

Sub Classification & Creamy Layer of Scheduled Castes, Supreme Court Order & Repercussions

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Abstract

In a landmark judgement, a seven-judge Bench of the Supreme Court on Thursday the 1st August 2024, reframed how the Scheduled Castes (SC) quota may operate by introducing a further division of the Scheduled Castes to represented castes and under-represented castes in Government jobs . This irrational judgement of division and disintegration of SCs is pronounced in a situation where the constitutional provision of reservations in government jobs is never filled to full quota since India became a sovereign republic. Instead of addressing the real cause for this inadequate representation in government jobs, the apex court with consent from government of India is trying to subclassify and disintegrate the emerging unity of Scheduled Castes, which can be seen as a political game of the ruling classes. The judgement to further classify the SC lists and the suggestion to separate the creamy layer among SCs for the very first time since reservations were introduced in the Constitution in 1950, will only help to reduce the name sake representation of Scheduled castes in governance and government jobs as well as to disintegrate an emerging unity among SCs .

Keywords: *The Constitution of India, the Supreme Court of India, Reservation in appointments, Scheduled Castes (SCs), Caste hierarchy & discrimination in Hinduism, Gandhi & Ambedkar, Poona Pact, Sub classification and creamy layer among SCs*

Introduction

The caste system among Hindus in India is an ancient social hierarchy. Though started as a system for assigning classified jobs in the society, as time passed those classified jobs became the duty of the children who handled the jobs. This has traditionally placed certain communities, especially those handling petty jobs like farming, cleaning, scavenging, etc. at the bottom of Indian society. As these jobs involve comparatively unclean operations there developed a system of segregating such workers and their family members away from the Hindus, who handle clean jobs. People belonging to these castes were treated as untouchables and out casts, who constituted the lowest stratum of the Hindu society in the Indian subcontinent. This willful segregation instituted by some Brahmins (who were placed at the topmost position of the caste structure), finally enforced the practice of untouchability of certain communities later known under different nomenclature and time in history as Panchamas, Depressed classes, Harijan, Dalits, Scheduled Castes & Tribes.

All of us know, Hinduism is a religion guided and maintained by some Brahmins. Early Brahmin leaders prepared and enforced certain dictums with a view to regulate public life most favorable to Brahmins as well as those castes, who were immediately placed below & serving the Brahmins like the Kshatriyas and the Vysyas. With passing of time these dictums codified as Manusmriti (Surendrakumar 2005), the Sanatan Dharma (Hindu Dharma- in Sanskrit meaning eternal religion) and formation of the four varnas from 1000 to 500 BCE , the Puranas, the Shankara Suktham, etc. were prepared skillfully & systematically to exploit the lower varnas for a comfortable life for Brahmins (Vasant Moon 1987). To get unquestioned acceptance, these codes of practices were introduced as the will of God. To stress the theory of "God's will", Manu said that, "God appeared before me and dictated his rules, for all the people to follow, which I just scripted". The Smriti mentions that a Sudra has no right to hear the Vedas, no right to study the Vedas, and no right to acquire the meaning of the Vedas (and perform the rites). As for prohibition of hearing, we have the text pertaining to Shudra, "Then should he(Shudra) happen to hear the Vedas, the expiation consists in his ears being filled with lead and lac", and "He who is a Shudra is a walking crematorium. Hence one should not

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read in the neighborhood of a Sudra". From this follows the prohibition of any learning by Shudras.

As per these rules, the Brahmins were assigned all the management roles of society like the ownership of land and properties, learning & teaching vedas, 'communicating to God and pronouncing the God's will' in times of disease, calamities & hardships, worshiping, performing poojas & yagnas to satisfy Gods, etc. In short in disguise and in the name of God, the Brahmins cunningly attached holiness and sanctity to legitimize the acts of restriction, denial and ill treatment meted out to a very large chunk of the population. It further established that assigning duties for the other three varnas is the unquestioned right of Brahmins.

In this way the 'God assigned duties' to Kshatriyas were to protect & support the Brahmins, their properties and their worship. In other words the Kshatriyas including the kings were to protect & serve the Brahmin and their profession. Thus the duties of Kshatriyas can be summed up as that of a modern security guard of Brahmins. Nevertheless, the Kshatriyas were the next in authority after Brahmins.

The duties for Vysyas were to provide the materials necessary for the Brahmins and Kshatriyas. In other words Vaishyas were to collect all materials including food necessary for feeding and maintenance of Brahmins and Kshatriyas and their families, so that they can enjoy a hassle free life and do the duties assigned to them as per the "will of the God".

