



## Consequential seniority: Recent era interpretations which led to various dimensions

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### Abstract

This research investigates the issues and concerns surrounding the recent Supreme Court ruling on Consequential seniority in the public employment sector. The study attempts to check the significance and the necessity of the reservations in promotion concerning the public sectors and the concept of consequential seniority. This study is conducted to analyse the problem concerning a concept of “consequential seniority” in reservation for promotion, which was brought about in the 85<sup>th</sup> Constitutional amendment and recently upheld in *BK. Pavitra vs Union of India, 2019*. The statement of the problem addressed the impact of consequential seniority upon administrative efficiency and administrative seniority moral, and the possible arguments for the legislative action concerning the backwardness of a certain community, and inadequate representation. The critical analysis of the hypothesis on the significance of reservation in promotions and consequential seniority concluded that both the legislature and the judiciary were attempting to strike a proper balance between Articles 14 and 16 by maintaining social justice and cause to suppress the arbitrariness. However, on one hand, as the general category seniors are threatened in their position to promotion, this study suggested to relay on the principle of non-arbitrariness and proceed with the implementation of consequential seniority rule backed with adequate data of inadequate representation and exclusion of creamy layer of the backward communities.

**Keywords:** consequential seniority, interpretations, led to various

### Introduction

The constitution operates as a fundamental law from where all the other sections derive their authority and discharge their responsibilities within the framework of the Constitution. Being the Parliament or the state legislature, it does not maintain a sovereign position in front of the Constitution of India, the validity of the law whether union or the state is charged concerning their respective jurisdiction as defined through the Constitution and exercise their power accordingly. The judiciary has the power to declare the law and constitution however only if the law is found to contravene any provision of the Constitution. The provisions mentioned in the Constitution Act of the supreme legislature for fulfilling the social democratic and republic justice to its people and all the provisions are executed through relevant executive actions. In such lines, The Constitution assembly and greater importance for upholding social justice, and they enabled it through legislations for removing economic inequalities and to provide a decent standard of living and majorly to protect the interest of weaker section. Constitution has enabled the executives to maintain policies that turn an eye to deliberately eradicate the miseries on a large segment of the population which are considered weakest among others a promising them with social, economic, and political Justice. This concept of socialism aims to end poverty, ignorance, disease, and inequality of opportunity. Reservations are one such policy which was interesting communities in the week a section of the society. This was a direct act of maintaining the equality doctrine which is brought within the meaning of article 14 of the Constitution which was directed to all legislator and executive director to eradicate discrimination in all sections. This drastic power is conferred in both employment and education within the powers of the state to be exercised in a

manner that does not conflict with any other constitutionally guaranteed rights. The provisions not only apply for employment opportunities but also it has been extended to promotions in employment to ensure equality and treat all the equals and unequal under one ground. This study is conducted to analyze the problem concerning a concept of “consequential seniority” in reservation for promotion, which was upheld in *BK. Pavitra vs Union of India, 2019*. The statement of the problem to be addressed concerns the impact of consequential seniority upon administrative efficiency and administrative seniority moral, and distinctly the backwardness of a certain community, and inadequate representation, thus a critical analysis on the significance of reservation in promotions and its impact on multiple Supreme Court *obiter dicta* to be conducted.

The concept of reservation is one of the significant parts of the Indian Constitution; it was incorporated into the Constitution with a wide scope and the main objective of uplifting the deprived backward communities. However, in some instances, multiple discrepancies were witnessed while applying the reservation policy, and numerous disagreements were made with its dire suppression of the fundamental right to equality; for which various analytical studies were conducted to use it for the fullest. This study is conducted to analyse the problem concerning a concept of “consequential seniority” in reservation for promotion, which was upheld in *BK. Pavitra vs Union of India* <sup>[1]</sup>. The statement of the problem to be addressed concerns the impact of consequential seniority upon administrative efficiency, and administrative seniority moral, and distinctively the backwardness of a certain community, and inadequate representation, thus a critical analysis on the significance of reservation in promotions and its impact on multiple Supreme Court *obiter dicta* to be conducted.

Under the pretense of legislative power, the Supreme Court rulings are being overturned brutally for years to ensure reservation policy in promotion in administrative services for the backward community. This act can be argued for good by considering the need for upliftment of backward communities or as a dooming factor constituting inequality and the dire neglect of administrative efficiency.

Sowell (2003) has remarked that 'as the country with the longest history of preferences and quotas to advance poor and disadvantaged groups, India's experience is particularly relevant to the actual consequences of such programs, as distinguished from their hopes and consequences'<sup>[2]</sup>.

