

Polity Class 15

22nd July, 2023 at 9:00 AM

SHOULD THE RESERVATIONS BE PROVIDED EQUALLY TO ALL THE MEMBERS OF THE BACKWARD CLASSES? (9:06 AM):

- The Supreme Court introduced the concept of the creamy layer and held that benefits of reservations for Other Backward Classes (OBCs) should only be provided to those who pass the means test.
- As per the court, the creamy layer refers to all those sections of the OBC committee who are socially, educationally, and economically advanced as compared to the rest members of that community.
- They constitute the advanced sections of the community and end up appropriating all the benefits without allowing them to reach the truly backward sections of society.
- The court then asked the government to fix the norms of property and income to determine the creamy layer.
- In 1994, the Department of Personnel & Training (DOPT) issued a circular that laid down the guidelines for the identification of the creamy layer.

Related constitutional amendments:

- The 77th Constitutional Amendment Act (CAA) (1995) inserted clause 4A into Article 16 which allowed reservations in promotions for the scheduled castes and tribes who are inadequately represented in the services of the state.
- The 81st CAA(2000) inserted article 16(4 B).
- Article 16 (4A) allowed the government to consider backlog vacancies as a separate class of vacancies that would not be used for determining the 50% ceiling set by the court.
- Article 335 imposes a limitation on the state to ensure efficiency in administration while providing reservations to SCs/STs.
- The 82nd CAA(2000) inserted a proviso to article 335 in order to overcome the judgment in Vinod Kumar v/s Union of India 1996.

- - The proviso: Provided that nothing in this article shall prevent the making of any provision in favor of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State".
 - It allows the government to relax the qualifying marks or lower the standards of evaluation for SCs & STs in matters of promotion.

CONSEQUENTIAL SENIORITY (9:30 AM):

- The 85th CAA (2001) inserted the term " Consequential seniority" in Article 16(4A).
- It overturns the catch-up rule that was applicable earlier after the Virpal Singh Chauhan case(1995).

Example:

- Two employees A and B are at the same level(X) in say 2017.
- A is from the scheduled caste and B is unreserved.
- B also has 2 years of seniority over A.
- Assume that at a higher level Y, there is a vacancy for a scheduled caste employee, but not for an unreserved employee.
- So A will be promoted to level Y in 2017.

- Vacancies for unreserved employees in the Y level got created in 2019, and B got promoted.
- Catch-Up rule: B will regain his 2 years of seniority at Y level.
- Consequential Seniority: A will be 2 years senior as he got promoted earlier.

M. Nagaraj v/s Union of India (2008):

- The constitutional validity of the 77th, 81st, 82nd, and 85th CAAs was challenged.
- The court upheld all three of them and held that reservations in promotions are not a matter of right.
- The Constitution has only provided an enabling provision.
- The court further stated that providing reservations for SCs and STs in promotion must satisfy the following conditions:
 - I. Quantifiable data should be provided to prove the backwardness of SCs and STs.
 - II. Inadequacy in representation for SCs and STs must be proven through quantifiable data.
 - III. Maintaining administrative efficiency.

JARNAIL SINGH CASE 2018 (10:00 AM):

- The court held that the judgment in the M. Nagaraj case was faulty and there is no need to collect quantifiable data to prove the backwardness of SCs and STs.
- This was because quantifiable data might not do justice in proving backwardness which is a result of centuries of discrimination.
- Also, unlike scientific realms, efficiency in administration might not be measured properly with objective data.
- The court also stated that the concept of a creamy layer should be extended to SCs and STs as well.
- The state should consider the introduction of such changes in its policy.
- The court also held that reservations are not a fundamental right and the state has the power to withdraw the same at any time.

93rd CAA 2005:

- **Article 15(5) was inserted.**
- **According to it, the state can make a law to provide reservations in matters of reservations in favor of SCs, STs, and OBCs.**
- **They may also include private educational institutions-aided or un-aided by the state.**
- **Such a provision (15(5) would be considered an exception to Article 15 and Article 19(1)(g).**
- **Article 19(1) (g) was referred to so that private institutions would not claim intrusion in their right to practice trade and occupation due to implementing reservations.**
- **Minority educational institutions, under Article 30 were exempted under 15(5).**
- **This was because minority institutions were anyways serving a social cause by protecting and promoting the interests of religious and linguistic minorities.**
- **Minority institutions can also hence reserve seats for specific minorities.**
- **The parliament subsequently enacted the Central Education Institutions(CEI) Reservations Act 2006 which extended reservations in central educational institutions, up to 27% for OBCs in addition to reservations for SCs and STs.**
- **Several state legislatures also passed laws in this respect.**
- **In the Ashok Kumar Thakur V/S Union of India Act(2008), the supreme court upheld the validity of the 93rd CAA and the CEI Act.**
- **It also observed that the issue of reservations in private educational institutions has not been raised in this case, and the court shall decide upon its constitutionality in an appropriate case at a later stage.**

ECONOMICALLY WEAKER SECTIONS(EWS) RESERVATIONS (10:30 AM):

