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Supreme Court Directive on Quota in Promotions

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Why in News

Recently, the **Supreme Court** asked the **Attorney General** to compile the various issues being raised by States with regard to the application of a **Constitution Bench judgment of 2006 in M. Nagaraj case**.

- The directive is **based on a plea by the Centre to refer to a seven-judge Bench the question** whether creamy layer should apply or not to the Scheduled Caste/Scheduled Tribe community while providing them reservation in government promotions.
- The court in M. Nagaraj case had **upheld the application of creamy layer principle to members of the Scheduled Caste/Scheduled Tribe communities in promotions**.

Key Points

- **Creamy Layer:**
 - The term '**Creamy layer**' was first mentioned in the Supreme Court's landmark judgment in the **Indra Sawhney case (1992)**.
 - This term is used to describe some members of a backward class who are **socially, economically as well as educationally advanced** as compared to the rest of the members of that community.
 - They **lap up all the benefits of reservations** meant for that class, without allowing benefits to reach the truly backward members of that class.
- **Reason for Directing Compilation:**

The **issues raised by the states** regarding application of **creamy layer principle to members of the SC/ST communities** in promotions are not common, hence such issues should be compiled before considering referral to a seven-judge bench.

- **M. Nagaraj Case (2006):**
 - **Reversed the stance in the Indra Sawhney case:** In this case applying the creamy layer concept in SC/ST reservation in promotions, the Supreme court reversed its earlier stance in the **Indra Sawhney case (1992)**, in which it had excluded the creamy layer concept on SCs/STs (that was applicable on OBCs).
 - **Directives to the states:** The five-judges Bench in Nagaraj case upheld the constitutional validity of all **77th, 81st, 82nd, and 85th constitutional amendments** enabling reservation of SC/ST communities in promotions, but made certain directives for the states:
 - State is **not bound to make reservations** for SC/ST in the matter of promotions.
 - If a State wants to provide reservation to the SC/ST communities in promotions:
 - It has to collect **quantifiable data** showing backwardness of the class.
 - **Show inadequacy of representation of that class** in public employment **in addition to compliance of Article 335.**
 - State needs to ensure that its reservation provision **does not lead to excessiveness- breaching the ceiling-limit of 50%**, or destroying the creamy layer principle.
- **Other Related Judgements:**
 - In **Jarnail Singh v L.N. Gupta (2018) case**, SC refused to refer the Nagaraj judgment to a higher bench but later altered the decision by saying that **states will not be required to present quantifiable data of backwardness** of SC/ST communities.
 - **Reservation in Promotions is not a Fundamental Right:**
Reaffirming its stand in Nagaraj case, the Supreme Court in 2020 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.
- **Current Demand by the Centre:** The Centre asked the Court to review its stance of introducing the concept of creamy layer in SC/ST promotions on various issues:
 - **Could deprive backward classes from reservation:** The government believes that the 'creamy layer' will become a trick to deprive the backward classes of the benefit of reservation.
 - **Redundancy of proving backwardness again:** It is presumed that once they are added in the Presidential List under Articles 341 and 342 of the Constitution of India, there is no question of proving backwardness of the SCs and STs all over again.
The said List cannot be altered by anybody except Parliament under **Articles 341 and 342-** defining who will be considered as SCs or STs in any state or Union Territory.

Constitutional Provisions for Promotion in Reservation

- **Article 16 (4):** Provides that the State can make any **provision for the reservation of appointments or posts in favour of any backward class** of citizens who, in the opinion of the state, are not adequately represented in the services under the State.
- **Article 16 (4A):** Provides that the 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.

It was inserted by the **77th Constitutional Amendment Act, 1995.**

- **Article 16(4B):** Added by the **81st Constitutional Amendment Act, 2000** which enabled the **unfilled SC/ST quota of a particular year to be carried forward to the next year.**
- **Article 335:** It recognises that special measures need to be adopted for considering the claims of SCs and STs to services and posts, in order to bring them at par.
82nd Constitutional Amendment Act, 2000 inserted a condition at the end of Article 335 that enables the state to make any provision in favour of the members of the SC/STs for relaxation in qualifying marks in any examination.

Source: TH