



Claim of Reservation for Social Justice: An Enabling provision not Fundamental Right

Prof. (Dr.) Pallavi Gupta

Professor & Principal,

JIMS Engineering Management Technical campus,

Greater Noida

Abstract

Philosophy of Reservation is an enabling provision. In India concept of reservation in employment was introduced by State as an instrument of social engineering to make egalitarian society. Reservation has been part of politics during the regime of various governments of India. it varies from state, group and communities wise. Initially reservation was provided almost in every government sector for employment at initial level to the category of Scheduled Cast and Scheduled Tribe only but gradually reservation was provided in promotions level and to the other backward classes also. Reservation is provided in education sector also. Researcher shall research whether State is under obligation to provide reservation in direct employment or promotion. Can a candidate of schedule casts and schedule tribes claim reservation in the post of promotion as fundamental right? This research paper is a case study with reference to reservation in employment at promotion level in the state of Uttarakhand.

Keywords: Philosophy of Reservation, Reservation under Constitution, SCs, STs, Socially and Educationally Backward Classes (OBCs)

1. Introduction

India is regarded as a model of pluralistic society, which is reflected in its cultural pluralism of various religions, castes, languages and regions. Its plurality is visible in the four-fold Varna system (Brahmin, Kshatriya Vaishya and Shudra) and about 5,000 castes and sub-castes. There are four major caste groups such as the Scheduled Castes (SCs: 16.73%), the Scheduled Tribes (STs: 7.95%), Other Backward Classes (OBCs: estimated to be 52%) and the rest regarded as upper castes or Forward Classes called General category (estimated 23%).

In India, social, educational and economic inequalities have always existed. Early Vedic society was a casteless and classless society. But with time, Caste system came. And the Scheduled Castes, Scheduled Tribes and Other Backward Class (broadly known as deprived and downtrodden classes) represent those social groups, suffered through the ages due to caste prejudices, economic inequality, educational backwardness and lagging behind in the field of educational and economic development.

In order to remove the current social, educational and economic disparities caused by societal discrimination in the past, reservation policy is inevitable and justified for deprived person. Therefore, the Constitution of India authorize the state to adopt such affirmative action in the form of reservation, in order to better the situation of backward classes and bring equality for every citizen. In the past, there had been denial of access to government for the backward classes of citizens considering their inability to get positions in open selections based on merit. It is, therefore opens to the government to reserve a certain number of seats in places of learning and public services in favour of the Scheduled Castes and the Scheduled Tribes and now for Other Backward classes also, to the exclusion of all others, irrespective of merit.

Instrument of Reservation was introduced to conserve and defend the concept of equality in the society, having aim to maintain harmony between the classes, groups, communities of different status. In India, the constitutional makers want to give reservation under the constitution, but after final debate it was left to parliament to make special provision for the enhancement of the backward classes of citizen including SCs and STs.

After considering the journey of reservation it can be said that Reservation had been a hot bowl since India got its Independence. Reservation is a beam of hope to the backward people to raise themselves as a respected member of the society. They wanted to get rid of stigma of being inferior in the eye of the society. Babasaheb Bhimrao Ambedkar chairman of drafting committee of Constitution realized that Indian caste system is not appropriate but he was not in favour of reservation. On the other side framers of the constitution of India were aware about the fact that the abolition of socio-economic difference in the society was obligatory for egalitarian of the society, but it was left to the future legislator. They guaranteed that the constitution of India provides inter alia protection and enough protection for elevating the disadvantaged, socially & educationally backwards classes of the society. Reservation policy was brought as tool of social engineering under several provisions (Article (16), 16(4A), 16(4B), 16(5) and proviso to article 335) of the constitution of India. These articles enable the State to make provisions to introduce reservation in employment and education as a tool of social engineering. On the one side Article 16(4) of the constitution empowered the State to formulate provisions of the reservation for the backward class of citizens in the initial stage of appointments or posts if State thinks that representation of backward class/ classes is not adequate in the government services. On the other side Article 16(4A) empowers State to make provision for reservation in the favour of the scheduled castes and the scheduled tribes to any class of post of promotion in the services if State thinks, their representation is not adequate in the State services. Article 335 speaks about concession, relaxation. In favour of the SCs and the STs, for Promotion in State services, Government can relax qualifying marks of any examination or lower the standards of evaluation. Further constitution provides that for appointment in the services of the state, on the one side claims of the backward classes (SCs and STs) shall be considered but Government has to keep in mind the fact that by providing reservation efficiency of administration shall not be affected.

