed overnight due to reorganisation of the States. A Scheduled Tribe person of the erstwhile undivided State was treated as Scheduled Tribes irrespective of his actual place of living in any part of the undivided State, at the time of making claim/ availing admissible benefit.

After reorganisation of the States and carving out of new States in the year 2000, the claimant suddenly has lost his status as Scheduled Tribe because he has to show evidence about his place of ordinary residence with respect to the year 1950 (the date of issue of first original Constitutional Order) and not with respect to the date of notification or implementation of the concerned State Reorganisation Act.

3. However, instructions are not clear about the status of persons belonging to a Scheduled Tribe community included for the first time in the list of STs in respect of his/her State/UT. Status of a person in respect of a community included for the first time in an order should be considered with reference to the date of inclusion and not with the date of original Order, which has subsequently been amended to include the said tribal community/communities. In absence of clarity in the amendment orders, tribals in almost all the States are facing difficulties in getting ST certificates after the amendments to original Orders issued in 1950, and 1951.

Format of the Caste Certificate

The Commission has noticed that the certificate issuing authorities in the States/ districts are not issuing certificates in the prescribed format. Some certificates are still issued in a casual manner containing information about present residence of the person only. In fact the format of the certificate prescribed by the Government of India vide MHA No.. 12025//2//76 SCT.. II dated 22..03..1977 ((placed att **ANNEXURE 5..IIIIII**)) **also has not helped curbing the evil of** availing benefits on the basis of false community certificate, which, in the recent past, has been assuming disturbing dimensions.

To avoid misuse of certificates and also to avoid issue of false community certificates, certain amendments are required to be made in the prescribed format and the instructions also have to be issued. The existing format for issue of community certificates enjoins upon the issuing authorities to indicate in para 1 of the format the name of the Order or the Act under which the caste/tribe of the person was recognized as Scheduled Tribe e.g. The Constitution (Scheduled Tribes) Order, 1950 and the relevant Amendment Act.

The Commission has observed that the name of the relevant Order and the Amendment Act is not correctly indicated by the issuing authorities, which creates problems at the time of verification of the genuineness of the community certificates. In fact the certificate issuing authorities are not fully aware of all the Constitution Orders and amendments thereto issued from time to time.

Competent Authorities to Issue Certificates

As mentioned earlier, the format of the Caste Certificate and the list of the authorities competent to issue the certificates have been prescribed by the Nodal Ministry in the Government of India. Chapter 13 of the Brochure on reservation in services for Scheduled Castes, Scheduled Tribes and OBCs published by the Department of Personnel and Training, accordingly, prescribe that the Caste Certificate issued by the following authorities in the prescribed format only will be accepted by the appointing authorities as sufficient proof in support of the candidates' claim as belonging to Scheduled Caste or Scheduled Tribe:

- (i) District Magistrate/Additional District Magistrate/Collector Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector/Ist Class Stipendary Magistrate/Sub Divisional Magistrate/Taluka Magistrate/ Executive Magistrate/Extra Assistant Commissioner.
- (ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/ Presidency Magistrate
- (iii) Revenue Officer not below the rank of Tehsildar; and
- (iv) Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

Status of Scheduled Tribes in various situations

The Ministry of Home Affairs,, which was the Nodal Ministry for the subject matters relating to development of Scheduled Tribes prior to 1985 had issued instructions/clarifications on the status of Scheduled Castes and Scheduled Tribes in various situations vide letter No.. 35/1/72--RU(SCT—V) dated 2nd May, 1975, placed at **ANNEXURE 5.V. In some situation specific instructions** have also been issued.. These are discussed hereinafter.

(A) CLAIM w.r.t. PLACE OF ORDINARY RESIDENCE.

Where a person claims to belong to a Scheduled Caste or a Scheduled Tribes by birth it should be verified1:--

- (i) That the person and his parents actually belong to the community claimed;
- (ii) That the community is included in the Presidential Orders specifying the Scheduled Castes and Scheduled Tribes in relation to the concerned State;
- (iii) That the persons belong to that State and to the area within that State in respect of which the community has been scheduled;
- (v) If the person claims to be a Scheduled Caste, he should profess either the Hindu or the Sikh religion;
- (vii) That he should be permanent resident on the date of notification of the Presidential Order applicable in his case.

