



PERSONALITY TEST PROGRAMME 2019 (Current Affairs Interview Issues)

RESERVATION ISSUE

RESERVATION ISSUE (PROMOTION, EWS, LOCAL JOB QUOTA, WOMEN RESERVATION ETC.)

- The objective of reservation as envisioned by the founding fathers of the Constitution was to ensure social justice by granting special status to backward classes as they were denied equal opportunities for generations and required special assistance to catch up with the other forward castes.
- Later, reservation was extended to other backward classes (OBCs) under the recommendation of Mandal Commission. OBCs were granted reservation in education & employment, but no reservation in State Assemblies or Parliament.
- Reservation in education & employment is now being increasingly seen as the only tool available for upward social mobility, for getting good jobs and stable sources of livelihood for the youth.

Related constitutional provisions and amendments:

- **Article 15(4):** State can make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes (SC)/Schedule Tribes (STs).
- **Article 15(5):** State can make special provisions for advancement of any **socially & educationally backward** classes of citizens or for SCs/STs, in relation to their admission to **public/private** education institutions. Minority educational institutions are excluded (**added by 93rd Constitutional Amendment Act 2006**)
- **Article 16(4):** State can make any provision for the reservation in appointments in favour of **any backward class** of citizens which is **not adequately represented** in the **services under the State**.
- **Article 16 (4A):** State can make any provision for **reservation in matters of promotion** (Added by 77th Constitutional Amendment Act (CAA) 1995), with consequential seniority (Added by 85th Constitutional Amendment Act 2001) in favour of the **Scheduled Castes & the Scheduled Tribes**, which are not adequately represented.
- **Article 38:** State must work to eliminate inequalities in status, facilities and opportunities amongst groups of people.
- **Article 46:** State to promote educational and economic interests of weaker sections, particularly SC/ST, and protect them from social injustice and exploitation.
- **Article 334** mentions period of reservation (i.e. 70 years) for SC/ST and representation of Anglo-Indians in Lok Sabha, State Legislative Assemblies, Panchayats and Municipalities.
- **Article 335:** As a safeguard against unreasonable or extravagant reservation, consideration to maintenance of efficiency of administration must be given, while making appointments to Central and State Government posts.
- **82nd Constitutional Amendment Act** provides for relaxation in qualifying marks/standards of evaluation for reservations in matter of appointment/promotions of members of Schedule Castes (SCs)/Schedule Tribes (STs)
- **Art 340** directs central govt to **investigate** the conditions of socially and educationally backward classes within the territory of India and take appropriate measures for their advancement
- **Art 341/342** prescribes procedure in matter of specification of SCs/STs communities in a particular state/Union Territory (UT) can be declared as "Scheduled Caste/Tribe" by the President through an initial public notification after consultation with state government. Parliamentary law can include/exclude any community from the list of Scheduled Tribes.

Reservations in promotions

Background

- In **Indra Sawhney & Others v. Union of India, 1992**, SC held that reservation policy cannot be extended to promotions. However, 77th and 85th CAA allowed state to make any law regarding reservation in promotion for SCs/STs and according “consequential seniority” to SC/ST promotees.
- In **M. Nagaraj v. Union of India Case 2006**, SC validated Govt’s decision to extend reservation in promotion for SCs/STs, but directed the state to provide:
 - Quantifiable data on the backwardness of SCs/STs
 - Facts about their inadequate representation
 - Justification in favour of maintaining overall administrative efficiency
- In **Jarnail Singh & Ors v. Lachhmi Narain Gupta & Ors (2018)**, SC allowed for grant of quota in promotions in the government jobs to SCs and STs without the need to “collect quantifiable data” to demonstrate their backwardness.
 - SC asserted that requirement to collect quantifiable data showing backwardness of SCs/STs was “contrary” to the 9-judge bench Indra Sawhney judgement, as it introduced sort of a ‘creamy layer’ criterion corresponding to SCs/STs.
 - However, it must satisfy criteria of inadequate representation and maintenance of administrative efficiency.
 - It has asked the government to examine the possibility of introducing creamy layer for Scheduled Castes (SCs) and Scheduled Tribes (STs).