For the purpose of reservation, broadly *other backward class* means socially & economically backward classes of the citizens. Further Scheduled casts and scheduled tribes are defined in article 366 (24) & (25). *Scheduled Castes* means those castes, races or tribes or parts of groups etc which are deemed to be Scheduled Castes under Article 341 and *Scheduled Tribes* means such tribes or tribal communities etc which are deemed to be Scheduled Tribes under Article 342 for the purpose of the Constitution of India. Enabling Provisions with reference to reservation means it empowers the States to make provision under the law. It is the discretion of State to provide reservation in government services if the representation of particular class of society in services is inadequate.

Writ Petition means constitutional remedy under article 32 and 226 of the Constitution of India available to

aggrieved person to access to court against the State action for breach of their fundamental rights. *Review Petition* means remedy available under article 137 of the constitution of India, section 114 and order 47 of the Civil Procedure Code, 1908 to the aggrieved person against an order or judgment to the same court. People take recourse to review petition, where appeal is not filed. *Special Leave Petition* means remedy available under article 136 of the Constitution of India to aggrieved person to access to court for justice with special permission of Supreme Court, if High Court refuses to grant certificate for appeal.

To enforce the spirit of constitution for social justice and to make egalitarian society various legislation are enacted by parliament regarding reservation. On the line of central government, State legislature also enacted law to provide reservation to the backward classes of citizen, STs and SCs. This research is based on doctrinal based research and presents an insight into the question Whether reservation in services as well as in education should be forever and claiming reservation in service is a fundamental right or just as enabling provision.

2. History of Reservation System in India

To understand the philosophy of reservation it can be said that in India, roots of reservation system had prevailed since British rule. In 1882 for uplift of the primary education Hunter Education Commission recommended that: i. special care should extend to the primary education, ii. Literary and vocational training should be in secondary education, iii. Adequate facilities should be available for the female education in the country. This task should be achieved by the Local government. Social Reformer of that time *Mahatama Jyotiba Phule* had demanded fair *reservation* in government employment and free of charge & compulsory education for everyone. In 1902 *Government Notified scheme which introduced reservation* for the improvement and safeguards of the backward classes of the society. A circular had issued and 50% reservation was offered for the backward classes in the State administration. In 1909 Government had introduced separate electorate system for Muslims in India and continued to be adopted under the 1919 Act. It was also a kind of political reservation on the name of equality.

After independence in *State of Madras v. Champakam Dorairajan*¹ [1951] case is the first case to discuss the instrument of reservation for social engineering. It was held that any Government scheme offering cast basis reservation in public sector (Govt. services) is unconstitutional because it is against the provisions of Article 29(2) and Article 16(2) of the constitution. This judgment show the way to the first Constitutional

¹ State of Madras v. Champakam Dorairajan AIR 1951 SC 226

amendment and to make provision for reservation for SCs, STs and SEBCs. Constitutional Amendment of 1951 inserted Article 15(4) which states that “*nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.*”

3. Judicial Bench on Reservation

In 1960s, in the case of *General Manager, S. Rly. v. Rangachari*² [1962] Supreme Court held that under Article 16(4) reservation in public posts also includes reservation in promotions as well. In *MR Balaji v. State of Mysore*³ [1963] it was held that reservation cannot be provided more than 50% in any government sector. In 1990s the case of *Indira Sawhney & Ors v. Union of India* [1993] has first time, permitted separate 27% reservation for other backward classes in central and State government employment provided i- the creamy layer of backward classes will not be entitled for any reservation, ii- reservation is limited upto 50% within reservation, iii- reservation shall be a one-time affair, iv- Reservation shall be confined only in initial appointments, no reservation in promotions and Supreme court over-ruled the judgment of Rangachari case. On the other hand, some intellectual policy framer were of the vision that this ruling or direction of Hon’ble supreme court would have adverse affects on the disadvantaged classes and eventually compel to make amendment in the constitution again as stated in the ‘Statement of Objects and Reasons’ of the Constitution (Seventy-Seventh Amendment) Act, 1995:

“This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interest of the Scheduled Castes and the Scheduled Tribes, the Government has decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it is necessary to amend article 16 of the Constitution by inserting a new clause (4A) in the said article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes”.