The duty of Shudras was to serve the above three varnas and they were forbidden from any right on land or property including wages, so that they are bound to serve the first three varnas without any complaint. With time, this Brahmin designed Hindu system got codified into an instrument of oppression & exploitation. The lower the varna the higher was the oppression & exploitation by the varnas above them. Thus the Shudras constituted the lowest rung of the Hindu society. A group of Shudras, who happened to handle the farm works, cleaning and scavenging were further segregated from the mainstream of public life as they were working in unsanitary circumstances. The British (The Committee of the Madras Town Census 1869) classified these people as Panchamas as they were treated as untouchables by the first two varnas. However, it is clear from history that the Panchamas, the present Scheduled Castes & Scheduled Tribes were kept far away from the Hindu life. The lives of Panchamas were so inhuman as they were denied access to the country's resources, education and social mobility! The practices enforced by the Brahmins were followed by the other lower varnas through the system of graded inequality as the uppermost caste, the upper caste, the low caste, the lower caste and the lowest caste. All these categorization came to be fixed at the birth of the individual. Therefore for those who are born in the upper caste, the birth was treated as greatest, upper was treated as great, low was treated as satisfactory, lower as not so bad and the lowest as the cursed one! No where in

these grading of human beings, we can see the concept "Men are Born Equal"? From this graded inequality, which is identified as the bane of social life in Hinduism, it is well-known that "birth in which caste, determines the status of the individual". For this reason some are born advantageous (high caste) and some others are born disadvantageous (lowest caste). For those born with advantage, caste is a social capital and for those born with disadvantage, caste is a curse and a loss. The Panchamas who constitute the lowest among different castes are therefore the most lost ones in history and even today. This caste based social stigma is so horrific that certain communities are even forbidden to take drinking water from public wells and ponds and travel on public roads! The pathos inflicted on Shudras by Brahmins through Manusmriti are well documented (Ambedkar 2014 & Tarik Anowar & Nurul Islam 2018). Such an inhuman & uncultured system cannot be seen in any other religion or country in the world! And some leaders boast India is the 'Mother of Democracy'.

The situation now in India is such that the Brahmins, the Kshatriyas and the Vysyas cannot handle their household chores like cooking, cleaning, sanitary and farm works. For these jobs they retain, rather confine, the Panchamas and some Shudras on namesake wages denying them freedom and other civil rights. This unconditional service from Panchamas & Shudras form the basis of the wealth and scholarship of Brahmins, Kshatriyas & Vysyas. The healthy survival of any community depends upon a reasonable compensation for the effort & service rendered by the members of that community. This not only was there but also there was exploitation of these poor working folks. In turn the Shudras remained malnourished, stunted, illiterate, outcast and neglected by the mainstream elite communities.

The British colonial government in spite of all their drawbacks, under the able demand of Dr. B.R. Ambedkar, was the first administration to recognize the need to address this inhuman inequality in Hinduism through Poona Pact (M.K. Gandhi & B.R. Ambedkar 1932). They were also the first to introduce the concept of "Scheduled Castes" by listing the Panchamas for the purpose of their emancipation through education, electoral representation and employment by the Government of India Order, 1936.

Reservation for Scheduled Castes in independent India

Reservation for Scheduled Castes (SCs) in independent India is a crucial component of the country's affirmative action plan, designed to uplift historically marginalized communities. The reservation system in the Constitution of India, aims to address the centuries old social, educational, and economic discrimination thrust upon the marginalized communities by Brahmins and other upper caste Hindus. Article 15(4) and Article 16(4) of the Constitution empowered the state to make special

provisions for the advancement of any socially and educationally backward classes of citizens, including SCs to promote their social, political and economic development (The Constitution of India 2024).

The caste graded Hindu society in India, on becoming a democratic republic, her founding fathers thought it essential to give equal opportunity to all citizens for social, economic and political development, which was considered essential for survival of the new democracy. This they realized can be achieved only by sharing the power, with equal opportunity in education, employment, legislation and judiciary. This was the logic & rationale for the inclusion reservation in the constitution of India. The relevant articles 341 (former 300 A) and 342 (former 300B), have been placed in the Constitution, intact, with the power of declaring Scheduled Castes and Scheduled Tribes in respect of any State, to the President of India. As such Article 341 (2) and Article 342(2), only the Parliament alone can make addition or deletion in the lists. According to the founding fathers of the Constitution, this condition is essential to restrict tinkering with the provisions of Presidential list of SC/ST by any agency other than the Parliament of India. Based on these constitutional provisions, reservation was implemented only in a limited way in certain areas as seen in the following paragraphs.