Government of India have issued following clarifications regarding place of ordinary residence:

- (a) 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/ Union Territory. 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.
- (b) In the case of a person born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe status, in 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..

B. STATUS WITH REGARD TO RELIGION

The Scheduled Tribes are identified on the basis of their isolation and distinct culture which has no connection with any religion whatsoever. The Scheduled Tribes may, therefore, profess any religion. Thus a person belonging to any Scheduled Tribe community continues to be a Scheduled Tribe even after change of religion.

MHA .No. 35/1/72--RU(SCT..V) dated 02.05.1975

C. CLAIMS ON MIGRATION

The list of Scheduled Tribes is State/UT specific. Therefore:

- I. A member of a Scheduled Tribe is eligible for benefits in his/ her state of origin only.
- II. A member of Scheduled Tribe Community, who migrates to other State/UT is not entitled to get Scheduled Tribe benefits from the state to which he/she has migrated.
- iii. 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 of the Scheduled Tribe, as the case may be, in relation to that State;
- iv. 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 original.

CLAIMS THROUGH MARRIAGES

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 Scheduled Tribe merely because he or she 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 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.

STATUS OF THE OFF--SPRIINGS OF IINTER—COMMUNITY MARRIAGES

In general, the off--spring of an inter--community married couple will have the status of being ST or non--ST in accordance with the status of his/ her father. However, the crucial test followed to decide the status of an off-spring off a couple where one of the spouses is a member of Scheduled Caste /Scheduled Tribe, is:

- Whether the child has been accepted by the Scheduled Caste/Scheduled Tribe community as a member of their community and has been brought up in that surrounding and in that community or not.

- If the child has been accepted by the Scheduled Tribe Community and has been brought up in the surrounding of Scheduled Tribe spouse then, the child would be treated as Scheduled Caste or Scheduled Tribe. However, each case is to be examined on its merit.

Verification of Community Certificates

Despite several instructions regarding issue of the caste certificates and verification of the caste certificates issued by the Ministry of Home Affairs (then Nodal Ministry), non-ST persons have been availing or trying to avail the benefits admissible to genuine Scheduled Castes/ Scheduled Tribes only. Similarly, there have been many instances where Scheduled Castes/Scheduled Tribes migrated to other States and their children have been claiming the same status in the State of migration. These issues have been adjudicated in detail by the Supreme Court.

F. PUNISHMENTS FOR OFFICIALS ISSUING SCHEDULED CASTE/SCHEDULED TRIBE CERTIFICATES WITHOUT PROPER VERIFICATION.

Government of India have issued instructions that action would be taken against them under the relevant provisions of the Indian Penal Code if any of them is found to have issued the Scheduled Caste/ Scheduled Tribe certificates carelessly and without proper verification in addition to the action to which they are liable under the appropriate disciplinary rules applicable to them.

Language of Caste Certificates

The community certificates issued to persons are required to be produced for availing various benefits and services extended by State Governments as well as Central Government like:

- Admission to Institutions of higher education/ professional colleges.
- Appointments in Group 'A' and Group 'B' services in the State Governments and State PSEs.
- Appointments in Central Government, and CPSEs and appointments to various All India Services or to Services with All India transfer liability.
- Banks and Insurance Companies.
- Availing benefits of various State Sector, Central Sector and Centrally Sponsored development Schemes,
- Availing benefits of various Loans and other schemes which are implemented by Banks and financial Institutions having staff with all India transfer liability.

G. Adaption of Parents of ST's belongs to other Communities...

Section 2(2) of the Hindu adoptions and maintenance Act 1956 (Central ACT) reads as follows:

Sec 2) notwithstanding anything contained in Sub-Section (1), nothing contained in this Act shall apply to the members of ST's within the meaning of clause (25) of Article 366 of the COI unless Central Government by notification in the official Gazette otherwise Directs.

Therefore adoption can not be a means for claiming ST and adoption for non tribal children by ST parents is invalid for the purpose of COI. This is also upheld by the Hon'ble High Court Of A.P in W.P.No 11914 of 1985 Bandi Srinivas Vs Osmania University, Hyderabad.

