



## Promotion Not a Fundamental Right

**For Prelims:** [Scheduled Castes](#), [Scheduled Tribes](#), reservation in promotions, [Indra Sawhney Judgment](#), Article 16 (4), Article 16 (4A), Article 16(4B), M Nagaraj Case, Supreme Court.

**For Mains:** Reservation in Public Employment and Promotions and related Judgements

**Source:** [TOI](#)

### Why in News?

The [Supreme Court](#) in its recent judgement has reiterated that **promotion is not a fundamental right** for government servants in India, as the **Constitution does not prescribe any criteria for filling promotional posts.**

- This has been left to the discretion of the **legislature** and **executive.**

### [Fundamental Rights:](#)

- These are the **basic human rights enshrined in our constitution that are guaranteed to all its citizens.** These rights are essential for a person's development and well-being.
- There are **6 Fundamental Rights that are enshrined in Part III (Articles 12-35) of the [Constitution.](#)**

### What are the Constitutional Provisions Related to Reservation?

- **Article 15 (6):** It enables the State to make **special provisions for the advancement of any economically weaker section** of citizens, including reservations in educational institutions.
  - It states that such reservations can be made in any educational institution, including both aided and unaided private institutions, except minority educational institutions covered under [Article 30 \(1\).](#)
- **Article 16 (4):** Provides that the State can make any provision for the reservation of appointments or **posts in favour of any backward class of citizens** who, in the opinion of the state, are not adequately represented in the services under the State.
- **Article 16 (4A):** Provides that the State can make any provision for **reservation in matters of promotion in favour of the [Scheduled Castes](#) and the [Scheduled Tribes](#)** if they are not adequately represented in the services under the State.
- **Article 16(4B):** It enabled the unfilled SC/ST quota of a particular year to be carried forward to the next year.
  - Both Articles 16(4A) and 16(4B) were inserted by the 77<sup>th</sup> [Constitutional Amendment Act](#), 1995.
- **Article 16 (6):** It enables the State to make **provisions for reservation in appointments.**

These provisions will be **subject to a 10% ceiling**, in addition to the existing reservations.

- **Article 335:** It recognises that **special measures need** to be adopted for considering the claims of SCs and STs to services and posts, in order to bring them at par.
- **82<sup>nd</sup> Constitutional Amendment Act, 2000:** It inserted a condition at the end of **Article 335 that enabled the state to make any provision in favour of the members of the SC/STs for relaxation** in qualifying marks in any examination.

## What are the Pros and Cons of Reservation in Promotion?

Pros of Reservation	Cons of Reservation
<b>Social Justice &amp; Inclusion:</b> Promotes representation of historically disadvantaged groups (SC, ST, OBC) in higher positions of services.	<b>Merit vs Reservation:</b> Raises concerns about overlooking the most qualified candidate for the promotion.
<b>Breaks Caste &amp; Social Barriers:</b> Creates a more diverse and inclusive leadership structure, fostering better understanding of societal issues.	<b>Demotivation &amp; Frustration:</b> Can lead to demotivation and frustration among general category candidates who feel passed over.
<b>Empowerment &amp; Upliftment:</b> Offers marginalised communities opportunities to advance and compete at higher levels.	<b>Creamy Layer Issue:</b> The "creamy layer" within reserved categories might still benefit, negating the upliftment purpose.
<b>Positive Discrimination:</b> Addresses past discrimination by offering a helping hand to overcome ingrained social and economic barriers.	<b>Seniority &amp; Efficiency:</b> Reservation in promotions can disrupt seniority-based promotion systems, impacting overall efficiency.

## What are the Reservation Related Developments in India?

### ▪ **Indra Sawhney Judgment, 1992:**

- In this nine-judge bench judgement held that **Article 16(4)** of the Constitution, which allows [reservation in appointments](#), **does not extend to promotions**.
- Court upheld the **constitutionality of the 27% reservation but 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.
- Carry forward rule is valid but it is subject to 50%. There **should be no reservation in the promotions**.
- The court clarified that **Article 16(4) is not a separate rule** that overrides Article 16(1). The article 16(1) is a fundamental right, **article 16(4) is an enabling provision**.
  - **Article 16(1):** It states that there shall be **equality of opportunity for all citizens in matters** relating to employment or appointment to any office under the State.
- Further, the Court directed to **exclude Creamy Layer** (economically well-off) from **Other Backward Classes (OBCs)** from getting reservation benefits.
  - However, it **specifically excluded SCs and STs** from this concept.

### ▪ **77<sup>th</sup> Amendment Act (1995):**

- This act empowered states to **maintain existing reservation policies** for promoting SC/ST employees.
- It introduced a new article, **16(4A)**, **allowing states to grant reservations in promotions** as long as they believe SC/STs are **underrepresented**.

