



Reservation: Not a Right

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This article is based on **“Reservation as right: on Supreme Court judgment”** which was published in The Hindu on 11/02/2020. It talks about the recent judgement of the Supreme Court on the reservation.

Recently, the Supreme Court has ruled that reservation in the matter of promotions in public posts is not a fundamental right, and a state cannot be compelled to offer the quota if it chooses not to. The idea that reservation is not a right may be in consonance with the Constitution, however, the government is still under the obligation to perform **affirmative action** for vulnerable sections of society.

What does the Supreme Court ruling hold?

- The Supreme Court held that affirmative action programmes allowed in the Constitution are **derived from “enabling provisions” and are not rights as such.**
- It held that no mandamus can be issued by the court directing state governments to provide reservations.
- In other words, it argued that there is **neither a basic right to reservations nor a duty by the State government to provide it.**
- The Supreme Court referred to Article 16(4) and 16(4A) while delivering its judgement in the matter.

Enabling provisions

- Article 16 in the Constitution of India refers to equality of opportunity in government jobs.
 - Article 16(1) provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
 - Article 16(2) held that there can't be any discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.

- However, Article 16(4) and 16(4A) provides for the grounds of positive discrimination or affirmative action.
 - Article 16 (4) provided that the state may take affirmative action in favour of appointments or posts in favour of any 'backward class' of citizens which, in the opinion of the state, is not adequately represented.
 - Article 16 (4A) provides that state can make any provision for reservation in matters of promotion in favour of the Scheduled Castes and the Scheduled Tribes if they are not adequately represented in the services under the State.

Also, through this judgement, the court reiterated its stand in **M. Nagraj case**, which stated that the state is not bound to provide reservation in promotions, but if it does so, it must be in favour of sections that are backward and inadequately represented in the services based on quantifiable data.

Significance of the Judgement

- It had been inferred from Article 16(4) and 16(4A), that these are exceptions to the equality of opportunity in government jobs, which state can exercise in order to provide social mobility to vulnerable classes.
- Reservation is no longer seen by the Supreme Court as an exception to the equality rule; rather, it is a facet of equality.
 - The terms "proportionate equality" and "substantive equality" have been used to show that the equality norm acquires completion only when the marginalised are given legal backing.
 - For instance, if no quotas are implemented and no study on backwardness and extent of representation is done, it may result in a perceptible imbalance in social representation in public services.

Judicial Scrutiny of Reservation

- The State of Madras v. Smt.Champakam Dorairajan (1951) case was the first major verdict of the Supreme Court on the issue of Reservation. The case led to the First Amendment in the constitution.
 - The Supreme Court pointed out that while in the case of employment under the State, Article 16(4) provides for reservations in favour of backward class of citizens, no such provision was made in Article 15.
 - Pursuant to the Supreme Court's order in the case, the Parliament amended Article 15 by inserting Clause (4).

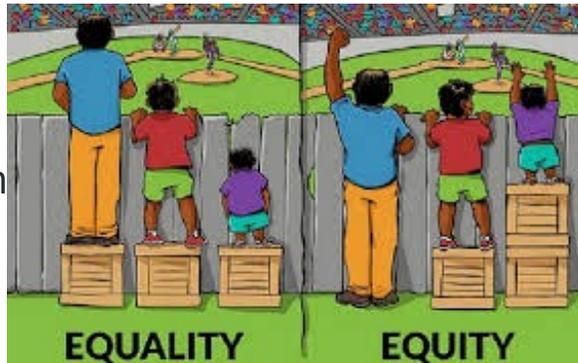
- In **Indra Sawhney v. Union of India (1992) case** the court examined the scope and extent of Article 16(4).
 - The court has said that the creamy layer of OBCs should be excluded from the list of beneficiaries of reservation, there should not be reservation in promotions, and total reserved quota should not exceed 50%.
- The Parliament responded by enacting the 77th **Constitutional Amendment Act** which introduced Article 16(4A).
- The Article confers power on the state to reserve seats in favour of SC and ST communities in promotions in Public Services if the communities are not adequately represented in public employment.
- The Supreme Court in **M. Nagaraj v. Union Of India 2006 case** while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:
 - The SC and ST communities should be socially and educationally backward.
 - The SC and ST communities are not adequately represented in public employment.
 - Such reservation policy shall not affect the overall efficiency in the administration.
- In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018**, Supreme Court held that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes.
- The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in the promotion to SC/ST individuals who belong to the creamy layer of their community.

What is Affirmative Action?

- Affirmative Action or positive discrimination is a government policy, created to promote equality among minority groups, so as to protect them from racist injustice and hate crimes.
- Generally, it means giving preferential treatment to minorities in employment and access to education. **Reservation is a type of Affirmative Action.**
- It was also originally developed to correct years of discrimination and to give a boost to disadvantaged groups. For example:
 - The affirmative action policies in the USA i.e. The Civil Rights Act 1964, mandated non-discrimination by race/ethnicity within any federally assisted program. The Act addressed racial discrimination and have led to the development of the minorities and extend even to women unlike in India.
 - South Africa, **that was once an apartheid state**, chose to implement affirmative action legislation to correct previous inequalities this policy came to be known as employment equity.

- In India, people have been historically discriminated against on the basis of caste, religion and ethnicity.

Pros of Affirmative Action



- It ensures diversity in advanced education, equality in the workplace and offers protection from hatred.
- It helps disadvantaged individuals with advancing and thereby promotes equality for all.
- It breaks stereotypes regarding caste, religion and ethnicity.
- It increases social mobility.
- It is needed to compensate minorities for centuries of slavery or oppression.
- It seeks to bring equity in society.

Cons of Affirmative Action

- It destroys the idea of a meritocracy.
- It can still reinforce stereotypes as it demeans true minority achievement.
 - People coming under the reservation, their success is labelled as a result of Affirmative Action, instead of ability and hard work.
- It can serve as a medium for reverse discrimination.
 - Reverse discrimination is discrimination against members of a dominant or majority group, in favour of members of a minority or historically disadvantaged group.
 - Reservation has resulted in unemployment in the majority class.
- Due to vote bank politics, even after discrimination issues have been eliminated, it is difficult to withdraw the affirmative action.

Conclusion

The reservation policy was introduced only for temporary timeframe until equality reigns amongst all bases of discrimination. However, the policy of reservation that has been continuing for over six decades now and has been expanding.

Since, Affirmative Action is necessary to provide equality, equity and diversity in society. The Policy of reservation results in social upliftment of minorities, however, there is a need for rationalising this current policy so that a balance can be established between social mobility and merit.

Drishti Mains Question

Discuss the importance of Affirmative Action in striking a balance between social mobility and merit.