

**INDIAN JOURNAL OF CONSTITUTIONAL STUDIES**

**ARTICLE**

**AUGUST 2021**

Copyright © 2016-17. All rights reserved with the Editors of Indian Journal of Constitutional Studies.

**ISSN 2456 - 5008**

Published bimonthly

**- - Disclaimer - -**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of the Indian Journal of Constitutional Studies. The Indian Journal of Constitutional Studies (hereinafter IJCS) and its affiliates holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Board or Board of Advisors for the Indian Journal of Constitutional Studies. Though all efforts are made to ensure the accuracy and correctness of the information published, the Editorial Board or the Board of Advisors for IJCS are not responsible for any errors caused due to oversight or otherwise.

**- - Note - -**

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

**Publisher Details -**

**Bishikh Mohanty**

**E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,**

**Khorda, Odisha, Pin - 751021**

**Telephone: +91 8106743973**

**Email: ijconsstudies@gmail.com**

**- Acknowledgement-**

We would like to express a deep sense of gratitude towards our editors who thoroughly validated all articles sent to them for reviews. We would also like to thank our contributors, **Mr. Shrirang Ashtaputre & Ms. Sanjana Kulkarni** for their contribution towards journal's blog.

## THE NEED FOR INTRODUCING CREAMY LAYER WITHIN THE SC/ST RESERVATIONS IN INDIA

*“If I find the constitution being misused, I shall be the first to burn it”*

- *B.R. Ambedkar<sup>i</sup>*

-*Shrirang Ashtaputre, Sanjana Kulkarni, students, ILS Law College, Pune*

### **Introduction:**

Today, one can witness rallies, debates and unending discussions among the elite, privileged and wealthy individuals of the society with regards to the inessentiality of and the unjustness promoted by the reservation system in India. Many forget that the idea of reserving certain constituencies, seats in educational institutions and even jobs for the underprivileged stems from the need for ensuring social, economic and political justice, as asserted in the Preamble<sup>ii</sup>. For creating an egalitarian society, the provisions in Part III and Part IV of the Constitution legitimize reservations, thereby paving the path for uplifting the victims of *Brahmanical* atrocities. Laudably, the Constituent Assembly<sup>iii</sup> unanimously sought to avenge the ill-deeds of their ancestors by willingly pressing on imposing reservations for bringing the members of the aforesaid community at par with the “socio-economically advanced citizens”.

### **Reserving an Opportunity for the Truly Deserving:**

The said right, contrary to its contemporary perception, was meant to be temporary, though the consistent failure of the State to undertake swift measures for enabling the SC/STs to avail this facility led to its perpetuation. Undoubtedly, it has aggravated the prevailing caste-based divide, thereby hampering social integration. Especially, after the judgment propounded by the Apex Court in *Indra Sawhney v. Union of India*<sup>iv</sup>, which extended the aforesaid facility to certain backward classes, today, several social groups such as the affluent *Patidars*<sup>v</sup>, *Jats*<sup>vi</sup> and *Marathas*<sup>vii</sup>

are adamant about being declared as “benighted” for securing the benefits of this initiative! Amidst this tussle for proving backwardness, it must be noted that the creamy-layer<sup>viii</sup> members among the OBCs are disentitled from availing reservations; such differentiation does not exist<sup>ix</sup> rigorously among the SC/ST, indicating that certain members of these communities, irrespective of their advanced socio-economic position in the society, continue to exploit the merits of reservations to their advantage, even today! This mechanism is virtually inherited by their children, even if the purpose of affirmative action<sup>x</sup> has achieved its goal in their case, i.e., by ensuring a dignified position, better financial stability and accessibility to every other form of enterprise, whether public or private. Even the learned members of the Constituent Assembly<sup>xi</sup> were against the idea of continuing reservation for families which have been uplifted successfully, though caste-based politics has deemed this scheme to be hereditary, which is specifically unconstitutional in these cases<sup>xii</sup>. Moreover, it seems unreasonable to extend reservations to the issues borne out of inter-caste marriages, where one of the spouses belongs to an “upper” caste<sup>xiii</sup>. Besides ignoring these facets, the leaders representing the SC/ST have failed to realize that the sufficiently prosperous families<sup>xiv</sup> of these social groups benefit the most out of this facility, implying stagnation in the upliftment of their fellow poorer and the oppressed members- perpetuating self-interest in the public sector<sup>xv</sup> negates the very idea of having reservation in the first place. This also contradicts the essence of having this mechanism - to promote the interests of those communities who are backward and underrepresented<sup>xvi</sup>. This is one of the reasons why an exponential increase in the enrolment of candidates from these communities for professional courses is not observed<sup>xvii</sup>, despite monumental support from the State – the truly vulnerable are pushed away from enjoying the fair competition, into oblivion.

### **Conclusion:**

An egotistical attitude has been engendered due to the inadequate and astigmatic implementation, which the framers of the Constitution certainly did not apprehend – this substantially conflicts with the very idea of imposing reservation in the first place. Although the prevailing method of reservation does enable in destroying caste-based barriers, it also increases the prevailing socio-economic gap, even within the members of the same SC/ST community. The *Gandhian* ideology

of striving hard for improving the status of the community in all aspects besides ensuring progress of the self, an ideal essence of the reservation system, is failing, owing to the refusal of the “uplifted” to not claim this right, in the interests of the fellow brethren. The willingness to compromise is expected from all the members belonging to the well-to-do background, irrespective of their origin, for caste alone<sup>xviii</sup>, cannot be contested as a ground for claiming the benefits of reservation and other factors, such as the degree of oppression, social-backwardness and poverty are equally, or more relevant in bestowing this privilege.

