

Reservation in promotion

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Manifest Pedagogy:

Reservation as an issue has been in news for the past two to three years with many upper caste groups demanding for reservation. It got highlighted with the provision for reservation to EWS section . And now comes the judgment on Reservation in promotion. Hence it needs to be studied thoroughly

In news

The Supreme Court upholds Karnataka's consequential seniority Act

Placing it in the syllabus

INDIAN SOCIETY :Social Empowerment

INDIAN POLITY : Mechanisms, laws, institutions, and Bodies constituted for the protection and betterment of these vulnerable sections.

Static dimensions

History of Reservation in promotion

1. Indra Sawhney case
2. 77th and 85th constitutional amendments
3. Timeline of consequential equality
4. *Nagaraj case*

Current dimensions

- Karnataka's Extension of Consequential Seniority to

Government servants Promoted on the Basis of Reservation act 2017

- *Jarnail Singh* judgment and the new concept of substantive equality

Content

History of Reservation in promotion

Mandal judgment/ Indra Sawhney case 1992

- The Supreme Court's *Indra Sawhney vs Union of India*(1992) has been hailed as a landmark judgment as it upheld reservations for Other Backward Classes (OBCs). However, this judgment also held that reservations in appointments, under per Article 16(4) of the constitution, don't apply to promotions.
- The Supreme Court upheld the Mandal Commission's 27 percent quota for backward classes, as well as the principle that the combined scheduled-caste, scheduled-tribe, and backward-class beneficiaries should not exceed 50 percent of India's population. At the same time, the court also struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes in 1992. In this case, the Supreme Court stated that;
 - Backward Classes of the Citizens of in Article 16(4) can be identified on the basis of caste and not only on the economic basis.
 - Article 16(4) is not an exception to Article 16(1)
 - The backward classes in Article 16(4) are not similar to as socially backward classes in Article 15(4) i.e. SC and ST
 - The creamy layer can be and must be eliminated from the Backward Classes.
 - Article 16(4) permits the classification of backward classes into more backward classes.
 - Reservation shall not exceed 50%. The court said

that this rule should be applied every year. However, it may be relaxed in favor of people from far-flung and remote areas because of their peculiar conditions. However, extreme caution should be exercised in doing so.

- Carry forward rule is valid but it is subject to 50%
- There should be NO reservation in the Promotions.

77th and 85th Constitutional amendment acts

- The Constitution (77th Amendment) Act, 1995: According to this Act, the Government has decided to continue the existing policy of reservation in promotion for the Scheduled Castes and Scheduled Tribes. The Constitution (77th Amendment) Act, 1995 was passed by parliament, inserting Article 16(4A) which allows the State to provide reservations to SCs/STs in matters of promotion, as long as the State believes that this category of the marginalized populations –the SCs and STs – aren't adequately represented.
- The Constitution (85th Amendment) Act, 2001: Provided for consequential seniority" in the case of promotion by the virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

Timeline of consequential seniority



Nagaraj judgment 2006

According to it, the government cannot introduce a quota in promotion for its SC/ST employees unless they **prove that the particular Dalit community is backward**, inadequately represented and such a reservation in promotion would not affect the overall efficiency of public administration. The opinion of the government should also **be based on quantifiable**

data. It was made clear that even if the state has compelling reasons, the state will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely

Karnataka's Extension of Consequential Seniority to Government servants Promoted on the Basis of Reservation act 2017

- It was passed by the Karnataka Government to protect thousands of SC/ST employees who faced demotion in view of the 2017 judgment.
- It allows the reservation in promotion for Scheduled Castes and Scheduled Tribes with consequential seniority (Consequential seniority is seniority given to employees from Scheduled Caste and Scheduled Tribe communities in government jobs as a consequence of reservation. It provides reservation in the first promotion as well as subsequent ones. This is not the case for general category employees).
- It gives the state government to make rules to carry out the purpose of this act.
- The repeals the Karnataka Determination of Seniority of the Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Act, 2002

Jarnail Singh judgment and the new concept of substantive equality

- In this case, the five-judge bench reviewed the criticisms made against Nagaraj judgment.
- The court held that the **government need not collect quantifiable data** to demonstrate backwardness of public employees belonging to the Scheduled Castes and the Scheduled Tribes (SC/STs) to provide reservations for them in promotions.
- The judgment has significant and a long term bearing on

the discourses on affirmative action as it smashes the misconstrued notion that reservations impact administrative efficiency. It draws attention to the fact that merit lies not only in performance but also in achieving goals such as the promotion of equality, and not just a formal equality of opportunity but the **achievement of substantive equality.**

- Substantive equality is a fundamental aspect of human rights law that is concerned with equitable outcomes and equal opportunities for disadvantaged and marginalized people and groups in society.
- Substantive equality recognizes that policies and practices put in place to suit the majority of clients may appear to be non-discriminatory.
- As defined by the scholars it is an output or outcome of the policies, procedures, and practices used by nation states and private actors in addressing and preventing systemic discrimination.
- Substantive equality explores measures that may be required to counter disadvantage and facilitate real equality.