



Reservation in Promotions

A five-judge Constitution Bench of the Supreme Court has upheld **the application of "creamy layer" principle** relating to reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) in promotions.

- The creamy layer is a concept that puts an income ceiling on people availing of caste-wise reservations in government jobs and education. Till now, this was only applicable for reservations under the Other Backward Classes quota. SCs and STs were excluded since it was argued that their backwardness was based purely on untouchability for which economic improvement was not a remedy.
- Further Supreme Court ruled that the **judgment in the case of M. Nagaraj v. Union of India**, relating to reservations for SCs and STs in promotions, **need not to be referred to a larger bench for consideration**.
- Center had claimed that there was a need to review the M Nagaraj verdict of 2006 stating that the judgement had virtually stopped promotions by putting criteria like backwardness, inadequate representation and overall administrative efficiency.
- Various States had challenged the Nagaraj verdict stating that the criteria for reservation in promotion for SC/ST employees laid down in it was proving to be a hurdle to filling up lakhs of vacancies in different government departments spread across various States.
- So, the correctness of interpretation given by Nagaraj decision was referred to Constitution Bench for reconsideration during November 2017.

Background

- The Central and the State Government since the 1950s have been following a policy of reserving seats in promotions in favours of SC and ST communities on the ground that they are not adequately represented at **the decision making level of public services**.
- This policy was held to be unconstitutional and void by the Supreme Court in **Indra Sawhney v. Union Of India 1992 case** on the ground that under Article 16(4) the State is provided with the power to make reservations in favour of backward classes of citizens only at the entry level that is at the time of recruitment into public services but not subsequently.
- The Parliament responded by enacting 77 th Constitutional Amendment Act which introduced Article 16(4A). It confers power on the state to reserve seats in favour of SC and ST in promotions in Public Services if the communities are not adequately represented in public employment. This law was given retrospective effect from 1992.
- 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 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.

Supreme Court's Judgement

- **Application of the "Creamy layer" principle**
 - Supreme Court ruled that the **"creamy layer exclusion" principle, till date applied only to OBCs, can be extended to SCs and STs** to deny reservation to the elite among the two communities.

- It upheld the constitutional amendments leading to Article 16(4A).
- Therefore, the Constitution Bench held that there was no necessity to revisit Nagaraj judgment in so far as it applied the creamy layer test.
- Giving a stamp of approval to application of creamy layer principle to SC/STs, the court asserted that the objective of reservation would not be fulfilled if only the creamy layer within that class bag all the coveted jobs in the public sector, leaving the rest of the class as backward as they always were.

▪ **Proof Of Backwardness Of SC/STs**

- The Supreme Court held the conclusion in Nagaraj case that the State has to collect quantifiable data showing backwardness of the SCs and the STs **as invalid**. It opined that this was contrary to the finding arrived at by the nine-judge bench in Indra Sawhney v. Union of India.
- It noted that the nine-Judge Bench in Indra Sawhney case had categorically ruled that test or requirement of social and educational backwardness cannot be applied to SCs and STs, who undoubtedly fall within the expression “backward class of citizens”.

▪ **Reservation In Promotion Need Not Be In Proportion To Population**

- It noted that while the test of proportionality to the population is mandated by the Constitution in Article 330 (Reservation of seats for SCs & STs in the House of People), it does not do so in the provision of reservations in promotions (Article 16(4A)).

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