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RESERVATION, REPRESENTATION, AND EQUITY: THE DEBATE ON CREAMY LAYER EXCLUSION

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Abstract

The Creamy Layer concept is one of the most important aspects of India's caste-based reservation system for the OBCs. The phrase describes the OBC category's socially, educationally, and economically advanced segments that are denied reservation privileges because they have ceased to experience the identical degree of disadvantage as other members of the backward classes. Creamy Layer status depends on social position, profession, and income. Individuals coming from families whose parents have gross annual income higher than ₹8 lakhs are usually termed as Creamy Layers. The status and rank of parents, such as Group A officers, some Group B officers, prominent military personnel, and occupants of constitutional positions, are also taken into consideration and become a relevant factor when it comes to government employees. The theory aims at ensuring that those disadvantaged groups for which affirmative action was initially meant get reservation benefits.

Apart from enabling affirmative action for social and educational backward classes, Article 14 of the Constitution of India also guarantees equality before the law and equal protection under the law. And so this brings to light an important constitutional issue – does the idea of achieving equality through reserve advances constitute a breach of the principle of equal opportunity? If reservations in favor of backward castes should also be available for those who belong to the creamy section among backward castes is another significant issue. Eliminating the creamy layer is sometimes seen as a way to guarantee a more equitable distribution of advantages and stop relatively favored groups from monopolizing possibilities. To test whether the creamy layer exclusion is needed to bring about substantive equality and social justice, this paper examines these claims by applying constitutional principles, judicial decisions, and policies.

There are three main sections to the paper. The introduction and the framework for the equality and reservation clauses in India's Constitution form the first part of this essay. The requirement of excluding the creamy layer from the scope of reservations is discussed in the second part,

wherein the judicial evolution of the creamy layer concept is examined. The final part presents some recommendations on how to make the system of governance more equitable and provides an outline on the way of applying creamy layer exclusion effectively.

Keywords - Creamy Layer, Backward Class, Constitution, Equality, Reservation

Introduction (Research Problem / Research Objectives)

The revolutionary view of the society, which is based on the principles of equality, justice, dignity, and inclusiveness, finds expression in the Constitution of India. It was through an awareness of structural inequalities resulting from centuries of caste discrimination, social exclusion, and economic hardship that the framers of the Constitution chose affirmative action as a means to ensure substantive equality and not just formal equality. Reservation is perhaps one of the most significant constitutional measures that can ensure historically under-represented communities have an equitable share in representation and opportunities in society, at work, and in education. The idea behind reservations was not that it was supposed to be a privilege or a compromise, but it was an effort to compensate for the misdeeds committed in the past and help those who belonged to the weaker sections of society become an active part in the development of the nation.

B. R. Ambedkar was one of the leading proponents of this idea, believing that social fairness was essential to the prosperity of Indian democracy. For Ambedkar, the idea of reservations was one such tool which could bring about change and dismantle the age-old structures by providing opportunities to those who have been denied them for a long time now. Reservation is supposed to be a tool for correction in order to make up for any historical imbalances that need to be corrected in order for an egalitarian society to be formed. Through legislative and judicial advancements, the constitutional framework controlling reservations has undergone significant evolution. There have been many constitutional amendments to increase the representation of Scheduled Tribes (STs) and Scheduled Castes (SCs) in public services. The Constitution (Seventy-Seventh Amendment) Act, 1995, included an amendment that gave rise to article 16(4A). This enabled the promotion of SCs and STs in public employment and services. Article 16(4B) of the Constitution (Eighty-First Amendment) Act, 2000 allowed empty reserved positions to be carried over past the general reservation cap. This is famously known as the 'Carry Forward Rule'. Article 335 was modified by the Constitution (Eighty-

Second Amendment) Act, 2000¹ in order to allow a modification of qualification scores and assessment criteria in promotion-related situations. On the other hand, those who have been uplifted by virtue of the reservation system were bestowed the grace of “Consequential Seniority” under the Constitution (Eighty-Fifth Amendment) Act, 2001. When taken as a whole, these changes demonstrate the ongoing constitutional commitment to ensuring that historically under-represented communities are adequately represented.

