

UNIT – V

Election Commission

Election Commission: Role and its Functioning.

What is ECI?

- The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.
- The body administers elections to the Lok Sabha, Rajya Sabha, and State Legislative Assemblies in India, and the offices of the President and Vice President in the country.

Background

- Part XV of the Indian constitution deals with elections, and establishes a commission for these matters.
- The Election Commission was established in accordance with the Constitution on 25th January 1950.
- Article 324 to 329 of the constitution deals with powers, function, tenure, eligibility, etc of the commission and the member.

Articles related to Elections	
324	Superintendence, direction and control of elections to be vested in an Election Commission.

325	No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
326	Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
327	Power of Parliament to make provision with respect to elections to Legislatures.
328	Power of Legislature of a State to make provision with respect to elections to such Legislature.
329	Bar to interference by courts in electoral matters.

Structure of the Commission

Originally the commission had only one election commissioner but after the **Election Commissioner Amendment Act 1989**, it has been made a multi-member body.

- The commission consists of one Chief Election Commissioner and two Election Commissioners.
- The secretariat of the commission is located in New Delhi.
- At the state level election commission is helped by Chief Electoral Officer who is an IAS rank Officer.

- The President appoints Chief Election Commissioner and Election Commissioners.
- They have a fixed tenure of six years, or up to the age of 65 years, whichever is earlier.
- They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through a **process of removal** similar to that of a Supreme Court judge for by Parliament.

The Election Commission of India (ECI) is a self-governing constitutional body which oversees the election process in India as per the Constitution of India. The ECI was set up on January 25 1950, with the aim of defining and controlling the multi-tiered election process in our country. The Election Commission of India administers the election process from the President of India to the State Legislative Assembly.

As per Article 324 of the Indian Constitution, ECI has the supervisory and directional control of the complete process election to Parliament and Legislature of every State and to the office of the President and the Vice-President of India.

Appointment & Tenure of Commissioners

- The Chief Election Commissioner and the Election Commissioner are appointed by the President of India.
- Each of them holds their offices for a period of 6 years or up to the age of 65 years, whichever comes first.
- They receive the same perks and pay as Supreme Court Judges.
- The only way a Chief Election Commissioner can be removed from office is upon an order of the President supported by the Parliament.

- The Election Commissioner or Regional Commissioner can only be removed from office by the Chief Election Commissioner.

Advisory and Quasi-Judiciary Powers

- The Election Commission of India has advisory jurisdiction in terms of post-election ineligibility of sitting members of the Parliament and State Legislature.
- Cases where an individual is found guilty of malpractice at elections by the Supreme Court or High Courts are referred to the ECI for its opinion of the said person's disqualification. In such cases, the judgement passed by the ECI is final and binding on the President of India or the Governor as per jurisdiction.
- The Election Commission of India also has the power to ban any candidate who has not lodged an account of election expenses by the deadline and as per the law.
- ECI can also remove or reduce the period of disqualification as per the law.

Administrative Powers

- Allotting territorial areas for electoral constituencies in the country
- Organise and amend electoral rolls and register eligible voters
- Inform dates and schedule of elections and scrutinize nomination papers
- Give recognition to political parties and assign election symbols to them.
- ECI appoints the following seats:
 - Chief Electoral Officer
 - District Election Officer
 - Returning Officer
 - Electoral Registration Officer

Role of Election Commission of India

ECI plays a crucial role in organising elections. The most significant role of the Election Commission of India is to ensure free and fair elections as per the norms and the Model Code of Conduct. It is in charge of monitoring the actions and activities of the political parties and candidates.

Functions of the Election Commission of India

- ECI is responsible for a free and reasonable election
- It ensures that political parties and candidates adhere to the Model Code of Conduct
- Regulates parties and registers them as per eligibility to contest in elections
- Proposes the limit of campaign expenditure per candidate to all parties and monitors the same.
- It is mandatory for all political parties to submit annual reports to the ECI in order to be able to claim the tax benefit on the contributions.
- Guarantees that all political parties regularly submit audited financial reports.