George Rosen (1966) in his study stated that the scheduled castes have gained by the reservations of seats in schools, colleges, and professional and technical institutions and reservations of jobs. Further, the number of scheduled caste members in government employment has risen, though the number is still well below the proportions reserved. The scheduled castes are still, in general, in the lowest economic position when compared to any other caste group<sup>[3]</sup>.

Kusum K. Premi (1974) made a study on the role of protective discrimination in equalization through educational opportunities. The study found that marked progress has been made by the Scheduled Castes in education, as is manifest from the rise in their literacy rates, enrolment co-efficient, and the proportion of their numbers in Class I and II categories of jobs in Central and state services<sup>[4]</sup>

#### **Milestones in Reservation Policy for SC/ST in India**

The caste system is a deep-rooted tradition of Indian society; it is in existence for centuries and is one of the world's longest surviving social Hierarchies. This system is a religiously sanctioned social structure of Hindu culture, which identifies four original and endogamous groups, or castes, grouped under varnas, where the people are stratified based on their labor work. It decides the engagement and the social interactions of the people. While there have been continuous practices of caste stratification, it has found to be causing a high level of social discrimination among people for ages and rendering a high level of social imbalance, which is needed to be abolished. It is backed by the traditional concept of Karma, a belief that determines a place of the people by their deeds in a previous life as this complex order remains until death and is unchanged. Proponents of the caste system have largely failed to recognize its potential evilness spreading among the people in terms of untouchability, abuse, inhumane treatment of people, forced labor, sexual violence, etc. It has created a deep-rooted socially enforced restriction and segregation affecting a full spectrum of civil, political, economic, social, and cultural rights of the people. Indian society would be never ready to abolish this caste-based discrimination as they are consciously accepting to practice this kind of social evil which got entwined into their veins, yet it is pertinent to debate on the abolition of this system.

These hard-core inequalities led to the emergence of the tale of reservation policies alongside the birth of the Constitution post-independence. A kind of clause in India, like the caste system itself, is used to solve the environment: the caste system is considered an effective measure, where certain ugly changes can be taken off from the society which was held over for centuries. Discrimination was one such class problem which had to be restricted, as it results in

untouchability and other social problem. This disease creates a frustrating and hostile environment and is undeniable that social discrimination based on caste, creed, and religion is still one of the most inhumane and vicious practices in human society. A place to improve the status and standard of living of sectors, classes, or groups in society and education was comprehensively thought and the result was reservation policies. Legally speaking, the reservation in Indian law is a positive action that is followed by the public sector, in terms of employment and education, where the seats are reserved for a certain percentage in institutions and employment houses.

The major upsurge in terms of reservation for the SC/ST was outlined in Article 334 and Article 335 exclusively. It was embarked within the Constitution, on 26th November 1949 by overseeing the need for Reservation of seats and special illustration which the framers of the Constitution believed that the reservation is capable of eradicating the social group discrimination which will be settled around the years of development. Article 335 exclusively plays a role as an equalization mechanism by its act of allotting seats on the idea of reservation. The Article in and of itself states that the State shall take under consideration the claims of members of scheduled Castes and Scheduled Tribes to any seats in administrative positions, however, provided that appointing the aforesaid members can improve the executive efficiency. This reservation framework, however, had undergone tremendous alterations to match with the growing environment, but it continued to be a stronghold in the Indian political and legislative handle for the sake of upliftment of the backward communities.

#### **Reservations in Employment and Promotions**

India's affirmative action policy post-independence in the eradication of inequalities and combat unemployment was through Constitutional provisions. Article 16 stipulates that "all citizens shall have equal opportunities in recruiting or appointing state positions." It prohibits discrimination based on religion, race, caste, gender, origin, place of birth, place of residence, or any of them, especially discrimination in national work or employment; therefore, the constitution stipulates national priority. To ensure non-discrimination and equal opportunities in practice, Article 46 of the Public Policy Directive reveals that the state will pay special attention to promoting the educational and economic interests of the most disadvantaged segments of the population, especially recognized castes and tribes, and protect them from social injustice and various forms of exploitation.

Promotion in the field of public service was entrusted through Article 16(4) which gives the state the power to "make arrangements for the benefit of less advanced citizens to retain appointments or positions". Article 16(4), authorizes the State to do so. According to the status in favor of SC and ST, one or more position groups promoted to the service are reserved. Article 335 was also included to stipulate the appointing services and institutions related to employment affairs, to maintain the effectiveness of administrative management.

