

CREAMY LAYER IN SCHEDULED CASTES AND SCHEDULED TRIBES: RESERVATION NEEDS TO BE ANALYZED

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INTRODUCTION

In order to provide socio-economic and educational justice to the Scheduled Castes and Scheduled Tribes and to promote the concept of social equality, various provisions have been made by the Constitution makers in the Indian Constitution. To achieve the goal of social justice, educational and economic uplift have been made the basis in the Constitution of India, which are included in Article 15 and Article 16 of the Constitution.

After 70 years, since the Constitution came into force, reservation has been made for Scheduled Castes and Scheduled Tribes in educational institutions and government jobs. Those who have taken the benefit of reservation in Scheduled Castes and Scheduled Tribes include those who are taking the benefit of reservation in second and third generation. But there are some of them who have not been able to take advantage of reservation even of the first generation. Today it is necessary that such people should also be benefited from the reservation, who have not been able to reach the reservation till date.

The Scheduled Castes and Scheduled Tribes people who still are deprived of the benefits of reservation, they should also be provided with the opportunity of reservation, this is possible only when those who are in the creamy layer or are in government posts taking the benefit of reservation should be excluded.

The Supreme Court had taken the view in the **Jarnail Singh v. Lachhmi Narain Gupta**ⁱ case that socially, educationally and economically advanced ‘cream’ of Scheduled Castes and Scheduled Tribes communities should be excluded from the benefits of reservation in promotions in government services.ⁱⁱ

The principle of Creamy layer should be applicable among Scheduled Castes and Scheduled Tribes. Socially, educationally ⁱⁱⁱand economically advanced cream of Scheduled Castes and Scheduled Tribes communities should be excluded from the benefit of reservation in government services in order to transfer quota benefits to the weakest of the weaker individuals and not be snatched away by members of the same class who were in the top creamy layer.^{iv}

CREAMY LAYER

A term ‘Creamy layer’ is used in Indian politics to refer the forward and better educated members of the Other Backward Classes (OBCs) who are not eligible for government-sponsored educational and professional benefit programs. The term was introduced by the Sattanathan Commission in 1971, which directed that the "creamy layer" should be excluded from the reservations (quotas) of civil posts.^v

In the matter of creamy layer in Scheduled Castes and Scheduled Tribes, the Social Justice Committee was constituted by the UP government Chief Minister Rajnath Singh on June 28, 2001^{vi}, under the Chairmanship of Parliamentary Affairs Minister Hukum Singh to suggest ways and means to ensure the reservation benefits to most Dalit and most backward castes within the purview of Mandal Commission recommendations.^{vii} It has categorised Dalits into two schedules: Schedule A comprising Chamars, Jatavs and Dhusias, and Schedule B comprising 65 other castes in the Dalit category.

The concept has its genesis in a 1992 Supreme Court judgment in the **Indira Sawhney vs Union of India**^{viii} case. Since then, two other significant Supreme Court judgments — one in **M. Nagaraj vs Union of India**^{ix} and another in the Jarnail Singh case — have laid down the law in this regard.^x

The 'creamy layer' categorization was meant only for the OBCs until 30 September 2018 but now is also applied to the Scheduled Castes and Scheduled Tribes.^{xi}

NEED TO ANALYZE THE RESERVATION SYSTEM

Today the demand for inclusion in the reservation, by various communities of the society is being strongly raised. There has also been an attempt by various political parties to give political colour to the issue.

Even today, after 70 years the Constitution came into force the Scheduled Castes and Scheduled Tribes demanded for reservation in promotion. This shows that our government has been unable to implement the reservation system properly.

Before continuing or reshuffling the reservation, it is necessary to analyze this system beforehand. With regard to analysis, the decision given in **M. Nagraj and Others v. Union of India and others**^{xii} case seems very relevant.

In above case the court said that the concerned State will have to show in each case the existence of the compelling reasons, namely backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. In this case the court asserted that the State had to collect quantifiable data showing the backwardness of the class in public employment.

The uplifted/affluent and advanced sections of the Scheduled Castes and Scheduled Tribes snatch away the maximum benefit and the 95% members of these communities. Reservation were temporary exceptions and the power to create new exceptions amounts to a law counter to basic feature of equality and is now unreasonable. It is a said commentary that even after 70 years, we have not been able to cure the deficiency for which the reservation was meant.^{xiii} It is the time to analyze the reservation policy so that the actual backward and deprived within the Scheduled Castes and Scheduled Tribes could get benefits of reservation.

Reservation is a form of quota-based affirmative action. Reservation is governed by constitutional laws, statutory laws and local rules and regulations. Scheduled Castes, Scheduled

Tribes and Other Backward Classes (OBC) are the primary beneficiaries of the reservation policies under the Constitution.^{xiv} Now the primary beneficiaries should be those persons, who are deprived within Scheduled Castes and Scheduled Tribes. As the Hukum Singh Commission report suggested that the uplifted/affluent and advanced sections of the Scheduled Castes and Scheduled Tribes should be excluded and categorized as creamy layer. It is necessary to excluded creamy layer within Scheduled Castes and Scheduled Tribes for epitomize the concept of reservation and for all over development of the society.