1. Education

Reservation for SCs is implemented in educational institutions, including schools, colleges, and universities. On an average 15% percentage of seats are reserved for SC students and 10% for Scheduled Tribes (STs) in public and government-aided institutions. This policy aims to ensure access to quality education and promote higher enrolment and retention rates among SC & ST students. Scholarships, fee waivers, and other financial incentives are also provided to support their education. Whatever be the rule position statistics say that in rural India around 3 crores of children below 7 years have not seen a school and 99% of these children are from SC, ST & OBC communities. As years moved the facilities of education moved from the government sector and aided sector to the purely private sector. Government investment in this sector is either static or decreasing. The quality of education in Government institutions is also nose diving, which further boosts private education. The net result is even though reservation is provided in government institutions vast numbers of the SC/ ST children are deprived of education. Our judiciary as well as governments are unaware of the poor infrastructure for school education in rural India. It is in this background the SCJ is raising the issue of sub classification of SCs & excluding creamy layer among SCs by a landmark judgement (Supreme Court Observer 2024)! A new strategy to deny even education to a section of Scheduled castes in the name of sub classification & creamy layer 2.

2. Employment

In government jobs, reservation to the SCs, STs and OBCs in case of direct recruitment on all India basis by open competition is given at the rate of 15%, 7.5% and 27% respectively.

22.5% of vacancies are reserved for SCs and STs across all levels of employment, from Group D to Group A, and higher administrative posts. However, in organized civil services, reservation is restricted to the entry cadre and promotions to higher cadres are purely based on merit. This reservation policy extends to recruitment in public sector undertakings, nationalized banks, and other government funded institutions. The reservation in employment is intended to ensure fair representation of SCs & STs in governance and development opportunities. Unfortunately, reservations in jobs have undergone serious erosion depriving substantial job opportunities for the SCs, STs & OBCs. In government sector recruitment as per quota was only in the last grade employment (Group D). The new policy of outsourcing watch & ward, peons & messengers, and other group D or Class IV employees has totally taken away almost 70% of the government job opportunities available to the SC/ST communities. In the case of Class III or Group C employees and above the quotas were never filled up resulting in de-reservation and filling up of the reserved vacancies with elite community candidates. In case of civil service recruitments, the quota was never filled up above 4 or 5 percent. This happens when the country is having lakhs of SC/ST graduates, post graduates and doctorate degree holders. The flimsy reason attributed for not filling the reserved quota is non availability of "competent" candidates.

It is quite fun to note that for civil services there is a criterion of essential qualifications for the applicants. Then there is a two tyre test. The preliminary and the final. If there is an essential qualification then test is only to grade the available candidates for calling a certain proportion of candidates for interview based on the number of vacancies for each category. This call shall be category wise proportional to the number of vacancies in the quota. This does not happen. Instead the UPSC decides a cut off score for initial and the final test, which many of the reserved candidates do not achieve as their economic background cannot support costly coaching classes. The net result is the elite community candidates get through the cut off score as they are spoon fed by well-paid intensive coaching, whereas the best SC/ST candidates do not get through for the reasons explained above. Those few SC/ST candidates who clear the tests are obviously the children of educated government employees. On the other hand, if the best performing SC/ST candidates meeting essential qualifications are inducted and provided proper training, they will definitely turn out to be better serving and development-oriented bureaucrats in government service.

The unfilled quota of SCs, STs & OBCs in organized civil services in Government of India presented in Parliament is alarming as shown in table 1. (John Brittas 2023). All the unfilled positions are offered to candidates from forward communities under the false pretext of poor performance in written test & personal interview! A cool way of torpedoing affirmative action for the welfare of marginalized communities.

Table 1. Yawning Gap of representation of SC, ST & OBC in civil services of India

Year	Total posts filled up	SCs	STs	OBCs
2018	906	68	31	134
2019	733	65	30	136
2020	858	61	29	133
2021	862	71	34	145
2022	1006	69	42	147
Total.	4365	334	166	695
% of filled up.		7.65%	3.8%	15.92%
% quota to be filled up		15%	7.5%	27%
% quota denied		7.35%	3.7%	12.12%

There is no judiciary or government authorities to see these anomalies, which cause the very poor representation of SC/ST personnel in responsible positions. Instead they see only that the few SC recruits in higher positions are the children of educated and employed SC/ST parents, which a judge classifies as "creamy layer". The fact that if there were eligible candidates among the non-creamy layer or under represented SC communities, the quota will not remain vacant. Therefore, the argument of the SCI judgment that the non-creamy layer and certain Scheduled

Caste communities are not getting reservation quota is baseless. The fact is that the Government welfare measures are not reaching certain communities of Scheduled Castes & Tribes to make them qualified. It is well known, the funds earmarked for the development of SC/ST communities, as SCP & TSP funds, go unutilized and diverted for other purposes.