In the case of *S. Vinod kumar v. Union of India*⁴ [1996] apex court held that any kind of relaxation is not permissible in the matters of reservation and if we do allow the lowering of the qualification marks or

² General Manager, S. Rly. v. Rangachari AIR 1962 SC 36

³ MR Balaji v State of Mysore AIR 1963 SC 649

⁴ S. Vinod kumar V. Union of India (1996) 6 SCC 580

examination marks it will be violation to Article 16 (4) of the Constitution of India, it ought to read with the mandate of Article 335. Several representations from different part of the country were filed to challenge this judgment. After that Government reviewed the position and passed the 82nd Constitutional Amendment Act by which following *proviso* was added in the provisions of Article 335 of the Constitution namely:

"Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State".

In 20th century, Supreme Court held the constitutional validity of 77th and 82nd constitutional amendment Acts in the case of *M. Nagaraj & Ors v. Union of India and Ors. [2006]* and further held, by inserting of Article 16(4A) and (4B) in Article 16 do not demolish its structure. Regarding reservation in education the Supreme Court held in *P. A. Inamdar case*⁵ [2005] that the educational reservation policy cannot be imposed on those private educational institutions which are not financially aided by government. This judgment led to amend constitution again. The Constitution (93rd Constitutional Amendment) Act 2006 was enacted with the object to impose State's reservation policy on unaided and aided private educational in situation.

Therefore to nullify the judgment of P.A. Inamdar case⁶ following clause was inserted in Article 15 after constitutional amendment which provides that:

"15(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

4. Reservation in Service after Creation of State of Uttarakhand

The Uttar Pradesh Public Services (Reservation for SCs, STs and OBCs) Act, 1994 was enacted to provide reservation in public services and posts in favour of SCs, STs & SEBCs of citizens. Under Section 3(1) of the UPPS Act, 1996 *reservation is provided in the direct recruitment. While under Section 3(7) of the Act*

⁵ A. Inamdar & Ors. v. State of Maharashtra 2005 AIR (SC) 3226

⁶ Ibid.

reservation is provided in public posts through promotion, provided government must an issues order in this regard, although such Government order is subject to modification or revocation time to time.

In 2001, the State of Uttarakhand was created under the U P Reorganisation Act, 2000. Uttarakhand Government adopted the U. P. Public Services (Scheduled Caste, Scheduled Tribe and Other Backward Caste Reservation) Act, 1994⁷ for the purpose of providing reservation in the public post. A Government Notification was issued on dated 30.08.2001 to provide reservation in the direct recruitment under section 3(1). However for the implementation of this Act in Uttarakhand, certain changes were made in the percentage of reservations in section 3(5). For Scheduled Castes Percentage of reservation was decreased from 21% to 19%, for Scheduled Tribes percentage of reservation was increased from 2% to 4% and for Other Backward Classes (SEBCs) reservation was modified from 21% to 14%. In this regard there was no issue. But the issue was raised when the implementation of Section 3 (7) of the 1994 Act, was also allowed to the State of Uttarakhand by provide reservation in promotion. This section says that -if, on the date of commencement of this Act, reservation was in force under Government Orders for “appointment to posts to be filled by promotion, such Government Orders shall continue to be applicable till they are modified or revoked”. It was challenged in the case of *Vinod Prakash Nautiyal and Ors. v. State of Uttarakhand and Ors.*⁸[2011]. The High Court of Uttarakhand upheld the validity of notification regarding section 3 (7) of the 1994 Act. But the Supreme Court corrected this judgment of the High Court given in *Uttar Pradesh Power Corporation Ltd. v. Rajesh Kumar and Ors.*⁹[2012] and held that Section 3 (7) of the 1994 Act is not constitutionally valid in so far as it is opposing the pronouncement of *M. Nagraj case* regarding reservation in promotion. It is directed that state cannot apply reservation in promotion under Section 3(7) of the Act, 1994. On the other hand, the State Government is empowered to enact the law according to provisions of the Constitution of India.

