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Inclusion of Reservation Laws in Ninth Schedule

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Why in News

Recently, a Union Minister emphasised the need to **include all reservation-related laws in the Ninth Schedule of Constitution** so that they are shielded from **judicial review**.

Key Points

- The minister argued that **reservation is not confined** just to Scheduled Castes (SCs) and Scheduled Tribes (STs) and is available to Other Backward Classes (OBCs) and poor sections of the upper castes as well and have been **attached to Fundamental Rights**.
 - **SC/ST Reservation:**
 - Both the Centre and the states are permitted to make any special provision for the advancement of SCs and STs.
 - The **quota in government jobs and educational institutions for SCs and STs is 15% and 7.5% respectively** (total 22.5%).
 - **Other Backward Class (OBC) Reservation:**
 - Both the Centre and the states are empowered to make provision for the advancement of OBCs regarding their admission to educational institutions and government jobs.
 - The **quota limit for OBCs is 27%**.
 - However, various state governments have different quota limits for OBCs in their state like Tamil Nadu has 50% reservation for OBCs.
 - In the ***Indra Sawhney & Others vs Union of India, 1992*** judgement, the Supreme Court fixed the upper limit for the combined reservation quota i.e. should not exceed 50% of seats.
 - **Economically Weaker Section (EWS) Reservation:**

The **103rd Constitution Amendment Act, 2019** empowers both Centre and the states to provide **10% reservation to the EWS category** of society in government jobs and educational institutions.
- **Background:**
 - This demand comes after the **Supreme Court's** recent observation that the **Right to Reservation is not a Fundamental Right**.
 - Earlier, SC ruled that **reservation in the matter of promotions in public posts was not a fundamental right** and that a **state cannot be compelled to offer quota** if it chooses not to.
 - Apart from that, there have been repeated challenges to the **Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989** and **its amendments**.

Ninth Schedule

- The Schedule contains a list of central and state laws which cannot be challenged in courts and was added by the **Constitution (First Amendment) Act, 1951**.
The first Amendment added 13 laws to the Schedule. Subsequent amendments in various years have taken the number of protected laws to 284 currently.

- It was created by the new **Article 31B**, which along with **Article 31A** was brought in by the government to protect **laws related to agrarian reform** and for **abolishing the Zamindari system**.
 - While **Article 31A extends protection to ‘classes’ of laws, Article 31B shields specific laws or enactments.**
 - While most of the laws protected under the Schedule concern agriculture/land issues, the list includes other subjects.
- Article 31B also has a **retrospective operation** which means that if laws are inserted in the Ninth Schedule after they are declared unconstitutional, they are considered to have been in the Schedule since their commencement, and thus valid.
- **Although Article 31B excludes judicial review**, the apex court has said in the past that even laws under the Ninth Schedule would be **open to scrutiny if they violated Fundamental Rights or the basic structure of the Constitution.**

Way Forward

- Although reservation is necessary, it should also be open to judicial scrutiny in order to ensure any abrupt or irrational policy initiative by the Executive or the Legislature.
- Any loophole or shortcomings in reservation policy must be addressed by involving various stakeholders. The need of the hour is not to go to extremes of either scrapping or shielding reservation policy, rather a rational framework on this contentious policy must be developed.

Source: IE