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SUBSTANTIVE EQUALITY: ON SC/ST GOVT. STAFF PROMOTIONS

Relevant for: Developmental Issues | Topic: Rights & Welfare of STs, SCs, and OBCs - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The **Supreme Court verdict upholding a Karnataka law** to preserve the consequential seniority of Scheduled Caste/Scheduled Tribe candidates promoted on the basis of reservation is notable for being the first instance of quantifiable data being used to justify reservation. After a similar 2002 law was struck down on the ground that there was no data, as required by the judgment in *Nagaraj* (2006), the Karnataka government appointed a committee to collect data on the "backwardness" of SC/ST communities, the inadequacy of their representation in the services and the overall impact of reservation on the efficiency of the administration — parameters laid down in the 2006 verdict as constitutional limitations on the power to extend reservation in employment. Based on the report, the State enacted a fresh law, which has now been upheld on the ground that it is compliant with the *Nagaraj* formulation, as well as the clarification found in *Jarnail Singh* (2018). A key principle in this decision is that where reservation for SC/ST candidates is concerned, there is no need to demonstrate the 'backwardness' of the community. The other pre-requisites of a valid system — quantifiable data on the 'inadequacy of representation' for classes of people identified for reservation, and an assessment of the impact of such quota on the "efficiency of administration" — remain valid. Justice D.Y. Chandrachud's judgment applies the rule emerging from *Jarnail Singh*, which decided that *Nagaraj* did not require reconsideration. At the same time, it held that *Nagaraj* was not right in insisting on data to justify the 'backwardness' of SC/ST communities, as it contradicted a nine-judge Bench decision in *Indra Sawhney* (1992).

The judgment places in perspective the historical and social justification for according reservation, rejecting the argument that quotas, by themselves, affect administrative "efficiency". It says merit lies not only in performance but also in achieving goals such as promotion of equality, and that India's transformative Constitution envisages not just a formal equality of opportunity but the achievement of substantive equality. It accepts the subjective satisfaction of the government in deciding the adequacy of representation, subject to the norm that there should be relevant material before it. One must also recognise the constant tension between legislative intent and judicial interpretation. Most judgments on affirmative action indicate that the courts are laying down constitutional limitations, lest the equality norm, a basic feature of the Constitution, be given the go-by. It is welcome that the backwardness of the SCs and STs no more needs to be demonstrated. Policy-makers should heed the appeal contained in the judgment: there is no antithesis between the concept of efficiency and the inclusion of diverse sections of society in the administration. While data on representation may be a requirement, the idea that reservation has an adverse effect on administration must be rejected.

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