

Right to Promotion

Why in news?

Recently Supreme Court stated that the right to promotion is not a constitutional right.

What is the historical background of reservation?

- **Origin-** The concept of caste-based reservations was initially conceived by *William Hunter and Jyotirao Phule in 1882*.
- **Legislative framework-** The legal origin of Reservation Policy in India began with laying down of the *Government of India Act, 1919* which came during the turbulent period of *World War I*.
- **Communal Award-** The reservation system as we know it today was introduced in 1933 through the '*Communal Award*' by British Prime Minister *Ramsay Macdonald*.
- **Post Independence-**The Constituent assembly chaired by **Dr. B.R Ambedkar** framed the reservation policy and many Articles in the Indian Constitution were dedicated for the same.
- **Right to promotion-** It is *not mentioned in part of the constitution*. There is no ruling mentioned in the constitution regarding the promotion of government employees.
- **Role of executive-** The executive (the Parliament in the case of the Centre and the State Assembly in the case of states) has the right to introduce rules and regulations regarding the promotion of employees.
 - **The central and state executives are solely responsible** for enforcing rules and regulations by the post or requirement.
- **Article 16-** Appeals regarding promotion can only be considered under **Article 16** of the Indian Constitution (equality opportunities for all in government offices) to ensure every employee is **treated equally**.

What are the argument for reservation?

- **Inclusion-** Reservation policies promote social inclusion by providing opportunities to individuals from marginalized communities who have historically been excluded.
- **Faith in the State-** When individuals from marginalized communities feel included and have equal opportunities, it contributes to nation-building and a stronger social fabric.
- **Positive affirmation-** Reservation is crucial to rectify historical injustices, level the playing field for disadvantaged sections, ensure representation, and uphold equality as the basis of meritocracy.
- **Provide opportunities-** It addresses systemic discrimination and provides opportunities to those historically deprived of resources.
- **Responsibility for past discrimination:** Those who argue that they were not responsible for past discrimination fail to acknowledge their privileges and the

intergenerational effects of discrimination.

What are the arguments that are raised against Reservation

- **Reverse discrimination-** Critics argue that reservation policies are a form of reverse discrimination, as they allocate opportunities based on factors such as caste, race, or ethnicity, rather than individual qualifications and abilities.
- **Undermining meritocracy-** Critics claim that by prioritizing quotas based on social categories, less qualified or competent individuals may gain advantages over more deserving candidates.
- **Limited improvement-** It is pointed out that despite implementing reservation policies for over 70 years, the situation of marginalized communities has not improved significantly.
- **Fragmentation-** Another concern raised is that reservation policies, instead of fostering a truly inclusive and discrimination-free society, may create further divisions among different communities.
- **Caste divisions-** Reservation perpetuates caste divisions which fails to address economic progress, erodes self-respect, hinders meritocracy, and is exploited for political gains.

Constitutional Provisions governing reservation

- **Part XVI** - It deals with SC and ST reservation in Central and State legislatures.
- **Article 15(4) and 16(4)**- It enable the reservation of government service seats for SCs and STs.
- Amendments like the *77th and 85th* introduced provisions for reservation in promotions.
- **Article 16(4B)**- It allows the state to fill unfilled SC/ST vacancies in the succeeding year, bypassing the 50% reservation cap.
- **Articles 330 and 332**- It provide specific representation for SCs and STs in Parliament and State Legislative Assemblies.
- Panchayats and Municipalities also have reservation provisions under **Articles 243D and 243T**.

Judicial scrutiny of reservation

- Landmark cases like '*State of Madras v. Smt. Champakam Dorairajan*' and '*Indra Sawhney v. Union of India*' shaped the legal landscape of reservations.
 - The latter case highlighted the exclusion of Article 15's reservation provision, leading to the introduction of Article 15(4).
 - '*Creamy layer*' exclusion, restrictions on reservation in promotions, and the 50% cap were established.
 - Subsequent amendments added Article 16(4A) to reserve promotion seats for SC and ST communities underrepresented in public employment.
- The '*M. Nagaraj v. Union Of India*' case set three constitutional requirements for such reservations, including the preservation of administrative efficiency.

What should be done?

- **Merit-cum-seniority-** The Supreme Court stated that the promotion of employees is done based on experience because it is expected that an employee with more experience is better equipped with the techniques of the work.

- **Nepotism-** Merit cum seniority system also helps in curbing the issue of nepotism in the workplace.
- **Awareness generation-** Grassroots-level education reforms, awareness campaigns and radical solutions like excluding the entire creamy layer from reservation could be considered.
- **Calibrated approach-** Reservation is necessary for addressing historical injustices but should be carefully balanced to avoid harming societal cohesion.
- **Strong political will-** It is essential to find an equilibrium that promotes justice for the marginalized, equity for all, and administrative efficiency.
- **Meritocracy-** It should be encouraged through financial aid to the underprivileged, rather than lowering entry barriers.
- **Equality-** Reservations should evolve to meet the evolving needs of Indian society while maintaining the principles of fairness and equality.

References

1. [Live Law |Right To Promotion Not Constitutional](#)
2. [Times Of India | Reservation](#)

