



Merit Over Reservation in Appointments of Law Officers

For Prelims: [Article 16\(4\)](#), [Reservation in India](#), [Article 16\(1\)](#), [Right to Equality](#), [Article 14](#), [Scheduled Caste](#), [Scheduled Tribe](#), [Minorities](#), [High Court of Madras](#), Uberrima Fides, Advocate General

For Mains: Reservation Policy and Its Implication Over Social Equality.

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Why in News?

Recently, the **Madras High Court** ruled that the rule of reservation need not be followed in the appointment of law officers.

- The court held that merit must be the sole criterion for such appointments as the government is duty-bound to engage only the most proficient, competent and capable lawyers to represent it before the courts of law.

What are the Key Points of the Verdict?

- The verdict was delivered while dismissing a public interest litigation petition filed in 2017 insisting upon transparency and adequate representation for **women**, the [Scheduled Caste](#), the [Scheduled Tribe](#) and the [minorities](#) in the appointment of law officers.
 - The petitioner highlighted that the **Appointment of Law Officers** of the [High Court of Madras](#) had failed to provide **vertical** as well as **horizontal reservation**.
- The **Division Bench** has stated that the relationship between an advocate and their client is one of active **confidence** and **trust** and is governed by the **doctrine of uberrima fides**.
 - The relationship between the government and the law officer is purely professional and not that of a master and a servant.
- The **law officers are not appointed to a civil post** nor are they employees of the government. Therefore, it cannot be held that reservation needs to be provided while appointing law officers by the government.
- The court suggested that the invitation for applications should be inclusive, allowing the government to select highly competent and meritorious lawyers as law officers.

Doctrine of Uberrima Fides:

- The **doctrine of Uberrima Fides** is a Latin phrase that **translates to “utmost good faith”**. It requires the advocate to act in the best interests of the client.

What are the Rules/Judgements Related to Reservation in Public Employment?

- According to Office Memorandum issued by the **Department of Personnel and Training (DoPT) in 2021** the **rule of reservation** must be applied even to **contractual** as well as **temporary appointments** barring those that were to last for less than **45 days**.
- **The Supreme Court** in [Indra Sawhney's case, 1992](#) ruled that providing reservations for certain **services and positions** might not be advisable for the performance of duties.
 - The post of a **law officer** was one such position that must be exempt from the rule of reservation.
- In 2022, Justices **Nageswara Rao, Sanjiv Khanna, and B.R. Gavai** issued a ruling emphasizing that state governments must provide **measurable data** to justify reservation policies for the promotion of candidates belonging to **SC and STs**.
 - The court upheld the requirement for state authorities to support their decisions on promoting SC/ST candidates with concrete and measurable evidence.
- **Constitutional Provisions Governing Reservation in India:**
 - **Articles 15(4) and 16(4)** of the Constitution enabled the State and Central Governments to reserve seats in government services for the members of the **SC and ST**.
 - Constitutional **81st Amendment Act, 2000** inserted **Article 16 (4B)** which enables the state to fill the unfilled vacancies of a year which are reserved for **SCs/STs** in the succeeding year, thereby nullifying the ceiling of **50%** reservation on the total number of vacancies of that year.
 - **Article 335** of the constitution says that the claims of **STs** and **STs** shall be taken into consideration consistently with the maintenance of efficacy of the administration.
- **Advocate General**
 - **Under Article 165** of the Constitution of India the **Governor of each State shall appoint a person who is qualified to be appointed as a Judge of a High Court to be Advocate General for the State.**
 - **The Advocate General** is the **Highest legal officer** in the state in India.
 - He possesses the **complete authority** to present himself in any court within the state.
 - He **lacks voting privileges** in the proceedings of the **state legislature** or any committees initiated by the state legislature. However, he does retain the **right to speak and participate** in these proceedings.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. Consider the following statements :

1. Attorney General of India and Solicitor General of India are the only officers of the Government who are allowed to participate in the meetings of the Parliament of India.
2. According to the Constitution of India, the Attorney General of India submits his resignation when the Government which appointed him resigns.

Which of the statements given above is/are correct ?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: D

Mains

Q. Whether the National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine. **(2018)**

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