5. Present Controversy

In the case of *Mukesh Kumar and Ors. vs. The State of Uttarakhand*¹⁰ [2020] candidate of SCs and STs claimed reservation in the promotion to the posts of AE (Civil) in PWD, of state of Uttarakhand, which was not permitted under a govt. notification. Several writ petition, SLP and civil appeal were filed against the

⁷ U.P. Public Services (Reservation For Scheduled Castes, Scheduled Tribes And Other Backward Classes) Act,1994[Sec3 (1) (5) (7)]

⁸ Vinod Prakash Nautiyal and Ors. v. State of Uttarakhand and Ors.W.P.(S/B)No.45 of 2011.

⁹ Uttar Pradesh Power Corporation Ltd. v. Rajesh Kumar and Ors.(2012) 7 SCC 1

¹⁰ Mukesh Kumar and Ors. vs. The State of Uttarakhand, (2020) 3 SCC 1

government order/notification. During the hearing of this case All related writ petitions, civil appeals and Special Leave Petition were clubbed and decided accordingly.

In the mean while a review petition was also filed to review the judgment of *Vinod Prakash Nautiyal case*¹¹, but it was dismissed. The High Court directed the State Government to constitute a committee for collection of data relating to the backwardness of the reserved communities in the State and to identify inadequacy of their representation in public posts. Although State Government constituted a committee for collection of Data, but another notification was issued on 05.09.2012, by the State Government that all public posts shall be filled without any reservations. This Government notification of dated 05.09.2012 was challenged by Mr. Gyan Chand (candidate of Scheduled Caste Community) working as Assistant Commissioner (Civil), State Tax, and *a Writ Petition was filed to* quash the Government order. The High Court on 01.04.2019 struck down the Government notification as it is against the decision of Supreme Court in *Indra Sawhney case*¹² and *Jarnail Singh and Ors. v. Lachhmi Narain Gupta and Ors.*¹³[2018]. This judgment of the High Court was challenged and an Civil Appeal through SLP was filed.

Second writ petition was filed to ask directions to fill post by reserved category. Vinod Kumar and three others (candidates of the SCs) employee of PWD, Uttarakhand, filed a writ petition of mandamus in the High Court and asked the direction for state government to prepare two list for promotion to the post of Assistant Engineer (Civil) in PWD, one list of eligible selected candidates and another list for each category of eligible candidates of General, SCs and STs. They further asked to hold a departmental promotion committee by government to fill the post of Assistant Engineers by promotion by giving reservation to SCs and STs according to the Government Orders dated 30.08.2001 and 17.02.2004. The High Court disposed off the writ petition (15.07.2019) and directed the Government to implement reservations policy in promotion for the members of scheduled castes and scheduled tribes only in future vacancies and to maintain the quota allocated for these categories. *Against this judgment of High Court dated 15.07.2019 another Civil Appeals through SLP were filed in Supreme Court.*

In the mean time, against the judgment of HC dated 01.04.2019 a review petition was filed by the State Government. The High Court realized that it committed an apparent error in its judgment dated 01.04.2019. The High Court make clear that it is not necessary for the Government to collect data regarding backwardness of the SCs & STs. Further the High Court observed that *as Article 16(4-A) of the Constitution is an enabling provision* therefore government is not bound to provide reservation in promotions to

¹¹ Vinod Prakash Nautiyal and Ors. v. State of Uttarakhand and Ors.W.P.(S/B)No.45 of 2011.

¹² Indra Sawhney v.Union of India and others, AIR 1993 SC 477

¹³ Jarnail Singh and Ors. v. Lachhmi Narain Gupta and Ors. (2018) 10 SCC 396.

candidates of *SCs and STs*. The High Court directed on 15.11.2019 the State Government to take a decision within a period of four months from the date of receipt of the judgment regarding reservation, whether they have to provide reservation or not in the services of the State, after considering the data relating to the adequate or inadequate representation of SCs and STs.

Aggrieved by the order passed in review petition on 15.11.2019, the Civil Appeals@ SLP were filed. State Government contended that Article 16(4) and 16(4-A) are merely enabling provisions and State has no constitutional duty to provide reservations, therefore people are not having fundamental right to claim reservation in direct recruitment or promotions to the posts in government service. Government relied upon the judgment of Vinod Prakash Nautiyal case¹⁴ by which Section 3(7) of the 1994 Act was declared unconstitutional to provide reservation in promotion. The State government said, on the basis of the decision of M. Nagaraj and Ors.¹⁵ Case, that State is not bound to make reservations, they have rightly decided, after due consideration, that there shall be no reservation in promotions and there is no necessity for collection of any quantifiable data when the Government has already decided not to provide reservations. State Government further contended that the collection of data is required only to justify a decision to provide reservation. State Government argued as per the decision of *Suresh Chand Gautam v. State of Uttar Pradesh and Ors.*¹⁶ [2016] that state cannot be directed by court to identify quantifiable data and to provide reservation.