### ▪ **85th Amendment Act (2001):**

- It introduced the concept of **consequential seniority for SC/ST candidates promoted through reservations**. This applied retroactively to June 1995.
  - **"Consequential seniority"** refers to the **concept of granting seniority to government servants belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs)** in cases of promotion through reservation rules.
- This provision was brought with retrospective effect from June 1995.

- **M. Nagaraj Judgment, 2006:**
  - This judgement **partially overturned Indra Sawhney judgement.**
  - It introduced a conditional extension of the "**creamy layer**" concept to **SC/ST communities** seeking promotions in government jobs.
    - This concept was previously applied **only to Other Backward Classes (OBCs).**
  - Judgement laid down **3 conditions** to allow states to provide reservations in promotions for **SCs/STs**, as:
    - **Inadequacy of Representation:** The state must demonstrate SCs/STs are inadequately represented in promotions.
    - **Creamy Layer Exclusion:** Reservation benefits should not extend to the "creamy layer" within SCs/STs.
    - **Maintain Efficiency:** Reservation should **not affect overall administrative efficiency.**
- **Jarnail Singh vs Union of India, 2018:**
  - In this case, the Supreme Court (SC) reversed its stance on data collection.
  - **States No Longer Need Quantifiable Data:** The SC ruled that states no longer needed **to collect quantifiable data to prove the backwardness of the SC/ST community** when implementing reservation quotas for promotions.
  - It allowed the government to implement "**accelerated promotion with consequential seniority**" for SC/ST members more easily.
- **103<sup>rd</sup> Constitution (Amendment) Act, 2019:**
  - It provides for reservation to **Economically Weaker Sections (EWS)** in jobs in central government jobs as well as government educational institutions.
  - It was introduced by amending **Articles 15 and 16** and inserted **Article 15 (6)** and **Article 16 (6).**
  - It was enacted to promote the welfare of the poor not covered by the 50% reservation policy for **Scheduled Castes (SCs), Scheduled Tribes (STs) and Socially and Educationally Backward Classes (SEBC).**
  - It enables both the Centre and the States to provide reservations to the EWS of society.
- **Janhit Abhiyan v. Union of India, 2022**
  - It challenged the **103rd Constitutional Amendment** that introduced a **10% reservation for Economically Weaker Sections (EWS)** in educational institutions and government jobs.
    - In a 3-2 verdict, the **Court upheld** the amendment.
  - It allowed the government to provide reservation benefits based on economic standing, alongside existing reservations for disadvantaged social groups.

## Way Forward

- **Data-Driven Approach:** It is needed to **assess the current representation of SC/ST/OBCs** across different levels and departments. This data can be used to establish concrete targets for filling reservation quotas.
- **Focus on Merit with Relaxation:** Promoting a system that emphasises merit while allowing for some relaxation in qualifying marks for SC/ST/OBC candidates in promotions, ensuring that **qualified candidates from these communities** have a better chance while maintaining an acceptable competency level.
- **Addressing Concerns:** Acknowledge concerns about **unqualified candidates getting promoted due to reservations.**
  - Propose solutions like **rigorous training and mentorship programs** for promoted SC/ST/OBC employees **to bridge any skill gaps** and ensure they excel in their new roles.
- **Long-Term Vision:** Emphasise that **reservations are a temporary measure** to achieve long-term social justice and equal opportunity in promotions.
  - Advocate for **parallel initiatives that improve education and access to resources** for these communities, ultimately leading to a situation where reservations may not be necessary.

## Conclusion

The Supreme Court's approach on reservation in promotions has evolved over time, balancing the competing principles of equality and affirmative action. While the Court has allowed states to provide such reservation, it has also imposed certain conditions to ensure that it does not compromise administrative efficiency and the overall public interest.

### **Drishti Mains Question:**

Reservation in promotions for SCs, STs, and OBCs presents a challenge in balancing inclusivity with bureaucratic efficiency. Critically examine strategies to ensure both objectives are met effectively in the Indian administrative system.

## UPSC Civil Services Examination Previous Year Question (PYQ)

### **Q. Consider the following statements: (2020)**

1. The Constitution of India defines its 'basic structure' in terms of federalism, secularism, fundamental rights and democracy.
2. The Constitution of India provides for 'judicial review' to safeguard the citizens' liberties and to preserve the ideals on which the Constitution is based.

### **Which of the statements given above is/are correct?**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (d)**

PDF Reference URL: <https://www.drishtias.com/printpdf/promotion-not-a-fundamental-right>