Upon evaluating the social advancement and the economic growth of the members in such communities, the concept of the creamy layer should be utilized for excluding those who are successfully uplifted against the truly vulnerable and backward<sup>xix</sup>, which, in the light of growing disparity, is imperative. Impliedly, such a stance restricts the unlimited scope of Article 16(4-A) and Article 16(4-B), as the State’s discretion to grant reservation would then be subjected to the aforesaid parameters<sup>xx</sup> – prevents the politicization of reservations. Likewise, it allows the equal treatment of the unequal members within a particular class. Introduction of the said concept within SC/STs sufficiently upholds Article 14, Article 15 and Article 16 and therefore, would not infringe upon the rights of these communities but truly enable the reformation of the truly oppressed people in the country<sup>xxi</sup>. It is high time that the Parliament, rather than opposing the stance of the Supreme Court in *M. Nagaraj* and *Jarnail Singh*<sup>xxii</sup>, considers introducing a creamy layer within the SC/ST in cases of education, jobs and promotions if reservations are to ensure their upliftment and social equality in the truest sense, which are the need of the hour.

**Endnotes<sup>xxiii</sup>:**

- <sup>i</sup> #ConstitutionDay: 16 Famous quotes by Dr Babasaheb Ambedkar you ought to know Free Press Journal Nov 26 20120 10:22 AM IST. As retrieved from: (<https://www.freepressjournal.in/india/16-famous-quotes-by-babasaheb-ambedkar-you-ought-to-know>).
- <sup>ii</sup> Om Marathe The Preamble: What does it say, and what does it mean to India and its Constitution? The Indian Express Jan 24 2020 9:47 AM. As retrieved from: (<https://indianexpress.com/article/explained/the-preamble-what-does-it-say-and-what-does-it-mean-to-india-and-its-constitution-6232014/>).
- <sup>iii</sup> CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) -VOLUME IX. As retrieved from: (<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C25081949.pdf>).
- <sup>iv</sup> AIR 1993 SC 477.
- <sup>v</sup> Happy With 10% Quota, But Will Continue To Fight BJP: Hardik Patel Outlook India. Feb 6 2019 8:00 PM IST. As retrieved from: (<https://www.outlookindia.com/website/story/india-news-happy-with-10-quota-but-will-continue-to-fight-bjp-hardik-patel/325018>).
- <sup>vi</sup> Jat Reservation, the Complete Story & why Supreme Court had to Rule against it, Read Judgment Latest Laws Feb 20 2016. As retrieved from: (<https://www.latestlaws.com/latest-news/jat-reservation-the-complete-story-why-supreme-court-had-to-rule-against-it-read-judgment/>).
- <sup>vii</sup> Zeeshan Shah Explained: Marathas, quota demand, and community's importance in state politics The Indian Express Jun 29 2019 2:41 PM IST. As retrieved from: (<https://indianexpress.com/article/explained/marathas-quota-demand-and-communitys-import-in-state-politics-maratha-verdict-devendra-fadnavis-5803793/>).
- <sup>viii</sup> Apoorva Mandhani What creamy layer is & why Supreme Court kept affluent SC, ST members out of quota benefits The Print Dec 4 2019 12:00 PM IST. As retrieved from: (<https://theprint.in/theprint-essential/what-creamy-layer-is-why-supreme-court-kept-affluent-sc-st-members-out-of-quota-benefits/329790/>).
- <sup>ix</sup> E.V. Chinnaiiah and Others v State of Andhra Pradesh and Others, AIR 2005 SC 162.
- <sup>x</sup> Quleen Kaur Bijral Bijral Affirmative Action: The System Of Reservations And Quotas In India The Logical India Oct 7 2015. As retrieved from: (<https://thelogicalindian.com/story-feed/awareness/affirmative-action-the-system-of-reservations-and-quotas-in-india/>).
- <sup>xi</sup> Supra iii.
- <sup>xii</sup> Gazula Dasaratha Rama Rao v. The State Of Andhra Pradesh And Ors., 1961 SCR (2) 931.
- <sup>xiii</sup> Rameshbhai Dabhai Naika v. State Of Gujarat And Ors., (2012)3 SCC 400.
- <sup>xiv</sup> State Of Kerala And Anr v. N. M. Thomas And Ors., 1976 SCR (1) 906.
- <sup>xv</sup> Id.
- <sup>xvi</sup> Rohtas Bhankar v. Union of India, (2014) 8 SCC 872.
- <sup>xvii</sup> Handbook on Social Welfare Statistics, Government of India Ministry of Social Justice & Empowerment Department of Social Justice & Empowerment Plan Division New Delhi Sept 2018. As retrieved from: (<http://socialjustice.nic.in/writereaddata/UploadFile/HANDBOOKSocialWelfareStatistic2018.pdf>).
- <sup>xviii</sup> Kumari K.S. Jayasree And Anr v. The State Of Kerala And Anr., 1977 SCR (1) 194.
- <sup>xix</sup> Supra iv.
- <sup>xx</sup> M.Nagaraj And Others v. Union Of India And Others, (2006) 8 SCC 212.
- <sup>xxi</sup> Jarnail Singh v Lachmi Narain Gupta, 2018 SCC OnLine SC 1641.
- <sup>xxii</sup> Krishnadas Rajagopal Why does government want Supreme Court to reconsider stand on SC/ST creamy layer? The Hindu Dec 13, 2019 01:29 AM IST. As retrieved from: (<https://www.thehindu.com/news/national/why-does-government-wants-supreme-court-to-reconsider-stand-on-scst-creamy-layer/article30233041.ece>).
- <sup>xxiii</sup> The Authors extend their sincere gratitude to All India Human Rights Association for inspiring us to write on the said topic.