



Slipping on Quota

This article is related to General Studies-
Paper II (Governance).

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"The most likely scenario is that the Modi government's move will be stayed by the apex court till the final decision on the constitutionality of the Bill is delivered."

The Narendra Modi government started its innings in 2014 with a constitutional amendment giving the government a vital say in the appointment of judges. But the apex court struck it down as unconstitutional in 2016 as the amendment undermined the primacy of the opinion of the Chief Justice of India in judicial appointments, which the Court said was part of the basic structure of the Constitution. Now, the government is ending its term with another major constitutional amendment, whose chances of being struck down by the SC are even greater. Strangely, the government that overemphasised "merit" in judicial appointments has now taken reservation to 59 per cent with almost 95 per cent of the population of economically backward classes covered. Moreover, a pro-private sector government has extended the proposed quota to private educational institutions as well, though the SC in Ashok Thakur (2008) had left this question unanswered.

The proposal to give 10 per cent reservation to the economically backward classes, like several other schemes of the Modi government, is neither novel nor innovative. The Congress government under P V Narasimha Rao did provide for similar reservation, but a nine-judge bench in Indra Sawhney (1992) struck it down. There have been similar efforts in states as well — Kerala under the left government (2008) in admissions to a few courses, the Congress government in Rajasthan (2008) and the BJP regime in Gujarat (2016). Even Mayawati has been in favour of such a reservation and has welcomed the government's move.

The BJP as a party has not been a great votary of social justice through reservations. In fact, the RSS chief, Mohan Bhagwat, in 2015 called for a review of the reservation policy. But anticipating its political fallout in the Bihar assembly elections, the BJP disowned Bhagwat's remark. Likewise, the government implemented the apex court's directive to take the department instead of university as the unit of reservation, a decision that drastically reduced the number of reserved seats for SCs and STs in universities. Similarly, the government lawyer did not effectively defend the SC/ST Act in the Supreme Court and almost admitted its misuse, leading to the dilution of the Act.

Historically, most reservation schemes have been announced on the eve of general or assembly elections. The political leadership treats Indian voters as stupid and forgets that in the past, such populist moves have not paid electoral dividends. Rajiv Gandhi did not win in 1989 despite overturning the Shah Bano verdict and opening the locks of the Babri Masjid. Socialist leader Karpoori Thakur and V P Singh too failed to get the anticipated support from the masses for their reservation policies.

In any case, the legality of the Modi government's move is suspect. The apex court has said in categorical terms that reservation solely on the basis of economic backwardness, that is without evidence of historical discrimination, finds no justification in the Constitution. A nine-judge bench in Indra Sawhney had ruled that reservation is a remedy for historical discrimination and its continuing ill-effects. The court also said that reservation is not aimed at economic uplift or poverty alleviation. Economic backwardness is to be on account of social backwardness.

The backwardness mentioned under Article 16(1) must be the backwardness that is both the cause and consequence of non-representation in the state administration. It has to be backwardness of the whole class, not of some individuals. The economic criterion will thus lead, in effect, to the virtual deletion of Article 16(4) from the Constitution. Hence, economic backwardness has to be on account of social backwardness under Article 16(4).

Moreover, the move upsets the 50 per cent cap imposed by the SC on reservation. Justice Thommen in Indra Sawhney said that "any attempt to over-emphasise its compensatory aspect and widen the scope of reservation beyond 'minority of posts' is to practice excessive and invidious reverse discrimination". B R Ambedkar in his speech in the Constituent Assembly on November 30, 1948, explicitly said that equality of opportunity would require that reservation should be for the "minority of the seats" and only in favour of "backward classes who had not so far had representation in the state".

The weaker sections as mentioned in Article 46 are a genus of which the backward class of citizens mentioned in Article 16(4) constitute a species. Thus, only backward classes, and not all the weaker sections, are entitled to reservation. Caste and class are not synonymous. Class is not antithetical to caste, caste is an enclosed class. Ambedkar, at the time of the first amendment, which inserted clause 4 in Article 15, told Parliament that "backward classes are nothing else but a



collection of castes". Class here is social class. Thus, economic backwardness must be the result of social backwardness.

Constitutional amendment in the matter will be subject to the basic structure theory. There is no definition of the basic structure and in each case, the court decides what features of the Constitution constitutes the basic structure. The Modi government must be hoping that since there is some controversy about the right to equality being a part of the basic structure, it can pass judicial scrutiny. Justice K K Mathew in *Indira Gandhi (1975)* had not accepted Article 14 as part of the basic structure because equality is a multi-coloured concept incapable of a single definition. Moreover, the government may argue that reservation will widen the ideals of equality by including even the economically backward. But equality as a principle is part of the basic structure and with equality of status and opportunity in the preamble also as basic structure, the Court may agree to the economic criterion for reservation.

