

Significance of Article 16(1) in India

written by iasexam.com | 22/11/2022



[GS Paper 2 - Indian Constitution, Historical Underpinnings, Fundamental Rights]

Context - The system of Reservation in India was introduced to uplift the historically disadvantaged sections of Indian society. Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), Economically Backwards Classes are provided opportunities by providing them reservations in legislatures, Government Jobs, Promotions, educational scholarships.

The reservation of the percentage in higher education institutions stands at 49.5%. A similar ratio is followed in Parliament. The percentage of reservation varies in each state. Maharashtra is estimated to have the highest percentage of reservation.

Reservation in Promotion

- The jurisprudence of reservation relies on the symbiotic coexistence of constitutionally guaranteed equality of opportunity in public employment under Article 16 (1) of the Constitution of India.
- The classifications were various clauses of the same article, especially Article 16(4) and Article 16 (4 A).
- It specifically aimed to provide reservation in promotion to Scheduled Castes and Scheduled Tribes, respectively.
- These articles vested a discretion on the government to consider providing reservations for the socially and educationally backward sections of the society.

What Reservation Law actually means?

- It is a settled law, time and again reiterated by the Supreme Court, that there is no fundamental right to reservation or promotion under Article 16(4) or Article 16(4 A) of the Constitution.
- Rather they are enabling provisions for providing reservation, if the circumstances so warrant (Mukesh Kumar and Another vs State of Uttarakhand & Ors. 2020).
- However, these pronouncements in no way understate the constitutional directive under Article 46.
- Article 46 mandates that the state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular SCs and STs.
- However such provisions resulted in the ever-evolving jurisprudence of affirmative action in public employment.

Laws formulated for Reservation in India

- **Article 15(4)** - 1st Amendment, 1951 - Special provision for Advancement of Backward Classes.
- **Article 15(5)** - 93rd Amendment, 2006 - Provision of Reservation for Backward, SC, and ST classes in private educational institutions.
- **Article 16(3)** - Reservation of posts in public employment on the basis of residence
- **Article 16(4)** - Reservation in public employment for backward classes.
- **Article (330 - 342)** - talks about special provisions for certain classes of society
- **Article 45** - Under Directive Principles of State Policy, states have a duty to raise the standards of living and health of backward classes.
- **Article 39 A** - Under Directive Principles of State Policy - states have to ensure justice and free legal aid to Economically Backward Classes.

Major Cases Related to Reservation

Mandal Commission

- Reservation in employment which was otherwise confined to SC and STs got extended to a new section called the Other Backward Classes (OBCs).
- This was the basis of the recommendations of the Second Backward Class Commission as constituted, headed by B.P. Mandal.
- The Mandal Commission (1980) provided for 27% reservation to OBC in central services and public sector undertakings.
- This was over and above the existing 22.5% reservation for SCs and STs, was sought to be implemented by the V.P. Singh Government in 1990.
- The same was assailed in the Supreme Court resulting in the historic Indra Sawhney Judgment.

Indra Sawhney Judgment

- In the judgment, a nine-judge bench presided by CJI MH Kania upheld the constitutionality of the 27% reservation.

- But it put a ceiling of 50% unless exceptional circumstances warranting the breach, so that the constitutionally guaranteed right to equality under Article 14 would remain secured.
- While Article 16(1) is a fundamental right, Article 16(4) is an enabling provision and not an exception.
- Further, the Court directed the exclusion of creamy layer by way of horizontal division of every other backward class into creamy layer and non-creamy layer.

77th Constitutional Amendment Act

- In the Indra Sawhney Case, the Supreme Court had held that Article 16(4) of the Constitution of India does not authorize reservation in the matter of promotions.
- However, the judgment was not to affect the promotions already made and hence only prospective in operation, it was ruled.
- By the Constitution (Seventy-seventh Amendment) Act, 1995, which, Article 16(4-A), was inserted.
- It aimed to provide the State for making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State.
- This was to be in favor of the SCs and the STs which, in the opinion of the State, are not adequately represented in the services under the State.
- Later, two more amendments were brought, one to ensure consequential seniority and another to secure carry forward of unfilled vacancies of a year.

103rd Constitutional Amendment Act

- The 10% reservation for Economically Weaker Sections (EWS) other SCs, STs and backward classes for government jobs and admission in educational institutions.
- This is currently under challenge before the Supreme Court which has referred the same to a constitution bench.
- This was a critical milestone to specifically include economic backwardness without social backwardness as is traditionally seen.

Dr. Jaishri Laxmanrao Patil vs Chief Minister (2021)

- Despite the Indra Sawhney ruling, there have been attempts on the part of many States to breach the rule by way of expanding the reservation coverage.
- The Maharashtra Socially and Educationally Backward Classes Act 2018, (Maratha reservation law) came under challenge before the Supreme Court.
- This case was referred to a bench of five judges to question whether the 1992 judgment needs a relook. Interestingly, the Supreme Court affirmed the Indra Sawhney decision, and struck down Section 4(1)(a) and Section 4(1)(b) of the Act which provided 12% reservation for Marathas in educational institutions and 13% reservation in public employment respectively.
- This judgment gave out a strong message that some State governments blatantly disregard the stipulated ceiling on electoral gains rather than any exceptional circumstances.