The **main duties** of the Election Commission are:

- Supervise, control and conduct all elections to Parliament and State Legislatures
- Set general rules for election.
- Prepare electoral rolls
- Determine territorial distribution of constituencies
- Give credit to political parties.
- Allot election symbols to political parties or candidates
- Appoint tribunals for the decision of doubts and disputes arising out of an election to Parliament and State Legislatures.

Model Code of Conduct

EC first issued a Model Code of Conduct for political parties at the time of the fifth general elections, held in 1971. Since then, the Code has been revised from time to time and lays down guidelines as to how political parties and candidates should conduct themselves during elections.

A provision was made under the Code that from the time the elections are announced by the Commission, Ministers and other authorities cannot announce any financial grant, make promises of construction of roads, carry out any appointments in

government and public undertakings which may have the effect of influencing the voters in favor of the ruling party.

Despite the acceptance of the Code of Conduct by political parties, cases of its violation have been on the rise. It is a general complaint that the party in power at the time of elections misuses the official machinery to further the electoral prospects of its candidates.

The misuse of official machinery takes different forms, such as issue of advertisements at the cost of public exchequer, misuse of official mass media during election period for partisan coverage of political news and publicity regarding their achievements, misuse of government transport including aircraft/helicopter, vehicles.

Procedure of Removal

- Judges of High Courts and Supreme Court, CEC, Comptroller and Auditor General (CAG) may be **Removed** from office through a motion adopted by Parliament on grounds of '**Proven misbehaviour or incapacity**'.
- Removal requires **special majority of 2/3rd members present and voting** supported by **more than 50% of the total strength of the house**.
- The Constitution does not use the word 'impeachment', for the removal of the judges, CAG, CEC.

- The term '**Impeachment**' is only used for removing the President which requires the special majority of 2/3rd members of the total strength of both the houses which is not used elsewhere.

Importance of ECI for India

- The ECI has been successfully conducting national as well as state elections since 1952. In recent years, however, the Commission has started to play the more active role to ensure greater participation of people.
- The Commission had gone to the extent of disciplining the political parties with a threat of derecognizing if the parties failed in maintaining inner-party democracy.
- It upholds the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance.
- It conducts elections with the highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism.
- It ensures participation of all eligible citizens in the electoral process in an inclusive voter-centric and voter-friendly environment.
- It engages with political parties and all stakeholders in the interest of the electoral process.
- It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.

Major Challenges

- Over the years influence of money and criminal elements in politics has increased along with violence and electoral

malpractices resulting in criminalization of politics. **The ECI has been unable to arrest this deterioration.**

- There has been **rampant abuse of power by the state government** who at times make large-scale transfers on the eve of elections and posts pliable officials in key positions, using official vehicles and buildings for electioneering, flouting the ECI's model code of conduct.
- The ECI is **not adequately equipped to regulate the political parties**. The ECI has no power in enforcing inner-party democracy and regulation of party finances.
- In the recent years, an impression is gaining ground that **the Election Commission is becoming less and less independent of the Executive** which has impacted the image of the institution.
- One of the major institutional drawback is non-transparency in election of CEC and other two commissioners and is based on the choice of presiding government.
- There have been allegations of EVMs malfunctioning, getting hacked and not registering votes which corrodes general masses trust from the institution.

Way Forward

- The challenge before the commission is to be vigilant and watchful against the collusion at the lower level of civil and police bureaucracy in favour of the ruling party of the day.
- Until the controversy related to glitches in EVM settles down, commission needs to establish its trust amongst people by installing (Voter Verifiable Paper Audit Trail System) VVPATS in more and more constituencies.
- There is a need to provide more legal support to the commission's mandate and the processes that support that mandate.

- As history shows, inadequate leadership is the bane of our public institutions. Safeguards to ensure that ethical and capable people head them are crucial.
- 2nd ARC report recommended that collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.

Election Commissioner

- The **Election Commission of India** is an **autonomous constitutional authority** responsible for administering Union and State election processes in India. The body **administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies** in India, and

the **offices of the President and Vice President** in the country (**Article 324**).