#### **Landmark Rulings of Supreme Court in Reservation in Promotion**

The first landmark issue on reservations was made in *Indra Sawhney vs Union of India*<sup>[5]</sup>, it devolved around

classifications of backward community. The Supreme Court ruled out that the backward classes under Article 16(4) cannot be identified based on economic criteria but the caste system also needs to be considered. And also issued criteria for the classification of backward communities by introducing a concept of “creamy layer”. In this case, the ceiling limit for the reservation was fixed to 50% by nullifying the carry-forward rule entrusted to the backward community to pile the reservation which was not filled in designated time as mentioned in Article 16(4B) and the reservations for promotions in government employment were denied giving major importance to administrative efficiency.

Followed by the Indra Sawhney case *Virpal Singh vs Union of India* [6] and *Ajit Singh vs the State of Punjab* [7] made a straddling ruling on catch-up rule. After reservation in promotion was constitutionally recognized, it leads to a situation where reserved category candidates, who were promoted over general class counterparts, became their senior due to earlier promotion. This difference was addressed in this case and as a result, the concept of a Catch-Up Rule was introduced for the senior general candidates who were promoted after SC/ST candidates to regain their seniority over general candidates, promoted earlier. Also in this case the Court of law made it mandatory for requisite and quantifiable data to show inadequate representation and to mandate reservation for a particular class in job promotions.

Thereafter, in the Supreme Court, a petition made in *Vinod Kumar vs Union of India* [8] contested the administrative efficiency of the promotions made through reservation. The court pointed out the amendment on relaxing the qualifying marks to promote SC/ST would not be accepted as it infringes the provision of administrative efficiency ensured in Article 335 of the Constitution.

In 2006, *Nagraj vs Union of India* [9], the Supreme Court validated and constitutionalized various amendments made concerning reservations in promotions. Alongside it made the 85<sup>th</sup> Constitutional amendment which introduced the concept of consequential seniority to promote SC/ST and introduced its mentioning in Article 16(4A). This case led to the effective involvement of Consequential seniority in promotions of SC/ST, the court upheld both Article 16(4A) consequential seniority and Article 16(4B) carry forward rule.

**Table 1:** Example for quantitative report to prove the inadequacy of representation of SC/ST. (Ratnaprabha Committee report with respect to Karnataka)

SC's	ST's
12% (Grade A)	2.70% (Grade A)
9.79% (Grade B)	2.34% (Grade B)
12.74% (Grade C)	0.04% (Grade C)
16.91% (Grade D).	2.34% (Grade D)

**Emergence of Consequential Seniority**

After the 85<sup>th</sup> amendment in 2001 following the introduction of catch-up rule for general category employers in promotion and employment through *Virpal Singh* and *Ajith Singh* case, the Parliament negated the Catch-Up Rule and introduced the rule of consequential seniority under amended Article 16(4A) to promoted SC/ST candidates. The text of Article 16 (4A) was amended such that “in matters of promotion to any class” became “in matters of

promotion, with consequential seniority to any class. This amendment along with the 77<sup>th</sup>, 81<sup>st</sup>, 82<sup>nd</sup> was challenged collectively in the *Nagraj* case, and the contentions and debates concerning the consequential seniority begun to spurt in the Court of law.

Consequential seniority refers to allowing the reserved category candidates to retain seniority over general category peers. If a reserved category candidate is promoted before a general category candidate who is senior to the reserved category candidate because of reservation in promotion, then for subsequent promotion the reserved candidate retains seniority due to this consequence. *For example*; if 2 persons A and B and both are working at level-2 in a job. Whereas A is 4 years senior to B but he belongs to a general Category and B is from the reserved category. At the time of promotion to Level-3, when the data reveal that the level-3 post does not contain any reserved category employees, then B will be promoted, while A is senior. This is due to reservation, B gets promoted first and now he becomes senior to A, and as per consequential seniority, B will remain senior to A even when A had more experience than B. The Supreme Court devolved around the point of thought while deciding the constitutionality of consequentiality rule was that to meet three compelling requirements to execute the fundamental rights and social justice to the backward communities, it aimed to demonstrate the backwardness of the SC/ST and to prove that the SC/ST is inadequately represented in relevant public employment and to maintain equality in administration.