Another major scheme of cutting the employment opportunities for SC/ST candidates is the planned disinvestment process implemented by various governments. In 1997 with the sale of BALCO, the Govt. of India started a new policy of disinvestment of Central Public Sector Enterprises (CPSE). Initially the privatization policy was to disinvest loss making units and now it is a general policy of Govt. of India for disinvestment of even profit-making units and as on 31-03-2015, 58 PSUs were disinvested.

In 2023-24 alone 16 PSUs under Government of India were disinvested, realizing a paltry sum above Rs 16,000 crores. The huge money realized from the entire disinvestment operations were invested for infrastructure development without immediate scope for employment generation. This is a major change from employment generation policy to infrastructure development policy,

seriously affecting employment opportunities for SC/ST and OBC personnel. In tune with the Central Govt policy of disinvestment the State Governments are also operating disinvestment killing the development opportunities of all marginalized communities all over India.

Instead of addressing this lacuna and without any data on actual SC/ST representation in executive & judiciary, the present SCI order is a concoction to undercut even the marginal representation now enjoyed by the Scheduled Castes, under the flimsy ground of under representation of certain SC communities & an imaginary creamy layer, which is not even butter milk compared to the rich ruling communities, who bag more than 90% of the higher-grade appointments in executive & judicial governance.

3. Political Representation for SCs

The political empowerment of the marginalized communities, which again is an important role in governance, the Constitution provides for reservation of seats for SCs & STs in the Parliament (in Lok Sabha only & no reservation in Rajya Sabha), State Legislative Assemblies and LSG institutions. This is also another way of sharing the power in the legislation process. In this process too, the real representation is nullified by a subsequent development called party whip. In practice these SC/ST MPs, MLAs & LSG Members are political party nominees and so are bound by party policies & whip, which often sideline SC/ST welfare measures. Consequently any SC/ST MP or MLA or LSG Member representing any SC/ST developmental interest against their party policy is liable to be removed from the party and may get disqualified. Thus, in practice these elected representatives too are unable to demand/represent tangible SC/ST development programmes.

4. Judicial Interpretation and Amendments

Over the past few decades, the reservation policy has been subject to judicial scrutiny and interpretation by High Courts and the SCI. These judicial institutions in India have played a crucial role in interpreting the reservation policies through important judgments. The Indra Sawhney case (1992) is a typical example. In this case the Court even though upheld the constitutional validity of reservations, without any basis they imposed a 50% ceiling on the total reservations in public employment and education, in spite of the fact that the SC/ST and OBC in India add up to more than 80% of Indian population. In reality even today the representation of SC, ST & OBC together in Class I or Group A posts is below 10% and more than 90% of this policy and decision-making posts are grabbed by the upper caste communities, more clearly the Brahmins.

The poor representation in higher posts obviously due to denial of recruitment and also due to denial of

promotion on the flimsy grounds like administrative efficiency made the then government under Indira Gandhi and Jagjeevan Ram to amend the Constitution, (77th Amendment 1995), which introduced Article 16(4A), to enable reservation in promotions for SCs & STs in government jobs. Even though here and there some good leaders will come and change the rules and regulations with constitutional amendments, the situation returns to original condition as the authorities to implement the rules and regulations in judiciary and executive are dominated by brahmins and other high caste personnel, who are even today guided by the age old Manu Smriti and Sanatan and not the constitution and the principles of equality, liberty & fraternity. One literally feels ashamed to see the “learned judges” of modern days after taking oath to protect the Constitution of India, drawing inspiration from the outdated & irrational Manusmriti and Sanatan for their judgements!

5. Challenges and Criticisms

While the reservation policy has some contributions to the development of SCs and STs, it has also invited more critics and enemies. There are arguments that the reservation policy perpetuates the caste system and may lead to discrimination against non-SC communities. One recent criticism even from sitting judges is on the emergence of a “creamy layer” within the SC community, who disproportionately reap the reservation benefits. These critics raise the hue and cry that some relatively well-off SCs are repeatedly reaping the reservation benefits. These critics do not see that in spite of the “SC creamy layer” repeatedly reaping the reservation benefits, more than 50% of the reserved vacancies are lying vacant due to “non-availability of qualified candidates”. Why are these vacancies not filled up by non-creamy layer SC candidates or the under-represented SC community members? These critics may please understand that the purpose of reservation is to create a role for marginalized communities in governance of the nation and states so that due benefits are extended to members of the marginalized communities while policies and programs are implemented for development. This representation will be effective only if a capable representative is in position. The exclusion of “creamy layer” rather capable candidates will totally defeat the very purpose of effective representation of SC/ST personnel in governance. In other words the exclusion of creamy layer is also designed to reduce the present name sake SC representation in governance as well as make the minor representation ineffective seriously affecting the developmental objective of SC communities. These and other similar challenges ordered by some High Courts, the SCI had struck down by a five judge constitution bench, in 2005. The present Supreme Court judgment in State of Punjab –vs- Davinder Singh and others (Supreme Court Observer 2024), approves authority of the state governments to sub classify the homogenous group of Scheduled Castes into subclasses for the purpose of