The benefits of the reservation policy are not percolating down to the people who are in actual need of them. This lack of percolation of quota benefits to the poorest of the poor ensures that the “weak always remains the weak and the fortunate layers consume the whole cake.”^{xv}

Reservation is not a fundamental right,”^{xvi} a three-judge bench led by Justice L Nageswara Rao. In a ruling in February, the Supreme Court had held there is no fundamental right to claim reservation in public jobs and no court can order a State to provide for reservation to Scheduled Castes/Scheduled Tribes.^{xvii}

SUGGESTIONS

The Court held that socially, educationally, and economically advanced cream of Scheduled Castes/Scheduled Tribes communities must be excluded from the benefits of reservation in government services in order to transfer quota benefits to the weakest of the weaker individuals and not be snatched away by members of the same class who were in the “top creamy layer”.

The Court also observed that it will not be possible to uplift the weaker sections if only the creamy layer within that class bags all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they were.^{xviii}

Nariman J. rightly observed that "the whole object of reservation is to see that backward classes of citizens move forward so that they march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were."^{xix}

The Court realized that the exclusion of creamy layer principle is essential to safeguard the right to equality.^{xx}The concept of creamy layer in Scheduled Castes and Scheduled Tribes helps in ensuring that only the genuinely deserving and the most downtrodden members get those reservation benefits.

The Court held that creamy layer exclusion is a principle of equality.^{xxi} It held that failing to apply the exclusion of creamy layer principle would violate right to equality in two ways. Firstly, it held that doing so treats equals differently, namely the general classes and the forward among Backward Classes (SC/ST). Second, it held that doing so treats unequals the same, namely backward classes and the forward among backward classes. Thus, the Court held that the exclusion of creamy layer principle is essential to safeguard the right to equality.^{xxii}

In fact, reservation cannot be considered as fundamental right. It has been considered as a means of establishing social equality, by which social inequality can be overcome by improving the economic status and educational status. Reservation cannot be applied uninterruptedly to the eternal age. If Social inequality is a disease; reservation is the medicine to remove that disease. The person uses the medicine to remove the disease of body and if he consumes an overdose of the medicine, it is possible that the drug may cause deformity in other part of the body. Similarly, reservation should also be continued for a certain period of time, so that no other distortions arise in the society and it should also be analyzed in due time.

ENDNOTES

ⁱ 14 (2018) 10 SCC.

ⁱⁱ Available at <https://economictimes.indiatimes.com/news/politics-and-nation/priority-supreme-court-hearing-in-sc/st-promotions-case-on-government-plea/articleshow/74183542.cms?from=mdr> access on May 11, 2020.

^{iv} *Jarnail Singh vs Lachhmi Narain Gupta SLP (CIVIL) NO. 30621 OF 2011* On 26 September 2018, (<http://indiankanoon.org/doc/190772988>. access on 09-05-2020).

^v Available at https://en.wikipedia.org/wiki/Creamy_layer access on April 17, 2018

^{vi} *Economic and Political Weekly* December 1, 2001.

^{vii} Available at <http://www.milligazette.com/Archives/15092001/10.htm> access on April 16, 2018.

^{viii} AIR 1993 SC 477.

^{ix} AIR 2007 SC.

^x Available at <https://theprint.in/theprint-essential/what-creamy-layer-is-why-supreme-court-kept-affluent-sc-st-members-out-of-quota-benefits/329790/> access on May 11, 2020.

^{xi} Available at https://en.wikipedia.org/wiki/Creamy_layer access on May 11, 2020.

^{xii} AIR 2007 SC.

^{xiii} *V.K.S. Chaudhary and Kunal Ravi Singh, "Reservtion Now of any Kind is Unconstitutional", Supreme Court Cases, 2013, Vol. VIII, at 35-42.*

^{xiv} *Right to Equality in India Vis-a-Vis Reservation in Favour of Backward Classes, Shubham Aparajita and Rishee Rhudra International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212: Volume 2 Issue 7, at 4.*

^{xv} Available at <http://www.thehindu.com/news/national/plea-to-exclude-scst-creamy-layer-from-quota/article22544974.ece> access on April 17, 2018.

^{xvi} (2020) 3 SCC 1: (2020) 1 SCC.

^{xvii} Available at <https://www.indialegallive.com/constitutional-law-news/courts-news/right-to-reservation-is-not-a-fundamental-right-says-sc-on-pleas-for-50-obc-quota-in-tn-medical-colleges> access on July 23, 2020.

^{xviii} <https://www.drishtias.com/daily-updates/daily-news-editorials/creamy-layer-for-sc-s-st-s> visited on May 6, 2020.

^{xix} Available at <https://www.scobserver.in/court-case/reservation-in-promotion-for-scs-and-sts/plain-english-summary-of-judgment-7b542862-0e20-494c-a1a3-5d07440c7552> visited on May 6, 2020.

^{xx} Available at <https://www.scobserver.in/court-case/reservation-in-promotion-for-scs-and-sts/plain-english-summary-of-judgment-7b542862-0e20-494c-a1a3-5d07440c7552> visited on May 6, 2020.

^{xxi} Available at <https://www.scobserver.in/court-case/reservation-in-promotion-for-scs-and-sts/plain-english-summary-of-judgment-7b542862-0e20-494c-a1a3-5d07440c7552> visited on May 6, 2020.

^{xxii} *Ibid.*