Arguments against reservation in promotion

- **Not a fundamental right:** Provisions under articles 16(4), 16 (4A) and 16 (4B) of the Constitution are only enabling provisions, and not a fundamental right.
- **Doesn’t ensure end of social discrimination:** Gaining employment and position does not ensure the end of social discrimination and, hence, should not be used as a single yardstick for calculating backwardness.
- **Hurts efficiency of administration** particularly in highly technical domains such as super-specialization in medicine, nuclear research, space program etc.
- **Cornering of Benefits:** Critics point out that like the reservation aspect, even the promotions will be cornered by a select few castes and tribes.
- **Already adequate reservation:** There should not be quota in promotions for higher posts as backwardness indicators of SC/ST employees are effectively mitigated once they join government service.

Arguments in favour of reservation in promotion

- **False notion of “efficiency”**
 - The ‘loss in efficiency’ argument is largely the result of an extremely conservative understanding of ‘merit’.
 - No person can be promoted unless they obtain a good rating in their annual confidential report which is currently the measure of efficiency.
- **Skewed SC/ST representation at senior levels:** Currently, representation of SCs/STs, recruited at lower levels of the services & aiming to reach the higher echelons, is highly skewed due to prejudices. E.g. only 4 SC/ST officers of secretary rank in the government in 2017, while around 40% of STs are in ‘Group D’ services.
- **Large number of vacant posts:** Post-Nagraj case, reservation in promotions was struck down on the grounds that there was no quantifiable data on ‘backwardness’, which itself was not defined.

Way forward

- Talks should be conducted with all stakeholders before moving ahead on the contentious issue of introducing ‘creamy layer’ criteria within SC/ST reservations.
- Constitution envisages not just formal equality of opportunity but also achievement of substantive equality. Currently, there is ambiguity in promotion process. Thus, there is a need for a new, comprehensive law to be enacted.

Reservation for Economically Weaker Sections

124th Constitution Amendment Bill provides 10% reservation in government jobs and educational institutions to the economically weaker sections (EWS) among those who are not covered under any reservation plan.

YOUR SEATS ARE RESERVED IF

- Your annual household income is below **RS 8 LAKHS**
- You own agricultural land below **5 ACRES**
- Your house is below **1,000 SQUARE FEET**
- Own residential land not exceeding
 - **100 yards** IN MUNICIPAL AREA
 - **200 yards** IN NON-MUNICIPAL AREA

Key features of the amendment

- The Act amends **Article 15** to enable the government to take special measures (not limited to reservations) for the advancement of “economically weaker sections” (EWS).
- Up to 10% of seats may be reserved for such sections for admission in educational institutions. Such reservation will not apply to minority educational institutions.
- The amendment adds **Article 16(6)** which permits the government to reserve up to **10% of all posts** for the “**economically weaker sections**” of citizens.
- The reservation of up to 10% for the EWS will be in addition to the existing reservation cap of 50% reservation for SC, ST and OBCs.
- The central government will notify the “economically weaker sections” of citizens on the basis of family income and other indicators of economic disadvantage.
- Constitutional recognition to **Economically Weaker Section (EWS)** for the very first time, as vulnerable section & as a basis of affirmative action programme. It is a departure from traditional centrality of caste in deciding affirmative action.

Arguments in favour of reservation based on economic status

- **Need for new deprivation assessment criteria:** In **Ram Singh v. Union of India (2015)**, SC asserted that social deficiencies may exist beyond caste (e.g. economic status / gender identity as in transgenders). Hence, there is a need to evolve new yardsticks to move away from caste-centric definition of backwardness, so that the list remains dynamic and most distressed can get benefit of affirmative action.
- **Growing economic disparity** as evident from agrarian crisis (due to low productivity & wages) & demands for reservation by dominant peasant castes.
- **Class-Caste Dichotomy:** Class (created by economic conditions) and identity (created by birth identity caste) politics have been in conflict increasingly in recent times, as benefits from affirmative action and class movements have been cornered by middle class and elites. This has created a sense of dissatisfaction amongst communities with similar or poorer economic status but excluded from caste-based reservation.

Related Information

In recent years, **dominant castes**, which were historically rich, landowning, politically influential communities (Marathas in Maharashtra, Patidars in Gujarat, Jats in Haryana, Kapus in Andhra Pradesh), are demanding quotas in jobs and higher education.