- **H. Illegitimate Children**

In case of Children born out of invalid marriages they are to be treated as illegitimate and the tribe of the mother applies to the child. If the mother is not there then the tribe of the father applies to that child but in such cases also major factor for consideration is whether the child has been accepted by the Scheduled Tribe community as a member of their community and has been brought up as such.

Adoptions (SC's)

1. Valid adoptions are given in sec 6 - 11 of Hindu adoption and maintenance Act 1956.
 - a. The actual giving and taking of the child in adoption is mandatory.
 - b. Adopted child is deemed to be a child of his adoptive father or mother for all purpose and child severed all ties with the family
 - c. 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 parents in that area)

Adoptions(SC's) continued

2. The CA should satisfy the legal requirements complied with or not ? Whether the child physically lives with and supported by the adoptive parents. Otherwise the CA should refuse the community certificate.
3. Where an adoption of a married person or a person of age above 15 years , the certificate shall be issued by the district magistrate basing on the usage or the custom prevailing in that particular area.
 - a. This type of cast certificate to be issued by the joint collectors alone.
 - b. The adoptive children should live for a minimum period of five years with the adoptive parents to obtain case certificate.

Cases Of Conversion and Reconversion Of Schedule Castes

1. Where a person SC got converted into a religion other than Hindu , Sikh and Buddhism and then reconverted to his original SC status if he is accepted by his or her own community people as one among them.
2. If a descendant of SC case convert , the mere fact of conversion to Hindu, Sikh , and Buddhism will not be sufficient to entitle him to regard as a member of SC to his forefather belonged at if he establish such conversion accepted by the members of SC as one among them.
3. The collectors are informed , that the govt has not authorized any association or sangam to issue reconversion certificate from Hindu, Sikh, and Buddhism.

the CA has to be clearly establish by way of local spot enquiry on a case to case basis by verifying the customs or religious practices, festivals , ceremonies professed by the applicant and genuinenity of conversion or reconversion.

Therefore the CA must establish clearly through local enquiries the actual religion professed by the applicant as established by his conduct and issue a certificate to that effect.

Note : applicants who are professing Christianly are not entitled to claim SC status on par with SCs

Appeal and Reviews

1. If any person aggrieved by an order passed under 4(1) by the competent authority, rejecting an application under section 3, may within 30 days from the date of receipt of order, may appeal to the District Collector concerned.

The District Collector may after giving the Appellant an opportunity of being heard, either confirmed the order/set aside the said order and direct the competent authority to issue a community certificate.

2. If any person aggrieved by an order passed by the District Collector under section 5 of the Act, may within 30 days from the date of publication of such order in AP Gazette, appeal to the Government, the Government after giving the Appellant an opportunity being heard and subject to such rules as may be prescribed, confirm or set aside the order appealed against.
3. The Government may, on application received from any person aggrieved by an order passed by government subsection 2 of section 5, within 30 days of the publication of that order in AP Gazette Review, any such order if it was passed by them under only mistake whenever a fact of or Law in ignorance of material facts.

- I. **Scheduled Tribe status for children of a couple where both the spouses are members of Scheduled Tribes but each belongs to different Sub- Caste.**

The Sub-tribe of the father applies to the status of the child in such case. But the condition of acceptance and recognition such sub tribe and brought up of the child in sub-tribe is to be examined by the competent Authority

4. Pending disposal of an appeal under subsection 2 of section 5 or Review under subsection 3 of 5, it shall be competent for the government, to stay the operation of the order against an Appeal or Review as the case may be filed.

Power of Revision by the Government

1. The Government may at any time, either 1. suo motu 2. or an application made to them within the prescribed period 3. call for and examine the record relating to any decision made or passed by any person, officer, authority subordinate to them 4. for the purpose of satisfying themselves on the legality, regularity, propriety of such decision or order if any case it appears to the government that any such decision or order should be modified, annulled, reversed, remitted for reconsideration, they may pass such order accordingly.

Provided that the government shall not pass any order prejudicial to any party unless such party has had an opportunity of making such representation.

2. The Government may stay the execution of any such decision or order pending the exercise of their powers under subsection (i) in respect there off