- It is **not concerned with the elections to panchayats and municipalities** in the states. For this, the Constitution of India provides for a separate **State Election Commission**.
- The Election Commission shall **consist of the chief election commissioner and such number of other election commissioners**, if any, as the **President may from time to time fix**.
- Presently, it consists of the Chief Election Commissioner and two Election Commissioners.

- **Appointment & Tenure of Commissioners:**

- The **President appoints** Chief Election Commissioner and Election Commissioners.
- They have **tenure of six years, or up to the age of 65 years**, whichever is earlier.
- They enjoy the **same status** and receive salary and perks as available to **Judges of the Supreme Court of India**.
- **All Election Commissioners have equal say** in the decision making of the Commission.

- **Removal:**

- They **can resign anytime or can also be removed** before the expiry of their term.
 - The **Chief Election Commissioner can be removed** from his office in the **same manner** and on **same grounds** as a **judge of the Supreme Court**.
 - In other words, he can be removed by the President on the basis of a **resolution** passed to that effect by **both the Houses of Parliament with special majority**, either on the ground of **proved misbehaviour or incapacity**.
 - Thus, he **does not hold his office till the pleasure of the President**, though he is appointed by him.
- Any other **election commissioner** or a regional commissioner cannot be removed from office except on the **recommendation of the chief election commissioner**.

- **Limitations:**

- The Constitution has **not prescribed the qualifications** (legal, educational, administrative or judicial) of the members of the Election Commission.

- The Constitution has **not specified the term of the members** of the Election Commission.
- The Constitution has **not debarred the retiring election commissioners from any further appointment** by the government.

Powers and Functions of the Election Commission

• Administrative:

- To determine the **territorial areas of the electoral constituencies** throughout the country on the basis of the **Delimitation Commission Act** of Parliament.
- To **prepare and periodically revise electoral rolls** and to register all eligible voters.
- To **grant recognition to political parties** and **allot election symbols** to them.
- Election Commission ensures a level playing field for the political parties in election fray, through strict observance by them of a **Model Code of Conduct** evolved with the consensus of political parties.

• Advisory Jurisdiction & Quasi-Judicial Functions:

- Under the Constitution, the Commission has **advisory jurisdiction in the matter of post election disqualification of sitting members** of Parliament and State Legislatures.
- The **opinion of the Commission in all such matters is binding** on the President or, as the case may be, the Governor to whom such opinion is tendered.
- Further, the **cases of persons found guilty of corrupt practices** at elections which come before the Supreme Court and High Courts are also referred to the Commission

for its opinion on the question as to whether such person shall be disqualified and, if so, for what period.

- The Commission **has the power to disqualify a candidate who has failed to lodge an account of his election expenses** within the time and in the manner prescribed by law.

State Election Commission: Role and its Functioning.

Free and fair elections form the bedrock of a democratic country. In India, the constitution envisages an **Election Commission of India** (ECI) and State Election Commissions (SEC) for every state to safeguard the free and fair election and grants them with certain constitutional safeguards to secure their independent functioning.

However, the recent **removal of Andhra Pradesh State Election Commissioner via an ordinance route** is an example encroaching upon the independence of the Constitutional body especially in the light of political accusations and vested interests.

This development not only threatens institutional autonomy but also falls foul of the constitutional provisions. Though the Election Commission of India is facing issues of autonomy due to political interference, the situation at the level of state election commission is more grim.

Note:

The ordinance promulgated by Andhra Pradesh Governor reduced the term of State Election Commissioner in the state from five years to three years and altered the qualifications (only those who served as a High Court judge can now occupy the post, earlier it was an officer of the rank of Principal Secretary & above) required to be the SEC.

Significance of Election Commission Institution

- It is the **guardian** of free and reasonable elections in India.
- It enforces the **Model Code of Conduct (MCC)** before every election to be followed by the different candidates and parties so that the decorum of the electoral process is maintained well.
- It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.
- The Election Commission prescribes the limits of campaign expenditure by the candidates and parties and monitors the spending too.
- The body also mandates that the political parties submit their audited financial reports regularly.