In any case, only an 11-member bench can overrule *Indra Sawhney* and a decision is unlikely in six months. The most likely scenario is that the Modi government's move will be stayed by the apex court till the final decision on the constitutionality of the Bill is delivered. The validity of reservation on the basis of economic backwardness in the absence of social backwardness, will depend on how many of the 11 yardsticks of backwardness laid down in *Indra Sawhney* for OBC reservation is satisfied by the Bill.

GS World Team...

Reservation

Why in the discussion?

- Recently, the Central Government has announced the decision for giving 10% reservation to the financially backward classes (general category) in government jobs and educational institutions on January 07, 2019.
- The Central Government will soon introduce the Constitution Amendment Bill in Lok Sabha for this.

Amendment in constitution

- The Union Cabinet under the chairmanship of Prime Minister Narendra Modi has approved the constitutional amendment in this regard.
- The government will bring the constitutional amendment bill 2018 (Constitution Amendment Bill to Provide Reservation to Economic Weaker Section -2018) for the economically weaker sections in this regard. Through this Bill, amendment will be done in Article 15 and 16 of the Constitution.
- Reservation given to upper castes will be different from the existing 50 percent reservation.
- People of general category eligible for reservation will be-
 - Whose annual income is less than Rs. 8 lakhs
 - Those with less than 5 hectares of farming land
 - Who have house of less than 1000 square feet.
 - Those with less than 109 yards of corporation notified land.
 - Who has less than 209 yards of non-notified land of the corporation
 - Who had not yet come under any kind of reservation

Provision of Article 15

- Article 15 gives equal citizenship rights to all citizens. According to Article 15 (1), the state will not make any discrimination against any citizen only on the basis of religion, ethnicity, caste, gender, birthplace or any of them.
- Under Article 15, Article 15 (4) and 15 (5) have

provided special provisions for social and educationally backward classes or Scheduled Castes and Scheduled Tribes. There is no use of economic terms anywhere here.

In such a situation, the government will need to add economically weaker words in this article to give reservation to the upper castes.

Provision of Article-16

- Article -16 guarantees the equality of opportunity in relation to public employment and prevents the state from discriminating against anyone, only on the basis of religion, race, caste, sex, race, place of birth or any of these.
- To ensure adequate representation in the public services of any backward class, exceptions are made for the implementation of measures for their beneficial action, as well as a post of a religious institution for the person pursuing that religion is reserved.

Purpose and current status of reservation in India

- The reservation system was done to ensure the participation of every section of the society in the field and government jobs, welfare schemes, elections and education in the state so that every section of the society has the opportunity to come forward.
- For this, the backward classes were divided into three categories - Scheduled Caste (SC), Scheduled Tribe (ST) and OBC (OBC).
- At present 49.5% of the total reservation is being given in India, which is as follows:
 - Scheduled Caste (SC): 15%
 - Scheduled Tribes (ST): 7.5%
 - Other Backward Classes (OBC): 27%
 - Total Reservations: 49.5%

Who will get benefit?

- The 10% reservation given to the upper castes by the central government will not be available only to the Hindus but to those people of the general category of all religions or sects who have the criteria of the eligibility conditions of this category.



- This reservation has not been given on the basis of religion, caste, color or any other kind of discrimination.

Indira Sahni Vs Union of India 1992 case

- In Indira Sahni and the other Vs. Union of India, the Supreme Court upheld the implementation of separate reservation for other backward classes in central government jobs.
- In the case of Indira Sahni, for the first time in 1992, it was said that reservations for the Scheduled Castes, Scheduled Tribes officers and employees in the promotion are not correct.
- The Parliament considered this and the 77th constitutional amendment was brought. In this amendment it was said that the State Government

and the Central Government have also the right to give reservations in the promotion. This case went to the Supreme Court again and it was verdicted that reservation can be given but seniority will not be given.

- After this 85th constitutional amendment was passed from the same parliament and it was said that consequential seniority will also be given.
- In the Indira Sahni case, the constitutional bench comprising the Supreme Court Judges, on 16.11.1992, did not consider reservation in promotion for the Scheduled Caste and Scheduled Tribe in the public services under Article 16 (4) of the Constitution, and ordered that reservation these sections will be kept in the promotion for the next 5 years only.

Expected Questions (Prelims Exams)

1. Consider the following statements-
 1. Article-16 prohibits the government on discrimination of any person on the ground of only religion, race, caste, sex, ethnicity, birthplace or any of them.
 2. Article-16(4) special provisions have been provided for the socially and educationally backward classes or scheduled castes or scheduled tribes.

Which of the above statements is/are correct?

 - (a) Only 1
 - (b) Only 2
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2
2. By which of the following constitutional Amendment the system of reservations in the promotion has been provided?
 - (a) 77th Constitutional Amendment.
 - (b) 87th Constitutional Amendment.
 - (c) 42nd Constitutional Amendment.
 - (d) 61st Constitutional Amendment.

Expected Questions (Mains Exams)

- Q. The provision of reservations in India are provided on what basis? Discussing its objectives also discuss the present situation of reservations.**

(250 Words)

Note: Answer of Prelims Expected Question given on 08 Jan. is 1(a) and 2(c).