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The ‘quota within quota’ debate

(Paper 2 : 7.1 SC/ST - constitutional safeguard)

Supreme Court has referred to a larger Bench the question whether SCs and STs should be sub-categorised for reservations. What are the arguments for and against this? How has the court ruled in the past?

On Thursday, a five-judge Constitution Bench of the Supreme Court reopened the legal debate on sub-categorisation of Scheduled Castes and Scheduled Tribes for reservations, or what is commonly referred to as “quota within quota” for SCs and STs.

While the Bench ruled in favour of giving preferential treatment to certain Scheduled Castes over others to ensure equal representation of all Scheduled Castes, it referred the

issue to a larger Bench to decide. This was because in a 2005 ruling, also by a five-judge Bench, the Supreme Court had ruled that state governments had no power to create sub-categories of SCs for the purpose of reservation.

Since a Bench of equal strength (five judges in this case) cannot overrule a previous decision, the court referred it to a larger Bench to settle the law. The larger Bench, whenever it is set up by the Chief Justice of India, will reconsider both judgments.

What is sub-categorisation of SCs?

States have argued that among the Scheduled Castes, there are some that remain grossly under-represented despite reservation in comparison to other Scheduled Castes. This inequality within the Scheduled Castes is underlined in several reports, and special quotas have been framed to address it.

For example, in Andhra Pradesh, Punjab, Tamil Nadu and Bihar, special quotas were introduced for the most vulnerable Dalits. In 2007, Bihar set up the Mahadalit Commission to identify the castes within SCs that were left behind.

In Tamil Nadu, a 3% quota within the SC quota is accorded to the Arundhatiyar caste, after the Justice M S Janarthanam report stated that despite being 16% of the SC population in the state, they held only 0-5% of the jobs.

In 2000, the Andhra Pradesh legislature, based on the findings of Justice Ramachandra Raju, passed a law reorganising 57

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SCs into sub-groups and split the 15% SC quota in educational institutions and government jobs in proportion to their population. However, this law was declared unconstitutional in the 2005 Supreme Court ruling that held states did not have the power to tinker with the Presidential list that identifies SCs and STs.

Punjab too has had laws that gave preference to Balmikis and Mazhabi Sikhs within the SC quota; this was challenged and eventually led to the latest ruling.

What is the Presidential list?

The Constitution, while providing for special treatment of SCs and STs to achieve equality, does not specify the castes and tribes that are to be called Scheduled Castes and Scheduled Tribes. This power is left to the central executive — the President.

As per Article 341, those castes notified by the President are called SCs and STs. A caste notified as SC in one state may not be a SC in another state. These vary from state to state to prevent disputes as to whether a particular caste is accorded reservation or not.

According to the annual report of the Ministry of Social Justice and Empowerment, there were 1,263 SCs in the country in 2018-19. No community has been specified as SC in Arunachal Pradesh and Nagaland, and Andaman & Nicobar Islands and Lakshadweep.

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In the 2005 decision in E V Chinnaiah v State of Andhra Pradesh and Others, the Supreme Court ruled that only the President has the power to notify the inclusion or exclusion of a caste as a Scheduled Caste, and states cannot tinker with the list. Andhra Pradesh had submitted that the law was enacted as states had the power to legislate on the subject of education, and reservation in admission fell within its legislative domain. The court, however, rejected this argument.

The Constitution treats all Schedule Castes as a single homogeneous group.

If all SCs are treated as one group, what are the grounds for sub-categorisation?

The basis of special protections for SCs comes, in the first place, from the fact that all these castes suffered social inequity. Untouchability was practised against all these castes irrespective of economic, education and other such factors.

However, the Supreme Court has engaged with the argument on whether the benefits of reservation have trickled down to the "weakest of the weak". The concept of a "creamy layer" within SCs was upheld by the court in a 2018 judgment in Jarnail Singh v Lachhmi Narain Gupta.

The "creamy layer" concept puts an income ceiling on those eligible for reservation. While this concept applies to Other Backward Castes, it was applied to promotions of Scheduled Castes for the first time in 2018.

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The central government has sought a review of the 2018 verdict and the case is currently pending.

Punjab's law applies a creamy layer for SCs, STs in reverse — by giving preference to Balmikis and Mazhabi Sikhs. This is the case that has now led to reopening the debate on sub-categorisation of scheduled castes.

In the E V Chinnaiah case in 2005, the court had held that special protection of SCs is based on the premise that "all Scheduled Castes can and must collectively enjoy the benefits of reservation regardless of interse inequality" because the protection is not based on educational, economic or other such factors but solely on those who suffered untouchability.

The court had held that merely giving preference does not tinker, rearrange, subclassify, disturb or interfere with the list in any manner since there is no inclusion or exclusion of any caste in the list as notified under Article 341.

The states have argued that the classification is done for a certain reason and does not violate the right to equality. The reason they have given is that the categorisation would achieve equitable representation of all SCs in government service and would being about "real equality" or "proportional equality".

What are the arguments against sub-categorisation?

The argument is that the test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes. The special treatment is given to

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the SCs due to untouchability with which they suffer. In a 1976 case, State of Kerala v N M Thomas, the Supreme Court laid down that “Scheduled Castes are not castes, they are class.”

The petitioner’s argument against allowing states to change the proportion of reservation is also based on the perception that such decisions will be made to appease one vote-bank or the other. A watertight President’s list was envisaged to protect from such potential arbitrary change.

Also, in the current case, the court relied on its 2018 ruling in Jarnail Singh to buttress the point that social inequities exist even among SCs. However, since that ruling is pending for review, the petitioners argued against relying on it.

In the Jarnail Singh case, the court held that the objective of reservation is to ensure that all backward classes march hand in hand and that will not be possible if only a select few get all the coveted services of the government.

“The constitutional goal of social transformation cannot be achieved without taking into account changing social realities,” the court ruled.

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