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CREAMY LAYER IN SCHEDULE CASTE AND SCHEDULE TRIBE: ACHIEVING THE CONCEPT OF TRUE EQUITY

- *Srishti Gupta*

INTRODUCTION

Reservation normally implies a separate quota which is reserved for a special category of persons, and the category for whose benefit a reservation is provided is not required to compete on equal terms with the open category.¹ The provisions related to reservation can be found under Article 15 and 16 of the Indian Constitution. To combat the caste system and uplift the marginalized communities and to ensure fair representation and equality in society in the sectors of education and employment the provision for reservation was introduced. The emergence of reservation can be traced back to the tussle of 1700 years versus 75 years. Since the inception of Manusmriti way back in 200 CE, it rooted the concept of varna system² within Hindus which grown now in a deep rooted caste system, which further intensified and lead to the discrimination based on caste.

LEGAL FOUNDATION OF RESERVATION

The provision related to reservation can be found in Article 15 and 16. Reservation in educational sector can be found under Article 15(3) originally grants power to the legislature to enact special provision for women and children. Further 1st Amendment Act, 1951³ inserted Article 15(4) for

¹ Government of Andhra Pradesh v. P.B. Vijayakumar and Another (1995) 4 SCC 520: 1995 SCC (L&S) 1056

² The varna system divides society into four varnas, Brahmanas, Kshatriya, Vaishya and Shudra on the basis of their occupation.

³ The Constitution (First Amendment) Act, 1951. Available on: <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcd1b99b5d8f/uploads/2023/03/2023030234-2.pdf> (Accessed on February 10, 2026)

the special provisions for Socially and Educationally Backward Classes (SEBC) of citizens or Scheduled Castes (SC) and Schedule Tribes (ST). 93rd Amendment Act, 2005⁴ inserted Article 15(5) for the special provisions for SEBC, SC and ST for their admission to educational institution including private educational institutions other than minority institution and lastly 103rd Amendment Act, 2019⁵ inserted Article 15(6) enabling the legislature to make any special provision for the admission in educational institution of Economically Weaker Section (EWS) other than the classes mentioned in clause (4) and (5).

For the purpose of employment opportunities, provision can be found under Article 16. Originally Article 16 clause (3) and (4) contains enabling provisions for the adequate representation of backward classes through the provision for reservation. Further the 77th Amendment Act, 1995 inserted Article 16(4A) enabling the legislature to make provision in favor of SC and ST who are not adequately represented in the services under the state and lastly the 103rd Amendment Act, 2019 inserted Article 16(6) enabling the legislature to make any special provision for the reservation of appointments in favor of Economically Weaker Section (EWS) other than the classes mentioned in clause (4).

9 judge bench of Supreme Court in the Indra Sawhney v. Union of India⁶ well known as Mandal Commission case, held that sub-classification of backward classes into more backward and backward classed can be done but the sub-classification cannot exceed more than 50%. With respect to Carry forward rule, Supreme Court in Devadasan v. Union of India⁷ struck down the 'Carry forward rule'. However Supreme Court overruled Devadasan v. Union of India⁸ and held that 'carry forward rule' is valid provided it should not result in breach of 50%.

CONCEPT OF EQUALITY AND EQUITY – JURISPRUDENCE OF AFFIRMATIVE ACTION

⁴ The Constitution (Ninety Third Amendment) Act, 2005. Available at: <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/03/2023030219-1.pdf> (Accessed on February 10, 2026)

⁵ The Constitution (One Hundred and Third Amendment) Act, 2019. Available at: <https://www.scobserver.in/wp-content/uploads/2021/10/103rdAmendment.pdf> (Accessed on February 10, 2026)

⁶ Indira Sawhney v. Union of India, AIR 1993 SC 477

⁷ Devadasan v. Union of India, AIR 1964 SC 179

⁸ ibid

Formally equality demands that individual should be treated equally irrespective of their religion, race, caste, sex, place of birth, residence or descent. However, the concept of equity is grounded in the idea that equal treatment may not yield equal outcomes in unequal societies.

Imagine a river that everyone must cross to reach opportunities like education, jobs, and dignity. For some, there is a strong concrete bridge built generations ago. For others, there is no bridge at all only deep water, strong currents, and warning signs telling them they do not belong on the other side. Declaring “everyone is free to cross” does not make the situation fair. Equality is allowing everyone access to the riverbank; equity is building bridges for those who were historically denied one. Until that bridge exists, blaming those who drown for lacking effort is not merit it is injustice disguised as fairness.

The provision of reservation is the same act of building bridge for those who are historically denied and marginalized, it is grounded in the concept of equity, it is an enabling provision and however it does not impose any obligation on the state to take any special action, it merely confers discretion to act only if it is necessary to make special provisions for backward classes.

