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1. The Supreme court's ~~judgement~~<sup>on 10.10.2016</sup> sub-categorisation of SCs and STs ensures fair distribution of reservation benefits but raises concerns over fragmentation within these communities. Critically examine its unconstitutional, social and political implications. 8 marks

~~Article 16~~ <sup>is</sup> the bedrock of positive discrimination in India that provides reservation for socio-economic weaker section in educational institution. Its meaning is to fight to equality in a highly unequal society.

Article 341 and 342 says, President shall be empowered to notify SC/ST or OBC that suffered historical injustice. The sub-categorisation of SCs and STs to ensure fair distribution has following implication -

### CONSTITUTIONAL IMPLICATIONS

#### 1. LEGAL CHALLENGES

As per the constitution as well as S.C judgement states can't unilaterally categorised communities because of legal challenges like article 341 and 342 provisions.

### SOCIAL IMPLICATIONS

#### POSITIVES

- 1. Minimise Inequality  
 subcategorisation of SC/ST will minimise inequality among the community and ensure inclusive development.

#### 2. Recognising diversity -

Initially subcategorisation was not allowed because SC/ST is considered as homogenous class but the court acknowledges that the historical and empirical evidence indicates that SC/ST is not a homogenous class thus recognising diversity.

#### NEGATIVES

- 1. Unavailability of quantifiable data  
 There is unavailability of data because the socio-economic caste census has not been updated since 2011.

### POLITICAL IMPLICATION

#### POSITIVES

- 1. Strengthen democracy  
 By ensuring that the benefits of reservation reach the most disadvantaged groups within these categories thereby promoting greater inclusivity.

#### NEGATIVES

#### → 1. Administrative Burden

Process of creating, managing and updating subcategories adds a significant burden.

2. Political resistance

This can face opposition from political groups that either support or oppose changes leading to potential delays and conflicts.

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Bringing consensus among state holders in order to realise its implementation.

2. Strong political will power.

Thus, the goal of subcategorisation of SCST to ensure inclusive growth, social justice and social progress which ensures equity of opportunity and the court decision opens the door to more effective affirmative action.

~~What limit exceeds?~~

Re

2. The introduction of EWS reservations has sparked a debate over the future of caste-based affirmative action in India. Discuss whether economic criterion should replace caste-based reservation or if a hybrid model is necessary to ensure inclusive development. [7marks]

~~Reservation is the process of facilitating people in various field like education, job etc who faced historical injustice but with time this has been reduced and to minimize income inequality became the need of the hour to achieve the objective of equality and justice enshrined in the Preamble.~~

### POSITIVES OF ECONOMIC BASED RESERVATION

1. Minimise economic inequality

According to oxfam report the top 1% of India's population owns 40.5% of the total wealth widening economic inequality and to address this reservation of on economic basis will minimise it thereby implementing 38(2).

2. Progressive steps for education at

Recognition of economic backward is

~~Affirmative action~~  
~~for discrimination~~

a progressive step because currently in the social discrimination is not so evident like historical times authorized account & others we make ourselves to broad - stable society. But with reservation it creates

3. Remove the casteism stigma since the criterion is economic it will gradually remove the stigma associated with reservation which was caste based.

4. Better representation better representation in govt. services as the number of people under represented section is more from unreserved category despite this a hybrid model is

necessary to ensure inclusive development because there are challenges associated with

the implementation of EWS.

### CHALLENGES

1. Unavailability of authentic data for unreserved category.

2. Operational challenge to implement EWS the challenges lies with authentication of income criterion especially family income.



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3. Breached the ceiling limit  
It also breached the 50% rule as provided for reservation given by the Supreme Court in Indra Sawhney case.  
Thus, ultimately the goal of reservation is to establish a casteless society which can only be ensured through inclusive growth, social justice and social progress which ensures equity of opportunity for all.

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3. Extending reservation to the private sector is being considered to ensure social justice, but it raises concerns about economic growth and meritocracy. Critically evaluate the feasibility of implementing reservation in private sector employment in India. 7 marks

~~The rationale for reservation is to provide support to the group which are lagging on the socio-economic development indicator. It is not an exception for right to equality rather giving meaning to right to equality in a highly unequal society.~~

To ensure social justice reservation in private sector employment could be provided but a balance between meritocracy and equality need to be maintained as India is democratic along with welfare state.

### FAVOUR OF IMPLEMENTING RESERVATION IN PRIVATE SECTOR

#### 1. Social justice

The affirmative action policy which will compensate the historical injustice and uplift the marginalised section thus



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ensuring social justice. ~~and job opportunities in private~~

## 2. Inclusive development

Reservation in private jobs will ensure its benefits reach to the entire society by promoting the interest of the weakest in the society thus allowing the full utilization of talent in the society.

3. Create new job opportunities  
Marginalised section will get new job opportunities and it will indirectly forced them to enhance their human capital development and it will lead to the development of entire nation.

## AGAINST

### 1. Reduce critical innovation

Reservation in private jobs could be counterproductive and detrimental to the competitiveness of state productivity.