Reasons of demand for reservation by dominant castes:

- **Structural changes in the economy:** Land is no longer a source of power that it used to be with increasing urbanization, importance of knowledge/skills and greater premium attached to English education.
- **Agrarian distress:** Traditionally agricultural castes which are socially dominant don't see future in agriculture, driven by low wages driven by poor productivity and extensive fragmentation of farm land (Jats/Patidars/Marathas)
- **Wage Crisis:** Income in private sector is considerably low for worker and labour level jobs, in comparison Class C & D level Government jobs for people with equivalent qualification, leading to a rush for government jobs.
 - According to Labour Bureau in 2011-12, the average daily earnings of workers was ₹249 and regular employees was ₹388 in private sector in comparison to ₹679 and ₹945 in public sector correspondingly.
 - Payout is further increased after the implementation of 7th Central Pay Commission (CPC)
- **Perception of loss of power:** There is feeling among powerful farming communities that real economic power lies in the hands of the big corporations, and the state acts in their interest. So, these communities feel their power slipping away.
- **Relative deprivation:** When a community feels other communities in their region (which are economically and socially in similar conditions) are getting the benefits of reservation, they also claim for the same status.

Arguments against extending reservations on economic basis

- **Against equality norm:** To balance the equality of opportunity of backward classes ‘against’ the right to equality of everyone else, a cap of 50% was put on the reserved seats. When the quota exceeds 50% limit, it breaches the equality norm.
- **No under-representation:** Upper caste is adequately represented in public employment. It is not clear if the government has quantifiable data to show that people from lower income groups are under- represented in its service.
- **Problem with the ceiling:** By fixing income ceiling for eligibility at ₹8 lakh a year — same as ‘creamy layer’ limit above which OBC candidates become ineligible for reservations — a parity has been created between socially & economically backward classes.
- **Challenges in the identification of beneficiaries:** In a country where taxable population is still very low due to misrepresentation of income, implementing economic eligibility criteria would be a bureaucratic nightmare.

- **Pandora's box' of demands:** There may be demand from sections of the SCs/STs and OBCs to introduce similar sub-categorization, based on economic criteria, within their respective quotas.
- **Anti-Merit:** In common perception, reservation has also become synonymous with anti-merit, which might get further ingrained in public psyche post EWS reservation.
- **Tool of populism:** Offering reservations has increasingly become tool for political gains in politics. This affects their credibility as a tool for social justice.

Way Forward

- **Independent and transparent verification:** Based on the affidavits furnished by the candidates, independent, transparent and non-intrusive verification methods have to be devised so that reservation provisions cannot be misused easily.
- The logic of providing reservation to economically backward people can further be carefully extended to **exclude creamy layers among SC/ST groups.**
- **Improving job creation in private sector:** The only way out of the quota quagmire is to create an enabling environment for the formalization and creation of more and better jobs in the private sector to cater to a more aspirational India.

Women's Reservation

- **India ranks 149 of 193** countries in women's representation according to the **Inter-Parliamentary Union 2019** ranking behind not just countries like UK, US and France but also neighbours like Pakistan, China, Nepal and Bangladesh.
- The ratio of women representatives in Lok Sabha stands at 14.3% (78 members), while the world average is around 25%.
- While female representation is low in the Lok Sabha, representation in state assemblies is even lower. The national average of women in state assemblies and state councils was 9% and 5%, respectively. Mizoram, Nagaland & Puducherry had no elected women representatives in their assemblies.
- At the Panchayat level, 1/3rd seats are reserved for women and also 1/3rd of seats for the SC and ST women within the SC and ST quotas.
- According to the Economic Survey 2018, prevailing cultural attitudes regarding gender roles, domestic responsibilities, female illiteracy, lack of confidence or finances and the threat of violence, are some of the **reasons for low women representation in India.**

Women's Reservation Bill (108th Constitutional Amendment Bill)

- 108th Constitutional Amendment Bill, 2008 seeks to reserve 1/3rd of all seats for women in the Lok Sabha and the state legislative assemblies on a rotation basis. 1/3rd of total seats reserved for SCs/STs will be reserved for women of those groups.
- Reservation of seats for women shall cease to exist 15 years after the commencement of this Amendment Act.