- **The parliament enacted the 103rd Constitutional Amendment Act 2019, according to which, the state can make reservations for the EWS category, not belonging to SC, ST, and OBC categories.**
- **The quantum of this reservation should not exceed 10%.**
- **This provision takes the overall reservations in India to 60% and also provides reservations on the basis of economic criteria alone.**

- Such reservations shall be applicable in both educational institutions and government jobs.
- In the Janhit Abhiyan V/S Union of India case(2003), the constitutional validity of the 103rd CAA was challenged on the following grounds:
 - I. It violates the basic structure as reservations were supposed to be provided for the socially backward and to address the historic social injustice.
 - II. It violates the limit of 50 % set by the court in M. R. Balaji's (1962) and Indira Sawhney's (1993) cases.
 - III. EWS reservations in private educational institutions interfere with article 19(1)(g) of private educational institutions.
- Court upheld the validity of the 103rd Amendment by a majority of 3:2.
- It stated that poverty is an adequate criterion for determining backwardness.
- EWS is a separate and distinct category that is not barred from reservations.
- Reservations cannot be denied to EWS because they do not face other kinds of backwardness.
- The court held that the 50% ceiling was for SCs, STs, and OBCs.
- Reservations in private educational institutions were not violative of the basic structure and this view is in concurrence with the judgment provided in earlier cases.

Opinion of Minority Judges of the Janhit Abhiyan V/S Union of India case(2003):

- Exclusion of SEBCs from the EWS category is unconstitutional as it denies them a chance of mobility from reservation quota based on historic discrimination to a reservation based on economic deprivation.
- Breach of the 50% limit would end up compromising the concept of equality, through reverse discrimination.
- The aim of the constituent assembly was to provide reservation only for a temporary period, and that too within certain limits, otherwise, it would lead to reverse discrimination.
- Reservations ought to be given to the community and not individuals, but EWS reservations violate this principle.
- Taking back reservations from any community can be taken as a political impossibility.

Issues with the arrangement of expanding reservations:

- **Proceeding in this manner- expanding the reservation net would eventually make reservations futile.**
- **Because if everyone is reserved, then no one is reserved.**
- **Reservations or promises of reservations have become a populist tool for electoral gains, and the focus on increasing and improving avenues for education and employment has been relegated.**
- **We have seen many cases of historically forward and dominant communities demanding reservations.**
- **It was put forward that a few years of business losses can't be a ground for reservations, similar to centuries of discrimination.**

Some recommendations:

- **Government policies should focus on expanding employment opportunities, rather than relying on reservations.**
- **Government should prioritize enhancing the quality and number of educational institutions to reduce the demand for reservations.**
- **We must constantly evaluate and evolve the criteria to determine the backwardness.**
- **The present limit of 8 lakh rupees needs to be re-examined as it may include a number of socially advanced classes as well.**

ARTICLE 17 (11:18 AM):

- **It states that untouchability is abolished and its practice in any form is forbidden.**
- **If any disability is imposed on an individual according to untouchability, such an act will be deemed an offense and should be punished according to the law.**
- **As per Article 35A clause 2, sub-clause 2, only the parliament has the power to make laws on such offenses in order to ensure uniformity throughout the nation.**
- **In the Devarajiah V/S Padmana case 1957, the court held that the word “untouchability” has been mentioned in the double quote.**

- This means that one cannot take the literal meaning of the term.
- Rather it refers to an age-old practice of imposing disability on an individual due to taking birth in a particular community.
- According to this, some individuals are considered untouchables and their physical touch is considered polluting.

SABARIMALA CASE/INDIAN YOUNG LAWYERS ASSOCIATION V/S STATE OF KERALA 2018 (11:40 AM):

- the court held that the practice of not allowing women of menstruating age inside the sanctum sanctorum of the temple is also a form of untouchability.
- This is because it imposes a disability or a notion of pollution & purity.

Manual Scavenging:

- Manual Scavenging refers to the age-old practice which includes manually cleaning, carrying, disposing, or handling, human excreta in an insanitary latrine/ open drain/ sewer/septic tank or a pit.
- In the Safai Karmchari Andolan v/s Union of India case in 2014(PIL was filed in 2013), the court issued several guidelines for uplifting the status of individuals.
- In 2013, Manual Scavengers and Their Rehabilitation Act, 2013 was passed by the parliament to abolish this practice which is closely related to untouchability.
- The parliament also enacted the Abolition of Untouchability Act 1955 which was later amended in 1976 to be renamed as Protection of Civil Rights Act.

Article 18:

- The article aimed to remove the British practice of awarding titles to Indian citizens for their services to the British government.
- Such a practice was believed to create a class of Indians, deemed more privileged than rest Indians.
- Article 18 can be divided into four parts:
- I. Indian state shall not confer a title (Rai Bahadur, Sir, Khan Bahadur, etc.) on anyone.
- II. No Indian citizen can accept a title from any foreign state.
- III. No person who is not a citizen of India shall accept a title from any foreign state without the consent of the President while holding any office of profit in India.

- **IV. No person, either a citizen or a foreigner cannot accept any gift or emolument if he is working in an office of profit or trust under the state without the consent of The President.**

The topics for the next class are the continuation of Article 18 and other fundamental rights.