



## Reservation in Promotion

**For Prelims:** SC, ST, reservation in promotions, Indra Sawhney Judgment, Article 16 (4), Article 16 (4A), Article 16(4B)

**For Mains:** Reservation in Public Employment and related Judgements

### Why in News?

Recently, the Centre has informed the Supreme Court, that quashing of reservation in promotion to **Scheduled Caste and Scheduled Tribe (SC/ST)** employees in government jobs may cause employee unrest and lead to multiple litigations.

- Earlier, the **Supreme Court (SC)** refused to lay down the “yardstick” for determining the inadequacy of representation for granting **reservation in promotions** for **Scheduled Caste (SC)/Scheduled Tribe (ST)** candidates in government jobs.

### What are the Pros and Cons of Reservation?

Pros of Reservation	Cons of Reservation
<ul style="list-style-type: none"><li>▪ It <b>ensures diversity in advanced education</b>, equality in the workplace and offers protection from hatred.</li><li>▪ It <b>helps in the emancipation of disadvantaged individuals</b> and thereby promotes equality for all.</li><li>▪ It <b>breaks stereotypes</b> regarding caste, religion, and ethnicity.</li><li>▪ It increases social mobility.</li><li>▪ It is <b>needed to compensate for centuries of oppression and discrimination</b> and provides level-playing fields.</li><li>▪ It seeks to bring equity in society by addressing 'graded inequalities'.</li></ul>	<ul style="list-style-type: none"><li>▪ There are concerns that lead to <b>erosion of meritocracy</b>.</li><li>▪ It can <b>still reinforce stereotypes</b> as it demeans the achievements of marginalized sections.<ul style="list-style-type: none"><li>◦ People <b>coming under the ambit of reservation</b>, their success is labelled as a result of Reservation, instead of their capabilities and hard work.</li></ul></li><li>▪ There are concerns that <b>reservation can serve as a medium for reverse discrimination</b>.<ul style="list-style-type: none"><li>◦ Reverse discrimination is discrimination against members of a dominant or majority group, in favour of members of a minority or historically disadvantaged group.</li></ul></li><li>▪ Due to vote bank politics, even after discrimination issues have been diminishing, it is difficult to withdraw the reservation.</li></ul>

### What are the Important Related Judgements?

- **Mukesh Kumar and Another vs State of Uttarakhand & Ors. 2020:**
  - In this Case, the Supreme Court held that **there is no fundamental right to reservation**

or promotion under **Article 16(4) or Article 16(4 A)** of the Constitution rather they are enabling provisions for providing reservation, if the circumstances warrant.

- However, these pronouncements in no way **understate the constitutional directive under Article 46** that mandates that the state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular Scheduled Castes and Scheduled Tribes.
- In fact, **sensitivity of the welfare state towards the weaker sections over decades resulted in the gradual expansion of canopy of reservation** in the form of increasing classifications under Article 16, a set of actions that created a wave of litigation by which resulted in the ever-evolving jurisprudence of affirmative action in public employment.

▪ **Indra Sawhney Judgment (1992):**

- In the judgment, **a nine-judge bench presided by Chief Justice M.H. Kania upheld the constitutionality of the 27% reservation** but put a ceiling of 50% unless exceptional circumstances warranting the breach, so that the constitutionally guaranteed **right to equality under Article 14 would remain secured**.
- The **Court dwelled on the interrelationship between Articles 16(1) and 16(4)** and declared that **Article 16(4) is not an exception to article 16(1)**, rather an illustration of **classification implicit in article 16(1)**.
  - While Article 16(1) is a fundamental right, Article 16(4) is an enabling provision.
  - Further, the **Court directed the exclusion of creamy layer by way of horizontal division** of every other backward class into creamy layer and non-creamy layer.

▪ **77<sup>th</sup> Constitutional Amendment Act:**

- The Parliament responded by enacting the **77<sup>th</sup> Constitutional Amendment Act** which introduced **Article 16(4A)**.
- Later, two **more amendments were brought**, one to ensure consequential seniority and another to secure carry forward of unfilled vacancies of a year, the former by way of addition to **Article 16(4 A) and the latter by way of adding Article 16(4 B)**.

▪ **M Nagaraj Case 2006:**

- In this case applying the creamy layer concept in SC/ST reservation in promotions, the **SC 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)**.
- The SC had upheld the **Constitutional amendments by which Articles 16 (4A) and 16 (4B) were inserted**, saying they flow from Article 16 (4) and do not alter its structure.
- It also laid down **three conditions for promotion of SCs and STs in public employment**.
  - The **SC and ST community 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 in the administration**.
- The court held that the **government cannot introduce a quota in promotion for its SC/ST employees unless** it proves that the particular community was backward, inadequately represented and providing reservation in promotion would not affect the overall efficiency of public administration.
  - The opinion of the government should be based on quantifiable data.

▪ **Jarnail Singh Case 2018:**

- Later in 2018, in the Jarnail Singh case, SC modified the Nagaraj judgement to the extent that **State need not produce quantifiable data** to prove the “backwardness” of a Scheduled Caste/Scheduled Tribe community in order to provide quota in promotion in public employment.

▪ **The Constitution (103<sup>rd</sup> Amendment) Act, 2019:**

- The **10% reservation for Economically Weaker Sections (EWS)**, other Scheduled Castes, Scheduled Tribes and backward classes for government jobs and admission in educational institutions is currently under challenge before the Supreme Court which has referred the same to a constitution bench.
- The adjudication awaited in this regard may also **turn to be a critical milestone in the jurisprudence of reservation as traditional understanding of backwardness is**

**broadened** to specifically include economic backwardness without social backwardness as is traditionally seen.

▪ **Dr. Jaishri Laxmanrao Patil vs Chief Minister (2021):**

- Despite the Indra Sawhney ruling, there have **been attempts on the part of many States to breach the rule** by way of expanding the reservation coverage.
- The [Maharashtra Socially and Educationally Backward Classes Act 2018](#), (Maratha reservation law) came under challenge before the Supreme Court which referred the same to a bench of five judges and one question was whether the 1992 judgment needs a relook.
  - Interestingly, the Supreme Court not only affirmed the Indra Sawhney decision, but also **struck down Section 4(1)(a) and Section 4(1)(b) of the Act which provided 12% reservation for Marathas** in educational institutions and 13% reservation in public employment respectively, citing the breach of ceiling.

## **What are the 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.
- **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.
  - **82<sup>nd</sup> 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.

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