



Reservation Review: SC

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Why in News

Recently, the **Supreme Court of India** has ruled the **January 2000 order** of the Governor of the erstwhile state of **Andhra Pradesh** which provided **100% reservation to Scheduled Tribes (ST) candidates** in posts of school **teachers** in **Scheduled Areas, unconstitutional**.

It also highlighted that within the **Other Backward Castes (OBCs)** and the **Scheduled Castes (SCs)** and **STs**, reservation benefits are **not reaching the truly deserving**.

Key Points

- The apex court said that 100% reservation is **not permissible** under the Constitution as the **outer limit is 50%** as specified in **Indra Sawhney case, 1992**.
- A 100% reservation would become **discriminatory and impermissible**. The citizens have **equal rights** and the total exclusion of others by creating an opportunity for one class is not contemplated by the Constitution.
- It also **deprives SCs and OBCs** of their due representation.
- The **opportunity of public employment** cannot be denied unjustly to the incumbents and it is not the prerogative of few.
- **Equality of opportunity** and **pursuit of choice** under **Article 51A** cannot be deprived of unjustly and arbitrarily.
- It is **arbitrary and violative** of provisions of **Articles 14 (equality before law), 15(1) (discrimination against citizens) and 16 (equal opportunity) of the Constitution**.
- It also impinges upon the **right of open category** because only STs will fill all the vacant posts leaving SCs and OBCs far behind.

Open Category: It means for **all castes**. The **50% unreserved seats are not entitled to the General category**. They can be **filled by reserved categories** as well **in case all seats are not occupied by the general category**.

- The SC has **allowed the request not to quash the appointments already made** under the 2000 order. However, it has **warned Andhra Pradesh and Telangana** against making such provisions in the future.
In case they do so, exceeding the limit of reservation, the appointments which have not been quashed now, will also be considered null and void.

Background

- The **Andhra Pradesh government** came out with a **similar order in 1986** which was quashed by the State Administrative Tribunal and an appeal before the Supreme Court was dismissed in 1998.
- However, in **2000**, the State **issued an order providing for 100% reservation to STs candidates** on teacher posts in Schedules areas.
- The **State's High Court upheld** the order but its decision was later on **challenged in the Supreme court** leading to this order.

On Reservation

- **Failure of trickle down approach:** The SC highlighted the **struggles of people from the OBCs, SCs and STs** who **could not benefit** from the trickle down approach of the reservation.
By now, there are **affluent and socially and economically advanced classes within the reserved communities** who do not permit benefits to trickle down to the ones who actually need them.
- **Revision of reservation:** The apex court **suggested the government to revise the lists of those entitled to reservation**, from time to time.
Suggestion: It can be **done without disturbing the percentage of reservation** so that the benefits trickle down to the needy and are not hindered by those who have been obtaining benefits for the last 70 years or after their inclusion in the list.

Indra Sawhney & Others vs Union of India, 1992

- The Supreme Court while **upholding the 27% quota** for backward classes, struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes.
- SC in the same case also upheld the principle that the combined reservation beneficiaries **should not exceed 50%** of India's population.
- The concept of '**creamy layer**' also gained currency through this judgment and provision that **reservation for backward classes** should be **confined to initial appointments only** and **not extend to promotions**.

- The **Constitutional (103rd Amendment) Act of 2019** provided for **10% reservation in government jobs and educational institutions** for the “**economically backward**” in the unreserved category.
 - The Act **amended the Articles 15 and 16** of the Constitution by adding clauses empowering the government to provide reservation on the basis of economic backwardness.
 - This **10% economic reservation is over and above the 50% reservation cap.**
- However, it should be noted that a constitution bench of the SC has reserved orders whether a bunch of **writ petitions challenging the economic reservation law should be referred to a Constitution Bench or not.**

That is why the court had **refused to pass any interim order to stay or hamper** the implementation of the Constitution (103rd Amendment) Act, 2019.

Source: IE