State Election Commissions (SECs)

- The State Election Commission has been entrusted with the function of conducting free, fair and impartial elections to the local bodies in the state.
- **Article 243K(1):** It states that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats (Municipalities under Article 243ZA) shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
- **Article 243K(2):** It states that the tenure and appointment will be directed as per the law made by the state legislature. However, State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court.

Challenges With Functioning of Election Commission Institution

- **Lack of Autonomy:** Although the state election commission on many occasions tried to exercise its duties enshrined in the constitution of India, they struggled to assert their independence. For example:
 - In Maharashtra, SEC had asserted that he should have the power to hold elections to the offices of mayor, deputy mayor, sarpanch and deputy sarpanch.
 - On the contrary, he was arrested and sent to jail for two days in March 2008 after the Legislative Assembly found him guilty of breach of privilege in an alleged conflict over his jurisdiction and powers.
- **Lack of Safeguard for SEC:** Though the State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court (Art 243K(2)), yet it has been diluted on many instances.
 - In the **Aparmita Prasad Singh vs. State of U.P.** (2007) the Allahabad High Court held that if the Governor has power to fix or prescribe tenure by rule, he also enjoys the power to amend the rule, either for extending the term of the tenure or reducing the same.
 - Once the prescribed tenure comes to end, the incumbent SEC must cease to hold office and this shall not amount to removal from office.
- **Non Uniform Service Conditions for SECs:** Article 243K(2) states that the tenure and appointment will be directed as per the law made by the state legislature and thus each SEC is governed by a separate state Act.
 - This gives power to states to amend rules unilaterally and even sometimes take ordinance routes to bypass legislative scrutiny like the recent example of Andhra Pradesh SEC.

Steps To Be Taken

- **Supreme Court Directive**

- The state governments need to follow the guidelines given by the Supreme Court in **Kishan Singh Tomar vs Municipal Corporation** of Ahmedabad case:
- The provisions of Article 243K of the Constitution, which provides for setting up of SECs, are almost identical to those of Article 324 related to the ECI.
- Also, the state governments should abide by orders of the SECs during the conduct of the panchayat and municipal elections, just like they follow the instructions of the EC during Assembly and Parliament polls.

- **Second Administrative Reforms Commission Recommendation**

- **Constitution of the State Election Commission:** The State Election Commissioner should be appointed by the Governor on the recommendation of a collegium, comprising the Chief Minister, the Speaker of the State Legislative Assembly and the Leader of Opposition in the Legislative Assembly.
- An institutional mechanism should be created to bring the Election Commission of India and the SECs on a common platform for coordination, learning from each other's experiences and sharing of resources.

- **Law Commission 255th Report on Electoral Reforms**

- It recommended, to add a new sub-clause to Article 324 of the Constitution to provide for a separate independent and permanent Secretariat for the ECI along the lines of the Lok Sabha/Rajya Sabha Secretariats under Article 98 of the Constitution.
- Similar provisions can also be made for the State Election Commissions to ensure autonomy, and free and fair local body election.

Conclusion

Election commissions are one of the bulwarks of the democratic system in India and thus securing their institutional integrity is a task that falls on all three branches —executive, judiciary and legislature. The unwarranted interference by one organ of the state in the functioning of others should be discouraged to achieve a robust electoral system

PROVISIONS RELATED TO SC/ST/OBC & WOMEN

Indian constitution abolishes any discrimination to any class of persons on ground or religion race or place of birth (Article 15(1)). It is in pursuance of this ideal that the constitution has abolished communal representation or reservation of seats in the legislatures or in any public office on the basis of religion.

However, the *Article 46* of the directive principles enjoins the state to take special care in promoting the educational and economic interests of the weaker sections of the society and in particular the scheduled castes and scheduled tribes and to protect them from social injustice. Any such provision made by the state cannot be challenged on the ground of being discriminatory. Similarly, the Part III constitution guarantees fundamental rights and provides many provisions protecting minority rights.

