Religion-based' reservation in India

Why in news?

India is debating fundamental constitutional questions around reservation during Lok Sabha elections 2024.

Why the Indian Constitution says on religion-based reservation?

- **Affirmative action**- The Indian Constitution provides for affirmative action measures such as reservation to address historical injustices and inequalities.
- **Articles 16(4)-** It enables the state to make any provision for reservation in favour of any backward class of citizens which is not adequately represented in the services under the state".
- **1st Amendment Act, 1951-** It inserted Article 15(4), which empowered the state to make "any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes".
- **Religion based reservation**- The reservation based solely on religion is prohibited by Article 15, which prohibits discrimination on grounds of religion, caste, sex, race, or place of birth.
- **Constitutional provisions-** The term "only" in Articles 15 and 16 implies that if a group is socially and educationally backward, it is entitled to special provisions.
- **Muslim reservations**- Some Muslim castes received reservations because they were part of the backward class, not solely because they were Muslims.
- **Mandal commission, 1979**- It identified various socially and educationally backward classes, including certain Muslim castes, and recommended their inclusion in the OBC category. This inclusion was based on social and economic criteria rather than solely on religious identity.
- **Indra Sawhney case, 1992**- The Supreme Court ruled that any social group meeting the criteria for backwardness should be treated as a backward class, regardless of their specific identity.

What are the state level initiatives that included special provisions for Muslims?

- **Kerala-** Muslims, who constituted 22% of the population, were included within the OBCs.

  The concept of religion-based reservation was initially introduced in 1936 in the Travancore-Cochin state.

- **Karnataka-** The 3rd Backward Classes Commission of the State headed by Justice O Chinnappa Reddy (1990) found that Muslims fulfilled the requirements for being

considered among the backward classes.

- **Tamil Nadu**- Based on the recommendations of the 2nd Backward Classes Commission of the State headed by J A Ambasankar, the State provided within the 30% OBC quota, a sub-category of Muslims with 3.5% reservation in 2007, this did not include upper-caste Muslims.
- **Andhra Pradesh-** In 1994, the question of Muslim reservation was referred to the Andhra Pradesh Backward Classes Commission.By 2004, based on a report highlighting the backwardness of Muslims, the government provided a 5% reservation.
- **Judicial intervention** - The High Court struck down the reservation due to a lack of mandatory consultation with the Andhra Pradesh Commission for Backward Classes and absence of data for determining backwardness.
- **M R Balaji vs State of Mysore, 1962-** The High court referred to this case and stressed that social backwardness should not solely rely on caste considerations and acknowledged that the Muslim community as a whole could be socially backward in certain states.
- However, the court affirmed that reservations for Muslims do not conflict with the secular nature of the Constitution.

The Supreme Court has recognized that Muslims, like other religious groups, can be socially backward and thus eligible for reservations under Articles 15(4) and 16(4).

- In 2007, a law was enacted giving reservation to only 14 Muslim castes with occupational similarities to Hindu castes already enjoying reservation.
- This law was also struck down, and the Supreme Court's final decision on its constitutionality is pending.
- **Telangana-** After the bifurcation in 2014, the Telangana government proposed a 12% reservation for OBC Muslims based on the G Sudhir Commission's findings with the aim to address the educational and economic disparities faced by Muslims compared to other communities.
- The proposal exceeded the 50% reservation cap set by the Supreme Court and was referred to the central government for inclusion in the Ninth Schedule. However, the central government did not bring the proposal to Parliament.
- **Judiciary stand**- Some of these reservation policies have faced legal challenges, particularly regarding the criteria used for determining backwardness and the extent of reservation.
- Courts have emphasized the importance of ensuring that reservation policies are based on objective criteria and do not violate the constitutional principles of equality and non-discrimination.
- **SC/ST reservation**- The reservation for Muslims is intersected with the reservation for SCs and STs but the reservation for SCs and STs is based on historical disadvantage and social exclusion, rather than religious identity.

What are the Centre's intervention on special provisions for Muslims?

- **Justice Rajinder Sachar Committee, 2006**- It found that the Muslim community

was almost as backward as Scheduled Castes (SCs) and Scheduled Tribes (STs), and more backward than non-Muslim Other Backward Classes (OBCs).

- **Justice Ranganath Misra Committee, 2007-** It suggested a 15% reservation for minorities, with 10% specifically for Muslims.
- **Executive Order, 2012**- The government issued an order providing 4.5% reservation for minorities within the existing 27% OBC quota.
- **Presidential order, 1950**- It specified that only Hindus could be included in the SC list, however Sikhs were included within SCs in 1956, and Buddhists in 1990.

Article 341 of the Constitution allows the President to specify Scheduled Castes (SCs) for each state or union territory, it also emphasizes that only Hindus are eligible for inclusion within SCs.

What lies ahead?

- While Sikhs and Buddhists were included within SCs, Muslims and Christians remain excluded.
- This exclusion raises questions about whether such reservations are based on religion, given the religious distinctions in eligibility criteria.

Reference

Indian Express-Explained Muslim quota question

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