On the other hand, aggrieved parties i.e, employees of reserved category argued that the State cannot refuse to collect data to identify adequate or inadequate representation of the scheduled castes and scheduled tribes in public services. They argued that there is constitutional mandate for the State to provide reservations for betterment of the members of the scheduled castes and scheduled tribes whether it is case of promotions or direct recruitment. They have right to equality under Article 16(4) and 16(4-A) of the Constitution and this right cannot be crushed by the State Government. Government has to implementing these Articles. They condemned the decision of *Suresh Chand Gautam* case¹⁷ for decided in correctly. They further informed that as recommended by Supreme Court in M. Nagaraj case¹⁸, State government has already constituted a Committee to collect data regarding representation of candidate of SCs & STs in public posts. Finally they

¹⁴ Vinod Prakash Nautiyal and Ors. v. State of Uttarakhand and Ors.W.P.(S/B)No.45 of 2011.

¹⁵ M. Nagaraj and Ors. v. Union of India and Ors. (2006) 8 SCC 212

¹⁶ Suresh Chand Gautam v. State of Uttar Pradesh and Ors.(2016) 11 SCC 113

¹⁷ Suresh Chand Gautam v. State of Uttar Pradesh and Ors.(2016) 11 SCC 113

¹⁸ M. Nagaraj and Ors. v. Union of India and Ors. (2006) 8 SCC 212

contended that the State Government was constitutionally obliged to offer reservations on the basis of the data, collected by the Committee because representation of the scheduled castes and scheduled tribes in government services is inadequate.

In the case of *Mukesh Kumar*¹⁹ three issues were framed in these civil appeals, writ petitions and special leave petitions to decide-

- Whether the State Government is constitutionally obliged to make reservations in public posts?
- Whether the State Government can take decision for not providing reservation to the candidates of SCs and STs?
- Can the writ of mandamus be issued by the Court to direct the State Government to provide reservations in public posts?

Regarding first issue, Supreme Court relied upon judgments of *Ajit Singh and Ors. v. The State of Punjab*²⁰ [1999] that Article 16(4) and 16(4-A) are enabling provisions in nature and these articles empowering the State Government to consider providing reservations or not, if the circumstances so necessitate, the Supreme Court held that Article 16(4) and 16(4-A) although, are part of right to equality but do not confer fundamental right to claim reservations in promotion. It is established law that direction cannot be given to the State Government to provide reservations for appointment in public posts. Likewise, the State is not obliged to make reservation for SCs & STs to fill the in the public posts through promotions. Hence it is concluded that constitutional provisions under Article 16(4) and 16(4-A) give discretion to the State to make reservation in matters of service in favour of the STs & SCs candidates, 'if in the opinion of the State they are not adequately represented in the State services'. Apex court held that if State exercise its discretion and provides reservation in public services, the State has to collect data showing inadequacy of representation of that class. To provide reservations in promotion, the State government has to satisfy on the basis of data that such reservations become necessary due to inadequacy of representation of SCs & STs in the particular post without affecting efficiency of general administration as required under Article 335 of the Constitution.

Regarding second issue, i.e. can state government take decision for not providing reservation to the candidates of SCs and STs, Supreme Court held that it is within the jurisdiction of the State Government to

¹⁹ *Mukesh Kumar and Ors. vs. The State of Uttarakhand*, (2020) 3 SCC 1

²⁰ *Ajit Singh and Ors.v.The State of Punjab and Ors* (1999) 7 SCC 209

decide whether reservations, in the matter of direct appointment and promotions are required or not. As per provisions of Article 16(4) and (4-A), the inadequate representation of SCs & STs is an issue of subjective satisfaction of the State. The State can form its own opinion on the basis of data available by Committee etc. Regarding the scope of Article 16(4) and 16(4-A) of the Constitution, Law is already settled by judiciary. Accordingly Supreme Court dismissed the SLP. At this stage, it is important to mention that after the formation of the State of Uttarakhand certain notifications were issued to provide reservation in promotion to public posts with certain modifications. A Committee was appointed by the Government of Uttarakhand for collection of scientific data for adequate or inadequate representation of the members of SCs and STs in public services in the State. This Committee recommended that representation of SCs and STs was inadequate and it was approved by State Cabinet on 12.04.2012, but the State Government decided on by notification to set aside all previous Government notifications relating to reservation in promotions to the post of State services. Therefore State can take decision not to provide reservation, if circumstance warranted.