Constitutional Provisions

Special Protection under Fundamental Rights

Under Part III, article 15(4) enabled the state to make special provisions for SCs, STs, women, Children and other unprivileged sections under the idea of “positive discrimination”.

Abolition of Untouchability

Abolition of untouchability has been included among fundamental rights under article 17. This is supplemented by Protection of Civil Rights Act, 1955.

Directive Principles

Under DPSP, the article 46 says that state shall make all efforts to protect and promote the educational and economic interests of SCs and STs.

Minister of Tribal Welfare

Art. 164 says that in the states of Bihar, Madhya Pradesh and Orissa there shall be a minister in charge of tribal welfare **who shall also be in charge of the welfare of SC** and other backward classes.

Grants in aid to states promoting welfare of STs

Article 275 provides for grants-in-aid to the states for promoting the welfare of scheduled tribes.

Lowering standards of evaluation

Provisions for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion for SCs and STs. Art. 335 says that claims of the members of SCs and STs shall be taken into consideration consistent with the maintenance of the efficiency in administration in appointments under the union and the states.

Separate National Commissions for SC and ST

Art. 338 provides for national commission for SCs and article 338A provides for national commission for STs. These commissions have been given all the powers of a civil court in their investigations. The union and state governments need to consult the commissions on all major matters affecting SC's and ST's.

Legal Protection

National commission for Safai Karamcharis

This commission was created via an act of parliament in 1993 initially for a period of three years. Though it is not a permanent commission, yet it's tenure has been extended from time to time. It works for upliftment and improvement of conditions of safai karamcharis particularly regarding abolition of manual scavenging. It also evaluates the implementation of measures taken for the welfare of safai karamcharis and oversees laws and programmes relating to Safai Karamcharis

It consists of a chairperson, a Vice-chairperson and five members all nominated by the union Government with at least one member is a woman of those engaged in this activity.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

This act prohibits the employment of manual scavengers as well as construction or continuance of dry latrines, yet the biggest violator of this law in India is the Indian Railways which has toilets dropping all the excreta from trains on the tracks and they employ scavengers to clean it manually.

Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

The 1993 legislation was enacted to prohibit the employment of manual scavengers as well as construction or continuance of dry latrine. But this act did not have clear provisions for rehabilitation of the manual scavengers. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 was legislated for banning manual scavenging completely.

The deep concern of the framers of the Constitution for the uplift of the Scheduled Castes and Scheduled Tribes and Other Backward Classes is reflected in the elaborate constitutional mechanism set-up for their uplift.

- Article 17 abolishes Untouchability.
- Article 46 requires the State 'to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation.
- Article 335 provides that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
- Article 15(4) refers to the special provisions for their advancement.
- Article 16(4A) speaks of "reservation in matters of promotion to any class or classes of posts in the services under the State in favour of SCs/STs, which are not adequately represented in the services under the State'.

- Article 338 provides for a National Commission for the Scheduled Castes and Scheduled Tribes with duties to investigate and monitor all matters relating to safeguards provided for them, to inquire into specific complaints and to participate and advise on the planning process of their socio-economic development etc.
- Article 330 and Article 332 of the Constitution respectively provide for reservation of seats in favour of the Scheduled Castes and the Scheduled Tribes in the House of the People and in the legislative assemblies of the States. Under Part IX relating to the Panchayats and Part IXA of the Constitution relating to the Municipalities, reservation for Scheduled Castes and Scheduled Tribes in local bodies has been envisaged and provided.

RESERVATION IN INDIA

Introduction

- **The age-old caste system** of India is responsible for the origination of the reservation system in the country.
- In simple terms, it is about **facilitating access** to seats in the government jobs, educational institutions, and even legislatures to certain sections of the population.
- These sections have faced **historical injustice** due to their caste identity.

As a **quota based affirmative action**, the reservation can also be seen as positive discrimination.

- In India, it is governed by government policies backed by the Indian Constitution.