reservation. One SC judge even recommended implementation of creamy layer among SCs! This judgement is totally contradicting to another Supreme Court Judgement by a five-member constitution bench which upholds States cannot tinker with Scheduled Castes List, for which only the Indian Parliament is empowered (Chinnaiah Vs State of Andhra Pradesh 2004)

This SCI judgment without any data, exposing an ulterior motive to torpedo even the present level of recruitment under reservation in effect is a tool to make more vacancies available to upper caste candidates. The CJI, otherwise reputed as a philanthropic judge and an Scheduled Caste Judge also are parties to such a baseless judgment without any valid data, raises serious questions on the rationale of SCI judgements. The fact that SCI has sought the opinion of the Government and the Modi Government is reported to have given NOC for sub classification of SCs, further prove that the present Central Government and the SCI are hand in glove to further disintegrate the SC community for political gains. It is a consolation to see the wisdom in the sole differing judgment of Justice Bela that sub classification of a homogenous SC group is unconstitutional and amounting to tinkering with the Presidential list, which only the Parliament of India is empowered. True, it is a divisive attempt to disintegrate the emerging consolidation of SC/ST communities in India.

The background being this, it is worthwhile to note why the Chief Justice of India & the Supreme Court of India are not looking into the allegation that all SCI and HC judges come from some 300 families in India? Why not the SCI recommend a legislation to exclude the super creamy layer family members of SCI/HC judges being appointed as judges? India is a democracy and not a monarchy. It is time to do away with the self-appointing collegium appointing judges and to install a democratic collegium for selecting judges. The US model of a presidential nominee approved by a simple majority in both houses of Parliament will be a democratic model to appoint Judges of High Court and Supreme Court. Unless such a democratic system comes the High Courts and the Supreme Court will have Judges pronouncing judgements quoting the outdated Vedas, Manusmriti, etc. instead of the Constitution of India.

Similar is the issue of “halwa distribution”, a poser by Rahul Gandhi on the finalizing of annual budget 2024-25 by the Finance Minister of India. In the group which plans the annual development plans and budget there is no representation for the vast majority of SC, ST, & OBC, who form more than 75% of Indian population. Same is the case with the Prime Minister’s Office which decides the country’s priorities. No representation for marginalized communities in planning and formulation of national programmes and policies. The judiciary and the executive making and interpreting future plans shall have proportional representation for marginalized communities. We are lagging in such a logical approach and that is why no tangible SC, ST & OBC development

happens even after 77 years of independence and tinkering of constitutional provisions with issues like sub classifications, creamy layer, etc. are coming up.

Conclusion

Reservation for Scheduled Castes & Tribes in India is a very important tool for social justice, equality and fraternity, aimed at addressing historical wrongs and to ensure access & a fair representation for marginalized communities in governance. The reservation policy remains a cornerstone of India's commitment to build an inclusive and egalitarian society. But continued efforts are necessary to refine and adopt the reservation system effectively to achieve the evolving needs of SCs, STs, OBCs and to ensure social, political and economic equality. The concept that the Panchamas & the Shudras have to serve the other three varnas unconditionally as unpaid servants is still in operation in the Indian society, which forms the basis of the willful denial of even the proportionate representation in judiciary, executive and a due role in development programs & budgeting the national development.

In this context the creamy layer and sub classification among SCs can be seen only as a tool to disintegrate the gradually progressing homogenous group and undercut their planned development as envisaged in the constitution, so that these outcast communities will remain confined as low paid servants of the higher ups. Therefore, the provisions of reservation and the Scheduled Castes as a homogenous group shall remain undisturbed until they are socially, economically and politically on par with the mainstream communities.

Then only India will achieve the great dream of equality, liberty and fraternity as envisioned by the founding fathers of our Constitution. So constitutional generosity demands that the Parliament shall take up necessary legislation to include the SC/ST reservations under section 9 of the Constitution as an exclusive prerogative of the President of India on a simple majority recommendation of Indian Parliament to avoid tinkering these provisions by any agency.

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