NEED FOR CONSTITUTIONAL RE-EVALUATION

As Supreme Court in the most recent case of *State of Punjab v. Davinder Singh & Ors.*⁹ Gave a reference to *Indra Sawhney*¹⁰ case in which 3 principles with respect to sub-classification has been laid down:

- a. Sub-categorization within a class is a constitutional requirement to secure substantive equality in the event that there is a distinction between two sections of a class;
- b. Sub-classification must not lead to the exclusion of one of the categories in the class. A model that provides sufficient opportunities to all categories of the class must be adopted;
- c. Sub-classification among a class must be on a reasonable basis and distinction between the categories must be substantial

Supreme Court observed in the above case that “*Class does not remain a homogeneous class if some of the members of the class are socially forward. The economic advancement can be a relevant criterion to exclude the creamy layer provided that economic advancement is so high as*

⁹ *State of Punjab & Ors. v. Davinder Singh & Ors.* (2025) 1 SCC 1

¹⁰ *Supra* note 6

to cause social advancement. The observation that this does not apply to the Schedule Castes and Schedule Tribes was made because they suffer from a more egregious form of social backwardness when compared to the Other Backward Class.”

However, Supreme Court in Davinder Singh¹¹ further noted in para 110 that *“We do not find that the purport of the observations in Indra Sawhney on sub-classification was to limit it to the Other Backward Classes, to the exclusion of the Scheduled Castes. The principle of sub-classification was given judicial assent in Indra Sawhney to ensure that the principle of substantive equality is fulfilled. The principle of sub-classification will be applicable to the Schedule Castes if the social positions of the constituents among the caste/groups is not comparable.”*

It has been observed that the very concept of a class denotes a number of persons having certain common traits which distinguish them from the others. It is observed that if some of the members are far too advanced socially (which in context, necessarily means economically and may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class, after excluding them alone, would the class be a compact class, such exclusion would benefit the truly backward.

An example was referred in Para. 500, if a member of designated backward class becomes an IAS/IPS or other All India Service, his status in society rises; he is no longer socially disadvantaged, his children would get full opportunity to realise their potential, they are in no way handicapped in the race of life. It is further observed that by giving them the benefit of reservation, other disadvantaged members of that backward class may be deprived of that benefit. Further in Para 501, Hon’ble Supreme Court observed that *“exclusion of such socially advanced members will make the ‘class’ a truly backward class and would more appropriately serve the purpose and object of clause (4) of Article 16.*

However, court noted that it is only Parliament by law which can include in or exclude from the list of the “Schedule Castes” specified in the notification notified under clause (1) of Article 341, any caste, race, or tribe or part of or group within any caste, race or tribe.

RESERVATION IS ONLY A MEDIUM OF FACILITY BUT ITS EXECUTION REVIVES CASTEISM

¹¹ Supra note 9

Hon'ble Supreme Court mentioned in Para 595 that, Reservation is one the modes of helping or uplifting the status of the OBCs/SCs/STs. Anyone who suggests another or a better way of helping the so-called depressed classes or the downtrodden or the marginalized persons of the society is immediately pounced as "Anti Dalit". Further Supreme Court mentions that Schedule Castes, Schedule Tribes and Other Backward Classes simply deserve equality with the other forward classes of people.

O. Chinnappa Reddy, J. in *K.C. Vasanth Kumar v. State of Karnataka*¹² Supreme court noted that they need facility; they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They for ask parity and not for charity. The then Chief Justice of India Y.V. Chandrachud counselled in *Vasanth Kumar*, the policy of reservation in employment, education and legislative institution should be reviewed every five years or so. Pandit Jawahar Lal Nehru in his letter dated 27.06.1961 addressed to all the Chief Ministers of all the State mentioned that 'the only real way to help a backwards group is to give opportunities of good education, this includes technical education which is becoming more and more important. Everything else is a provision of some kind of crutches which do not add to the strength or health of the body.

CONCLUSION

The idea of application of the creamy layer principle to Scheduled Tribes and Schedules Castes reflects a deeper constitutional tension between equality and equity. Reservation was introduced as an instrument of substantive equality, an enabling mechanism to dismantle centuries of structural exclusion and to ensure meaningful participation of marginalized communities in education and employment.

If certain members within SC/ST communities have attained significant social and economic advancement, the continued extension of reservation benefits to them may dilute the objective of uplifting those who remain truly disadvantaged. Sub-classification based on reasonable distinction will not dilute constitutional protection but reinforce substantive equality. A principle re-evaluation, therefore must aim to strengthen equity without undermining the historical safeguards guaranteed by the Constitution.

¹² *K.C. Vasanth Kumar v. State of Karnataka*, 1985 Supp SCC 714