Historical Background

- **William Hunter and Jyotirao Phule** in 1882 originally conceived the idea of caste-based reservation system.

- The reservation system that exists today, in its true sense, was introduced in 1933 when British Prime-Minister Ramsay Macdonald presented the '**Communal Award**'.
- The award made provision for **separate electorates** for Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans and the Dalits.
- After long negotiations, Gandhi and Ambedkar signed the '**Poona Pact**', where it was decided that there would be a single Hindu electorate with certain reservations in it.
- After independence, initially reservations were provided only for SCs and STs.
- OBCs were included in the ambit of reservation in 1991 on the recommendations of the **Mandal Commission**.

Mandal Commission

- In exercise of the powers conferred by **Article 340** of the Constitution, the President appointed a backward class commission in December 1978 under the chairmanship of B. P. Mandal.
- The commission was formed to determine the criteria for **defining India's "socially and educationally backward classes"** and to recommend steps to be taken for the advancement of those classes.
- The Mandal Commission concluded that India's population consisted of approximately 52 percent OBCs, therefore **27% government jobs should be reserved** for them.
- The commission has developed **eleven indicators** of social, educational, and economic backwardness.
- Apart from identifying backward classes among Hindus, the Commission has also identified **backward classes among non-Hindus** (e.g., Muslims, Sikhs, Christians, and Buddhists).
- It has generated an all-India other backward classes (OBC) list of 3,743 castes and a more underprivileged "depressed backward classes" list of 2,108 castes.

- In the **Indra Sawhney Case of 1992**, the Supreme Court while upholding the 27 percent quota for backward classes, struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes.
- Supreme Court in the same case also upheld the principle that the combined reservation beneficiaries should **not exceed 50 percent** of India's population.
- The **concept of 'creamy layer'** also gained currency through this judgment and provision that reservation for backward classes should be confined to initial appointments only and not extend to promotions.
- Recently, the Constitutional **(103rd Amendment)** Act of 2019 has provided 10% reservation in government jobs and educational institutions for the "economically backward" in the unreserved category.
- The Act **amends Articles 15 and 16** of the Constitution by adding clauses empowering the government to provide reservation on the basis of economic backwardness.
- This 10% economic reservation is over and above the 50% reservation cap.

Constitutional Provisions Governing Reservation in India

- **Part XVI** deals with reservation of SC and ST in Central and State legislatures.
- **Article 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.
- The Constitution was amended by the **Constitution (77th Amendment) Act, 1995** and a new **clause (4A)** was inserted in **Article 16** to enable the government to provide reservation in promotion.

- Later, **clause (4A)** was modified by the Constitution (85th Amendment) Act, 2001 to provide consequential seniority to SC and ST candidates promoted by giving reservation.
- Constitutional 81st Amendment Act, 2000 inserted **Article 16 (4 B)** 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 fifty percent reservation** on total number of vacancies of that year.
- **Article 330 and 332** provides for specific representation through reservation of seats for SCs and STs in the Parliament and in the State Legislative Assemblies respectively.
- **Article 243D** provides reservation of seats for SCs and STs in every Panchayat.
- **Article 233T** provides reservation of seats for SCs and STs in every Municipality.
- **Article 335** of the constitution says that the claims of STs and SCs shall be taken into consideration concurrently with the maintenance of efficacy of the administration.

Judicial Scrutiny of Reservation

- The **State of Madras v. Smt. Champakam Dorairajan (1951) case** was the first major verdict of the Supreme Court on the issue of Reservation. The case led to the First amendment in the constitution.
- The Supreme Court in the case pointed out that while in the case of employment under the State, **Article 16(4)** provides for reservations in favour of backward class of citizens, no such provision was made in Article 15.
- Pursuant to the Supreme Court's order in the case the Parliament amended Article 15 by inserting Clause (4).
- In **Indra Sawhney v. Union of India (1992) case** the court examined the scope and extent of Article 16(4).
- The Court has said that the **creamy layer** of OBCs should be excluded from the list of beneficiaries of reservation, there should

not be reservation in promotions; and total reserved quota **should not exceed 50%**.