Arguments in favour of the Bill

- **Empowerment:** Several studies show the positive effect of reservation on empowerment of women and on allocation of resources on gender specific issues.
- **Greater Economic Growth:** A paper by United Nations University World Institute for Development Economics Research (UNU-WIDER) in 2018 studied the impact of women politicians on economic performance in state legislative assemblies. It examined data for 4,265 state assembly constituencies between 1992–2012 using night luminosity as a measure of economic performance.
 - The paper estimated women legislators raise luminosity growth in their constituencies by about 15% points per annum more than male legislators. They were also found to be far more effective at completing road projects and hence creating infrastructure for growth.

Arguments against it

- Reserving a constituency for a woman would translate to a loss of opportunity for the men who could have been better or more qualified candidates. This could also result in disregarding the choice of the voter.
- It might perpetuate the unequal status of women since they would not be perceived to be competing on merit. It is also contended that reservation policy diverts attention from the larger electoral reforms such as decriminalisation of politics & inner party democracy.
- Rotation of reserved constituencies in every election may reduce the incentive for an MP to work for his constituency as he may be ineligible to seek re-election from that constituency.
- It is argued that reservation can at best be 'palliative' and no decisive transformation can take place unless such a measure is accompanied by structural changes in the nation's productive relations.

Conclusion

- There is an absence of political will to introduce women's reservation, since the Bill, first introduced in 1996, is yet to see the light of the day. Both national parties, Congress and BJP, who have promised passage of the bill in their manifesto in 2014 and 2019, are not showing due commitment.
- However, regional parties like Odisha's BJD & West Bengal's TMC have given 33% & 41% representation to women candidates respectively in last general elections.
- Some experts have suggested alternate methods such as **reservation in political parties** and **dual member constituencies**.

Table 2: Pros and cons of reservation in political parties and dual member constituencies

	Advantages	Disadvantages
Political parties	<ul style="list-style-type: none">▪ Provide more democratic choice to voters▪ Allow more flexibility to parties to choose candidates and constituencies depending on local political and social factors▪ Can nominate women from minority communities in areas where this will be an electoral advantage▪ Allow flexibility in the number of women in Parliament	<ul style="list-style-type: none">▪ No guarantee that a significant number of women would get elected▪ Political parties may assign women candidates to constituencies where they are weak▪ Might lead to resentment if a woman is accommodated to the disadvantage of a stronger male candidate
Dual- member constituencies	<ul style="list-style-type: none">▪ Does not decrease the democratic choice for voters▪ Does not discriminate against male candidates▪ Might make it easier for members to nurture constituencies whose average size is about 2 million people	<ul style="list-style-type: none">▪ Sitting members may have to share their political base▪ Women may become secondary persons or add-ons▪ To fulfil criteria of 33% women, half of the seats need to be dual constituencies. This would increase the total number of MPs by 50%, which could make deliberation in Parliament more difficult

Demand For Local Job Quotas

Background

- There has been growing demand by the people in the states to have local jobs in their states itself, particularly in the Southern and the Eastern states. The demand of local reservation has emerged as a **major poll issue**.
- In this direction, Andhra Pradesh assembly passed Andhra Pradesh Employment of Local Candidates in Industries/Factories Act, 2019, under which 75% of private jobs across all factories, joint ventures and industries in the state, including those taken up under public-private partnership mode, will be reserved for local Andhra people.
- Similar demands are being raised in other states like Karnataka, Maharashtra, Gujarat, Maharashtra etc.
- Recently, Madhya Pradesh (MP) also announced that it would bring in legislation to provide 70% reservation in private jobs for locals.

Analysis of the move

- **May not pass the legal scrutiny** as Article 16 does not empower the state government, but the Parliament, to provide for such reservation.
- **Politically motivated move which doesn't address the major roadblocks** in the Ease of Doing Business (EoDB) and industrial infrastructure.
- **Dangerous for unity of the country** as it could lead to a Pandora box where other states start implementing such policies, restricting the mobility of people across the country.
- **Mobility of labour force** is not only **important** for the industrialized states to maintain their comparative advantage by accessing cheap and requisitely skilled labour, but also to reduce **inter-state disparity** in income through **remittances**.
- **Difficult to attract investments under such constraints** which in turn would affect job creation e.g. Andhra Pradesh, already struggling to attract investments after bifurcation, may further alienate the potential investors.
- **Difficult to ascertain 'locals'** who are domiciled in the state of Andhra Pradesh without elaborate requirements on 'domicile' status.
- **Previous such efforts were not successful** in states like Maharashtra and Karnataka, where it wasn't enforced.

