



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 judgment 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 **Reservation** for vulnerable sections of society.

What does the Supreme Court ruling hold?

- The Supreme Court held that Reservation 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 judgment 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) provides that there cannot 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 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 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 judgment, 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 marginalized sections 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).

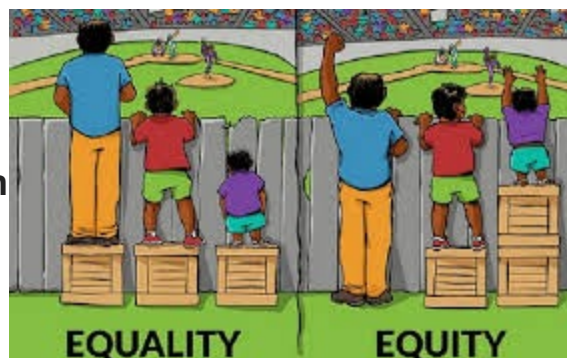
The court has said that the creamy layer of OBCs should be excluded from the list of beneficiaries of reservation, there should not be reservation in promotions, and total reserved quota should not exceed 50%.

- 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 favor 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 a reservation policy shall not affect the overall efficiency of the administration.
- In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018**, the 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 the Reservation?

- Reservation is a form of positive discrimination, created to promote equality among marginalised sections, so as to protect them from social and historical injustice.
- Generally, it means giving preferential treatment to marginalised sections of society in employment and access to education.
- It was also originally developed to correct years of discrimination and to give a boost to disadvantaged groups.
- In India, people have been historically discriminated on the basis of caste.

Pros of Reservation



- It ensures diversity in advanced education, equality in the workplace and offers protection from hatred.
- It helps in the emancipation of disadvantaged individuals and thereby promotes equality for all.

- It breaks stereotypes regarding caste, religion, and ethnicity.
- It increases social mobility.
- It is needed to compensate for centuries of oppression and discrimination and provides level-playing fields.
- It seeks to bring equity in society by addressing 'graded inequalities'.

Cons of Reservation

- There is concerns that leads to erosion of meritocracy.
- It can still reinforce stereotypes as it demeans the achievements of marginalized sections.

People coming under the ambit of reservation, their success is labelled as a result of Reservation, instead of their capabilities and hard work.
- There are concerns that reservation 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.
- Due to vote bank politics, even after discrimination issues have been diminishing, it is difficult to withdraw the reservation.

Conclusion

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

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

Drishti Mains Question

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