Regarding third issue, i.e. can the writ of mandamus be issued by the Court to direct the State Government to provide reservations in public posts? According to the law established by Supreme Court, it is clear that State Government is not obliged to make reservations. It is not their fundamental right to claim reservation in promotions. The direction given to State Government to collect scientific data is not necessary, as State is already having the required data. Relying upon the judgement of *Suresh Chand Gautam*²¹ case it was held that mandamus cannot be issued to the State to collect data to identify the adequate representation of the SCs and STs in public services and to provide reservations in public post. Therefore, the direction given by the High Court that the State Government should collect data first regarding status of representation of SCs and STs in Government services after that the State Government should take a decision to provide reservation in promotion or not, is contrary to the law laid down by this Court and is accordingly set aside.

6. Recommendations

After analyzing the various stages of reservation system in India it is concluded that reservation system has been part of India's history. India as a society was always divided and compartmented into sections based on color, caste, religion, etc. and because of this continuous evil that has been prevailing in our society reservation system was chanted to be the tool to protect and embrace equality and to accelerate vertical mobilization to under-privileged and backward classes of the society. Since the time of hunter commission

²¹ Suresh Chand Gautam v. State of Uttar Pradesh and Ors.(2016) 11 SCC 113

the wheel of reservation system has continued to roll and accelerate and develop to bridge the gap between the long lost under-privileged section of our community and the cream, well to- do community. It is questionable as to why does caste is still a basis for reservation in jobs and colleges. Now the backward classes have risen onto a level equal to that of the “general” class population and poverty, illiteracy is still an issue of concern amongst some of the upper castes. Social disharmony is also one of the negative aspects of the reservation system, for example being of that of the ‘*Jatt agitation and Patel’s agitation*. There was evidence saying *Jats and Patels have protested enough for them to be termed as “backward”*. Our reservation system clearly needs spiral clean change and amendments so as to reach the desired goals.

In the present case, division bench of L. Nageswara Rao and Hemant Gupta, JJ., discussed various provisions of the constitution of India, UP P S (Reservation for SCs, STs & OBCs Act, 1994, various rules in length. After considering various judgment of Supreme Court in *Indra Sawhney case*²², *Ajit Singh case*²³, *M.Nagaraj case* and *Jarnail Singh*²⁴ it is clear that Article 16(4) and 16(4-A) do not confer fundamental right to anyone to claim reservations in promotion. These articles are just enabling provisions in nature and the collection of data regarding representation of SCs and STs in public service is a *sine qua non* for providing reservations in promotions. The collection of data by the State Government is only to justify reservation to be made in the public posts. Hence State government is not constitutionally obliged to provide reservations in promotion and further government is not bound to justify its decision that there is adequate or inadequate representation of members of the Scheduled Castes and Schedules Tribes in State services. Even if the under- representation of SCs & STs in State services is brought to the notice of this Court, no mandamus can be issued to the State Government by this Court to provide reservation as laid down in the case of *C.A. Rajendran v .Union of India and Ors*²⁵ [1968] and *Suresh Chand Gautam*²⁶.

Considering historical aspect of reservation and its evolution and keeping in mind facts of present case it is concluded right to reservation cannot be claimed as fundamental right, it is enabling provision and adopted as tool for social engineering of Indian society.

²² Indra Sawhney v.Union of India and others, AIR 1993 SC 477

²³ Ajit Singh and Ors.v.The State of Punjab and Ors (1999) 7 SCC 209

²⁴ Jarnail Singh and Ors. v. Lachhmi Narain Gupta and Ors. (2018) 10 SCC 396.

²⁵ C.A. Rajendran v .Union of India and Ors .AIR.1968 SC 507

²⁶ Suresh Chand Gautam v. State of Uttar Prades hand Ors.(2016) 11 SCC 113