Broadly speaking, the judicial decisions interpreting article 14 while recognizing the paramount nature of the fundamental right recognizes the need on considerations of reality to have certain limitations. It is often stated that equality before the law is guaranteed by the first part of the article recognition of exceptional and qualification on special grounds. This ground of specialization is spread over article 16 for the SC/ST Category communities is argued to be non-arbitrary as article 16 article 14 is. In the case of the *Vishwas Anna Sawant vs Municipal Corporation of Greater Bombay*, the petitioner was promotion is to do the court of law. It was an employee belonging to the backward class community and another employee was similarly placed was denied promotion it was held that discrimination was illegal. Does the legislature and the judiciary are scuffling over effecting reservation in promotion is a million-dollar question, which has been debated for a while. Under the pretense of legislative power, the Supreme Court rulings are being overturned brutally for years to ensure reservation policy in promotion in administrative services for the backward community. This act can be argued for good by considering the need for upliftment of backward communities or as a dooming factor constituting inequality and the dire neglect of administrative efficiency. The analysis would be, both the bodies are effectively functioning in executing the provisions of the Constitution in an orderly format to maintain equality and uplifting the backward classes in different ways,

Resentment of the people of special treatment to the backward communities through amendments as follows;

1. The Constitution (Seventy Seventh Amendment) Act, 1995 inserted Article 16(4A) and allowed the State to provide reservations in promotions to an SC/ST if it is found that they are not adequately represented in government services.

2. The Constitution (Eighty First Amendment) Act, 2000 adding Article 16(4B) which allowed reservations in the promotion and breached the 50% ceiling limit on regular reservations by introducing a carry-forward rule to fill the unfilled vacancies from previous years.
3. The Constitution (Eighty-Second Amendment) Act, 2000 which inserted a proviso to Article 335; exonerated the efficiency requirement in matters of promotion by relaxing the qualifying criteria and lowering evaluation standards to members of SC and STs
4. The Constitution (Eighty Fifth Amendment) Act, 2001 added "consequential seniority" for SC/STs under 16(4B); allowing the reserved category candidates to retain seniority over general category peers, irrespective of general seniority.

All of these amendments were an act of overturning the Supreme Court precedents challenging its sovereignty, and this tussle shows the confrontation of the SC is only as strong as Parliament wants it to be. The Indra Sawhney judgment was overturned by the 77<sup>th</sup> amendment, the Virpal Singh judgment was nullified by the carry-forward rule and consequential seniority rule. And the 82<sup>nd</sup> amendment collapsed the overall evaluation standards and administrative efficiency in matters of promotion. This proves positive of the first part of the hypothesis which states, "Under the pretense of legislative power, the Supreme Court rulings are being overturned brutally for years to ensure reservation policy in promotion in administrative services for the backward community".

However, to justify the second part of the hypothesis, it is argued that article 16(4) and Article 16(4A) do not confer passing fundamental right nor provide or impose any constitutional duties but it is considered and effected only as an enabling provision listing a discretionary power upon the state to consider providing reservation on circumstances in mention in those articles for the SC and ST candidates. It is the well-settled position that while making these entries in employment, this factor is considered one among the characteristic feature for upliftment but not their entirety. These reservations in the promotion are dependent only on the inadequacy of representation of members of scheduled Tribes and backward classes to ascertain their condition and when no such backwardness is being noticed these rules will be struck down simultaneously. The backward class provisions are considered a blanket provision in protecting any kind of beneficial discrimination in natures of special provision for the benefit of classes mentioned therein and importantly to combat the act of discrimination in all respects.

Whilst the rulings made by the Supreme Court which was also accepted by the legislature, is that when in terms of promotion the creamy layer in backwardness and the administrative efficiency along with an inadequate representation of a reserved category and the fundamental rights of other employers are to be met and protected. As stated in the Indra Sawhney case, the creamy layer in the backward class has to be treated on par with the forward class and is not entitled to benefits of reservation. If the creamy layer is not excluded, it amounts to discrimination and violation of article 14 and 16 in as much as equals cannot be treated unequally. And the exclusion of creamy layer will affect article 16(4) cannot be treated as equals

equal and to the backward class. Therefore, maintaining equality in employment by making reservations in promotion as an Enabling provision Administrative discretion upon the administrator to complete all reasons to be a representation of backward class and the administrative efficiency in their actions.

### Conclusion and Suggestions

The critical analysis of the hypothesis on the significance of reservation in promotions and consequential seniority concludes that both the legislature and the judiciary were attempting to strike a proper balance between Articles 14 and 16 by maintaining social justice and cause to suppress the arbitrariness. Both the parts of the hypothesis have been justified with adequate data, therefore, neither the legislature is under the pretense of legislative power over the Supreme Court rulings in brutally overturning the precedents for years to ensure reservation policy in promotion in administrative services for the backward community. And the claim concerning the problem related to the concept of "consequential seniority" in reservation for promotion which impacts upon administrative efficiency, and administrative seniority moral, are justified by the existing backwardness of a certain community, and inadequate representation. However, as the general category seniors are threatened in their position to promotion, this study suggested to relay on the principle of non-arbitrariness and proceed with the implementation of consequential seniority rule backed with adequate data of inadequate representation and exclusion of creamy layer of the backward communities.

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