Way Forward

- Tackle the issues of unemployment by **promoting greater industrialization and equitable regional development**.
- **Promote inclusive development** like in Germany, where every village has a factory providing jobs to the local people. However, there should be an overarching framework at the Union level to promote such development.
- Focus on **making the youth of a state employable** with proper investments in education, health and skill development.
- Promote **labour intensive industries** to make use of the labour surplus in the country.
- Need to promote entrepreneurship where 'job seekers' themselves become 'job creators'. State can further strengthen incentives to the more deprived.

Summary

The Constitutional objective of affirmative action is to ensure social justice by giving special status to backward castes as they were denied equal opportunities for generations and required special assistance to catch up with the other forward castes.

Reservations in promotions

Recently, a five-judge Constitution bench allowed for grant of quota for promotions in the government jobs to SCs and STs without the need to "collect quantifiable data".

In **M. Nagaraj vs. Union of India Case 2006**, SC validated state's decision to extend reservation in promotion for SCs/STs, but gave direction that the state should provide proof on the following three parameters to it:

- **Empirical Data on Backwardness** of the class benefitting from the reservation.
- **Empirical Data on Inadequate Representation** in the position/service for which reservation in promotion is to be granted.
- **Impact on administrative efficiency**

Arguments against Reservation in promotion	Arguments in favour
<ul style="list-style-type: none"> • Not a fundamental right • Gaining employment does not ensure the end of social discrimination • Hurts efficiency of administration • Already adequate reservation 	<ul style="list-style-type: none"> • False notion of "efficiency" • Skewed SC/ST representation at senior levels • Historical disadvantage

Reservation for economically weaker sections

The Constitution (103rd Amendment) Act, 2019 (124th Constitution Amendment Bill) provides 10% reservation in government jobs and educational institutions to the economically weaker sections (EWS) among those who are not covered under any reservation plan.

Arguments in favour of reservation based on economic status	Arguments against extending reservations on economic basis
<ul style="list-style-type: none"> • Need for new deprivation assessment criteria • Social deficiencies may exist beyond the concept of caste (e.g. economic status / gender identity as in transgenders). • Increasing dissatisfaction among various sections. 	<ul style="list-style-type: none"> • Against equality norm • 50% ceiling is a constitutional requirement without which the structure of equality of opportunity would collapse. • No under-representation of upper caste • Definition of EWS • Challenges in the identification of beneficiaries • Pandora's box' of demands • Tool of populism

Women's Reservation

Percentage of women representatives in Lok Sabha stands at 14.3%, much below the world average of around 25%. According to the Economic Survey 2018, prevailing cultural attitudes regarding gender roles, domestic responsibilities, female illiteracy, lack of confidence or control over finances and the threat of violence, are some of the reasons for low women representation in India. **Women's Reservation Bill (108th Constitutional Amendment Bill)** seeks to reserve 1/3rd of all seats for women in the Lok Sabha and the state legislative assemblies, as well as 1/3rd of the seats among total reserved seats for SCs/STs.

Arguments in favour of the Bill	Arguments against it
<ul style="list-style-type: none"> • Reservation in Panchayats has shown positive effect on empowerment of women and on allocation of resources. • Spur greater economic growth and infrastructure development 	<ul style="list-style-type: none"> • Reduces the incentive for an MP to work for his constituency • Only 'palliative', if not accompanied by attitudinal changes and changes in socio-economic gender relations • Might affect the efficiency and working of the parliament • Might generate conflicts and tensions due to demand for sub-quotas

Demand for local job quotas

Recently, Andhra Pradesh became the first state in the country to offer 75% reservation to locals in private jobs. Similar demands are being raised in other states like Karnataka, Maharashtra, Gujarat, Maharashtra etc.

Reasons behind demand for local jobs

- Agrarian Distress
- Lack of jobs
- Displacement of landowners
- Lack of participation of all sections in the workforce
- Perception that Central devolution is insufficient

Analysis of the move

- May not pass the legal scrutiny and a politically motivated move
- Dangerous for unity of the country
- Concerns for the Industry
- Difficult to attract investments
- Lack of details
- Previous such efforts were not successful

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