

## Polity Class 14

22nd June, 2023 at 1:00 PM

THE CLASS STARTED WITH A BRIEF OVERVIEW OF THE PREVIOUS CLASS (01:05 PM)

### ARTICLE 16 (01:07 PM)

- **Article 16** prohibits discrimination in matters of public employment.
- **Article 16 (1)** is a specific example of the right to equality according to which all citizens should be provided equal opportunity in matters of public employment.
- **Article 16(2)** On the other hand prohibits discrimination against any citizens in the appointment of government employment, in addition, two grounds are added when compared to Article 15.
  - A) Descent
  - B) Residence.
- This provision only prohibits discrimination in government jobs and is not applicable to private sector jobs.
- **Article 16 (3)** It is the exception to Article 16 and allows the parliament to make a law to impose requirements based on residence for a category of jobs in a particular state or a union territory.
- As per Article 35 (a) (i), state legislatures do not have the power to make such laws.
- **Article 16 (5)** It is another exception to Article 16, which allows a law to prescribe religion as a ground for holding any office in connection with affairs of religious institutions.
- **Article 16 (4)** Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- The backwardness means Social or educational or both, economic criteria can also be stated.

- **Champakam Dorairajan case:**
- Madras government introduced a policy of reserving seats in medical colleges for different communities based on caste
- Champakam Dorairajan, a student who belonged to a Brahmin community, applied for admission to medical college but was denied a seat due to the reservation policy.
- She filed a writ petition challenging the constitutional validity of the policy.
- The Supreme Court upheld the High Court's decision and declared the reservation policy unconstitutional.
- The judgment stated that **Article 15(4)**, which allowed for the reservation of seats for socially and educationally backward classes, was unconstitutional as it violated the right to equality.
- The court also stated that Fundamental rights are enforceable but the DPSPs are non-enforceable in nature. They can be made enforceable only through the law.
- The constitutional amendment was brought to nullify this judgment and it mentioned that the reservation can be justified to uphold Article 46.
- **Article 15 (4)** is an exception to **Article 15** and **Article 29 (2)**.
- State can make special provisions for the advancement of socially and educationally backward classes of citizens or SCs and STs.
- **Mandal Commission and the aftermath:**
- The government-appointed commission under Article 340, Identifies 52% population as OBCs.
- It recommended 27% reservation in government jobs for the OBCs.
- This was done to avoid violating the 50% rule set by the court in M.R Balaji Case.
- The V. P Singh government issued an executive order in 1990 to extend the reservations to the OBCs in the central government jobs.
- Widespread protests broke out throughout the country and the executive order was widely opposed.
- A subsequent order was passed by the government to categorize the OBCs into advanced and backward and to extend the reservations up to 10% for the economically backward classes not belonging to SC, OBC, and ST communities.
- These two orders were challenged in the Supreme Court in Indra Sawhney v/s Union of India, A nine-judge bench of the court pronounced an elaborate verdict that formed the basis for the future of reservations in India.

- **Indra Sawhney v/s Union of India Case:**
- Questions raised in the case were:
  - **a) Whether reservations are violative of principles of equality and therefore the basic structure of the constitution?**
  - The Apex Court held that reservations are not violative of the principles of equality rather they give effect to the principle of equal protection of the law.
  - It also stated that the basic structure is not affected as a result of such reservations.
  - The court stated that **Article 16 (4)** contains within it all that is required for extending reservations in government jobs and such an extension does not require a law of the parliament.
  - The court stated that the reservations are not Anti-merit in nature as a merit by itself is a subjective concept rather they promote inclusivity in the society.
  - The court stated that quota-based reservations are not equivalent to communal reservations and it may happen that some people belonging to the reserved categories may find a seat on the basis of their own merit in the unreserved category and in that case, their seat would not be counted against the quota reserved for backward classes but rather be treated as open category candidate.
  - **b) Can be 50% limit provided in the earlier case be breached?**
  - The court stated that the 50% rule would be sacrosanct and can be breached only in exceptional circumstances.
  - For Example, In the case of people living in far-flung areas of the country.
  - The supreme court in Leela prasad rao v/s State of AP held that government can breach the 50% rule to a certain extent but extreme caution must be exercised in such cases.
  - **c) Are caste-based reservations violative of Article 16 too?**
  - The court held that the Mandal Commission has identified backward classes on the basis of detailed criteria that include social, economic, and educational indicators, therefore it would be wrong to say that the reservations have been provided on the basis of caste alone.

- **d) Can the reservation be provided on the basis of economic criteria alone?**
- The court held that economic criteria can not be the sole basis for determining backwardness.
- The observation made was that if high-caste poor are given reservations along with the OBCs, it would result in the monopolization of all the seats by them.
- The court, therefore, struck down 10% reservation for the Economically backward classes.
- **e) Can the reservations be provided in the case of promotion as well?**
- The court held that reservations should not be allowed in promotions as the reserved category candidate would feel that they do not need to compete with others but only among themselves.
- As a result they may not feel inclined to do work and excel as they would think their promotion is assured.
- This would also create a sense of frustration and bitterness among the general categories.
- The court proverbially stated that "Crutches can not be provided throughout one's career"
- It also noted that reservations in promotion would affect the Idea of efficiency under **Article 335**.
- **f) Are there any exceptions to the reservation policy?**
- The court stated that with respect to certain positions merit alone should be the criteria for appointment.
- For Example, In the Armed forces and Nuclear scientists at BARC there should be no reservations.
- The court in **Preeti Shrivastava v/s State of MP** held that reservations can not be designed in such a manner that it undermines the public interest or general good of all.
- Therefore in post-graduate seats in Medical colleges reservations should only be permissible to a certain extent.

**THE TOPIC FOR THE NEXT CLASS: ARTICLE 16 (To be continued...)**