- The Parliament responded by enacting **77th Constitutional Amendment Act** which introduced Article 16(4A).
- The article 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.
- 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 reservation policy **shall not affect the overall efficiency** in the administration.

- In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018**, Supreme Court holds that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes.
- The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.
- In May 2019 the Supreme Court upheld the **Karnataka law** that allows reservations in promotions for SCs and STs with consequential seniority.

Why reservation needed?

- To correct the **historical injustice** faced by backward castes in the country.

- To provide a **level playing field** for backward section as they can not compete with those who have had the access of resources and means for centuries.
- To ensure **adequate representation** of backward classes in the services under the State.
- For **advancement** of backward classes.
- To **ensure equality** as basis of meritocracy i.e all people must be brought to the same level before judging them on the basis of merit.

Argument Against Reservation

- Reservation in state services led to **divisions and enmity** among government employees, vitiating the atmosphere at workplace.
- Eradication, not perpetuation of caste was the objective of the reservation policy but Caste Based Reservation only **perpetuate the notion of caste in society**.
- Reservation was introduced to ensure that the historically underprivileged communities were given equal access to resources but irrespective of the economic progress they **continue to remain socially disadvantaged**.
- Reservation destroys self-respect, so much so that competition is no longer on to determine the best but the most backward.
- Reservations are the **biggest enemy of meritocracy** which is the foundation of many progressive countries.
- It has become **a tool to meet narrow political ends** through invoking class loyalties and primordial identities.
- The **dominant and elite class** within the backward castes has appropriated the benefits of reservation and the most marginalised within the backward castes have remained marginalised.
- Reservation has become the **mechanism of exclusion rather than inclusion** as many upper caste poors are also facing

discrimination and injustice which breeds frustration in the society.

Reasons Behind Increasing Demands of Reservation

- Reservation is increasingly seen as a **remedy for the adverse effects** of ill-thought out development policies.
- In developed states like Haryana, Gujarat and Maharashtra, in spite of their economies being relatively better, three things have been worrying the people:
 - **Acute agrarian distress,**
 - **Stagnation in employment growth** and
 - **Distortions in the development trajectory.**
- In this backdrop, for governments, it is easier to talk of reservation than to make a **course correction.**
- Increasing reservation demands among upper castes also arising from the **fear of losing privilege** and the inability to cope with change
- Upper castes have begun to feel disadvantaged especially in context of **government jobs** as they don't get similar advantages like backward classes.

Suggestion

- The reservation benefits should flow to the vast majority of underprivileged children from deprived castes; not to a few privileged children with a caste tag.
- High ranks officials families, high income professionals and others above a certain income should not get the reservation benefits especially in government jobs.
- **Fair and practical ways** to help needy person from each community through reservation is possible and necessary.

- The process of reservation should **filter the truly economically deprived** individuals and bring them all to justice
- Revolutionary changes in the **education system** at the grass-roots level is need of the hour.
- There is also need for **awareness generation** because while the unreserved segments, keep on opposing the provision, the neediest sections from within the reserved segments are hardly aware about how to get benefited from the provision or even whether there are such provisions exists.
- The **radical solutions** like excluding the entire creamy layer among all castes from reservation and developing their capabilities instead of offering them reservation for admission to higher education or jobs on a platter.

Way Forward

- Reservation is fair, as far as it provides **appropriate positive discrimination** for the benefit of the downtrodden and economically backward Sections of the society.
- But when it tends to harm the society and ensures privileges to some at the cost of others for **narrow political ends**, it should be done away with, as soon as possible.
- The communities excluded from reservations harbour **animosity and prejudice** against the castes included in the reservation category.
- When more people aspire for backwardness rather than of forwardness, **the country itself stagnates.**
- Meritocracy should not be polluted by injecting relaxation of entry barriers, rather than it should be encouraged by offering **financial aid to the underprivileged.**
- A **strong political will** is indispensable to find an equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system.

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