

## **Quadrant II - Notes**

**Paper Code: CON0115/CON0413**

**Module Name: Equality of Opportunity: Reservations of Posts for Backward Classes; 77th and 85th Amendment Acts**

**Module No: 11**

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### **The scheme of Art. 16**

- Article 16(1) – Equality of opportunity
- Article 16 (2) – Right against discrimination on specified grounds
- Article 16 (3) – Requirement as to residence is permissible
- Article 16 (4) – reservation in favour of backward classes
- Article 16(4-A) – Reservation in promotion
- Article 16(4-B) – carry forward of unfilled reserved seats
- Article 16(5) – Office in connection with religious affairs, religion a permissible qualification

### **Art 16(1)**

- Technical qualifications and standards may be prescribed wherever necessary – Sukhnandan Thakur v. State of Bihar AIR 1957 Pat 617
- So long as an applicant, along with others, has been given his chance, it cannot be said that he did not have equal opportunity along with others, who may have been selected in preference to him – High Court of Calcutta v. Amal Kumar Roy AIR 1962 SC 1704
- Equality of opportunity does not prohibit the prescription of compulsory retirement – P. Radhakrishna Naidu v. State of A.P AIR 1977 SC 854

### **Article 16(2)**

- The scope of Article 16(1) is wider than Article 16(2), because discrimination on grounds other than those mentioned in clause (2) can be tested under clause (1) - Sukhnandan Thakur v. State of Bihar AIR 1957 Pat 617

### **Article 16(3)**

- Parliament passed the Public Employment (Requirement as to Residence) Act, 1957 in pursuance of Art. 16(3). The exceptions made under this law were only for a period of 15 years and has expired thereafter.

### **Article 16(4)**

- State of Bihar v. Bal Mukund Shah AIR 2000 SC 1296  
Art. 16(4) is an enabling provision. It covers judicial services also. But, while providing reservation in judicial posts, the requirement of maintenance of efficiency of service under Art. 335 must be taken into account.
- Art.16(4) is not an exception to Art. 16(1). Rather, it is a facet of equality of opportunity in matters of employment. (Held in *Indra Sawhney* and affirmed in *K. Nagaraj v. Union of India* AIR 2007 SC 71)

### **Indra Sawhney v. Union of India**

- Reservations for SC, ST, OBC are vertical and reservations like women , disabled would be horizontal
- Reservations are allowed only at the entry level so no reservations in case of promotions
- Reservations can be given by executive order
- Reservations could be made under Art. 16 (1)
- Article 16(4) is not an exception but only an instance of classification
- No reservations for EBC
- Backwardness under 16(4) is not same as 15(4).
- Backwardness under 16(4) is only social backwardness
- Creamy layer needs to be removed from the per view of reservations
- Total reservations cannot exceed 50% except in an extraordinary situations
- Reservations for certain post are not advisable .
  - Defence services including all technical posts
  - All technical posts in Research and development including atomic energy and space and production of defence quipment
  - Teaching posts of Professors and above
  - Posts in super specialities in Medicine and engineering and other scientific technical subjecjects
  - Posts of pilot and co-pilot

Constitution Amendment Act – Number & Year	Change	The judgement sought to be nullified
77 <sup>th</sup> , 1995	Added Article 16(4A) Reservation in promotion For SC and ST	Indra Sawhney v UOI (Mandal commission case) No reservation in promotion
85 <sup>th</sup> , 2001	Added the words, “with consequential seniority” in Article 16(4A)	
81 <sup>st</sup> , 2000	Added Article 16(4B)  Carry forward Rule – allowed unfilled reserved seats to be carried forwards beyond the 50% ceiling of that year	R.K.Sabharwal v. State of Punjab)  Carry forward vacancies cannot be filled exceeding 50% of the posts
82 <sup>nd</sup> , 2000	Added proviso to Article 335, allowing reservation in promotion to SC & ST without considering efficiency aspect	Indra Sawhney and other cases that emphasized the importance of maintaining efficiency in administration