### 2. Brain drain

It could lead to the phenomena of brain drain as less opportunities will be available to the meritorious candidates due to introduction of reservation in private sector.

### 3. Constitutional violation

It will violate article 14 and 16.

Article 14 :- Equality before law

Article 16 :- Guarantees equal opportunity in public employment to all citizens.

4. Promotes son of the soil  
 Recent example of Haryana and Karnataka suggest reservation in job in private sector promotes regionalism as they provide opportunities mainly to domicile people.  
 Thus, this debate involves balancing local interests and constitutional freedoms to actual realisation of meaning of equality, social justice which are enshrined in our Preamble.

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4. Tamil Nadu's 69% reservation policy, ~~is not protected under the 9th schedule~~, faces numerous legal challenges. Discuss the validity of ninth schedule protection in light of judicial review and its implications for reservation policies in India.

8 marks

Reservations policy under article 15 and 16 proved to be bedrock to bring equity in the society. The 8th schedules were added by 1st amendment act and was upheld in Shankari Prasad case, S.C. upheld its constitutional validity.

Tamil Nadu 69% reservation policy protected under IX<sup>th</sup> schedule has following

### LEGAL CHALLENGE

1. Violates principle of equality - The 50% limit is imposed by S.C. in the Indra Sawhney case. This 50% limit is a constitutional mandate ensures equality and prevents arbitrary state action.

### VALIDITY OF NINTH SCHEDULE

1. Introduction - By 1<sup>st</sup> AA and its constitutional validity upheld in 1<sup>st</sup> Shankari Prasad case.

Prasad case

2. Provisions :- Parliament places any law in ~~any schedule~~ IX<sup>th</sup> schedule then it can't be challenged in any court for judicial review.
3. Issues :- Misused as Parliament shows its arbitrariness and placed laws related to terrorism, reservation etc.
4. Reform :- In IR Coelho case the blanket immunity of IX<sup>th</sup> schedule was removed and opened for partial judicial review of acts placed after 24<sup>th</sup> April 1973 on the ground of violation of basic structure.

### IMPLICATION OF IX<sup>th</sup> SCHEDULE ON RESERVATION

#### POLICIES

#### POSITIVES

1. Promotion of a just and equitable society  
It helps to reduce economic inequality and promotes social welfare.

2. Socio-economic development  
In Bihar's recent caste census data says that 82.79% of total population belongs to backward communities and scheduled caste. So for social and economic development 50% reservation is necessary in this situation.

#### NEGATIVES

1. Strengthen identity politics  
It will create a sense of divisiveness.

in the society as it is more caste based and became tool for vote bank politics.

2. **Domino effect**  
 This breach of 50% and prevention of judicial reviews will increase the demand of such protection and availing the benefit.

3. **Creates peace to the bottom**  
 More community will force to be called as backward and the purpose of reservation will be deviated. Thus, instead of putting reservation in IX<sup>th</sup> schedule we should focus on determining quantifiable data for targeted benefits and, update of caste data by pan India survey to realize larger goals and as rightly said by Justice Ranjana Kirashok Thakur case, "When more people aspire for a backwardness rather than forwardness the country is itself stagnant".

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5. Should ~~the~~<sup>and</sup> caste based census be mandatory to ensure reservation policies are evidence-based equitable? Critically analyze its necessity and role in policy formulation. 8 marks

~~Reservation policies are meant to facilitate socio-economic upliftment in the society. Caste census provides a general portrait of the Indian population and deepens the effectiveness of reservation policy. Better fair reservation policies to be made~~

~~to implement and equitable we need quantifiable data for to ensure the targeted benefits of reservation. In today's time reservation are provided on the basis of caste based so we need caste based census. However if with time as our society shift towards knowledge based economy and the basis of reservation changed from caste to economic criterion then caste based census would not be required.~~

### NEED OF CASTE BASED CENSUS

Positives → 1. Address social inequality

~~Caste based discrimination is still prevalent. Caste census can help in identifying~~



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the disadvantaged groups and bringing them into the forefront of policy making

2. Implementation of article 39 (b)  
Caste census can help in the equitable distribution of resources and guide policymakers in formulating policies that cater to specific requirements.

3. Role in policy making  
Caste census gives a comprehensive picture and provides the need of different aspiration of people and their condition in this society and policy making by keeping their needs in mind, gives the effectiveness to the policy.

#### NEGATIVE CHALLENGES

1. Reinforces the caste system  
It creates a sense of divisiveness in the society as it is caste based. Hence, it will contribute to more caste based discrimination.

2. Rigid system [Cost of exit]  
last caste based census happened in 1921 i.e. 100 years old and the cost inclusion and exclusion of people always creates havoc and protest and it makes difficult condition for govt. to execute their policy.

### 3. Further social division

It could lead to further social divisions and hinder the social harmony. Highlighting differences among society would lead to the threat to national integration.

Thus, a caste census can help in monitoring the effectiveness of affirmative actions policies and it would be crucial for policymakers to carefully eliminate the roadblocks to provide for a more equitable and just society.

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