Even though the above efforts have been made, several problems have emerged regarding the sharing of benefits by different beneficiaries of reserves. However, it has been observed that many families from the SC and ST groups have achieved considerable success socially, economically, and educationally even while still availing themselves of reservation privileges generation after generation. This is why there is often an overrepresentation of opportunities that come to the more advanced areas, whereas the disadvantaged and most vulnerable people of such communities remain deprived of the intended benefits of affirmative action. This phenomenon has led to much debate about the effectiveness, fairness, and direction that the reservation policy in India should take in the future. The idea of the Creamy Layer takes on special relevance in this setting. It is used to refer to people from an unprogressive caste who have become successful and might not require the benefits of the reservation system anymore due to their success and opportunities that they have been able to avail of. In *Indra Sawhney v. Union of India*, the Supreme Court recognized this principle in stating that reservation benefits cannot be extended to the more advanced members of OBCs since it is necessary for ensuring that positive discrimination is extended to the backward people

Complicated questions regarding constitution, social, and policies come up in the creamy layer exclusion issue. They argue that those who need to benefit from reservation are those who remain socially and economically backward, and since there is no such mechanism of exclusion, a small elite community can appropriate benefits meant for society in general. However, some argue that a different constitutional approach is necessary because the historical prejudice experienced by SCs and STs cannot be equated with backwardness among OBCs. The disagreement between these two contradictory perspectives reflects a more fundamental problem in finding the right balance between the need to ensure that affirmative

¹ THE CONSTITUTION (EIGHTY SECOND AMENDMENT) ACT 2000. (n.d.). Available at: <https://www.legislative.gov.in/static/uploads/2025/07/163d821e39b1891f0321d008fea81e50.pdf> [Accessed 3 Jul. 2026].

action benefits are fairly distributed on the one hand and the constitution's dedication to social justice on the other.

Constitutional Framework Governing Reservation and the Exclusion of the Creamy Layer

It is necessary to take into account the broader perspective of equality, social justice, and affirmative action in the Constitution while discussing the issue regarding the exclusion of the creamy layer from benefits of reservation. Through taking into account the structural and historical problems faced by marginalized people, the Indian Constitution seeks to establish substantive equality, instead of looking at equality from only a formal point of view. Articles 14, 16, 21, and 341(2) of the Indian Constitution form the main basis for not only the constitutionality of reservation but also the debate on creamy layer exclusion.

Article 14 - Equality before law

Article 14 guarantees that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."²

This denotes two related concepts, equality before the law and equal protection of laws and is regarded as the backbone of the equality doctrine in India. While the former imposes a positive obligation on the State to ensure equality in treatment for people who find themselves in similar circumstances and take whatever measures to ensure equality is achieved, the latter is a negative right that prohibits arbitrary actions by the State. The Supreme Court has repeatedly ruled that total equality is not required under Article 14. Rather, it allows for appropriate classification as long as it is founded on understandable differences (intelligible differentia) and has a logical connection (rational nexus) to the desired outcome. As historically underprivileged groups are a unique class which requires specific attention and representation, the policy of reservation was found to be justifiable based on the above-stated reasoning. Furthermore, there are limits to the use of affirmative action according to Article 14. Reservations should not be used as a way of keeping the benefits for an elite few within an underdeveloped community. The constitutional goal of fair distribution of chances may be undermined if socially and economically advanced people continue to get reservation benefits even when they are no longer significantly disadvantaged. This doctrine of "Creamy Layer"

² THE CONSTITUTION OF INDIA. (n.d.). Available at: https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf.

came about because of this fear. Consequently, one can consider exclusion of advanced sectors as a constitutional mechanism that ensures compliance of affirmative action with the equality principle in general stated in Art. 14.

Article 16 - Equality of opportunity in matters of public employment.

The particular application of the equality principle in relation to public employment is represented by Article 16.

*Article 16(1) guarantees equality of opportunity for all citizens in appointments and employment under the State, while Article 16(2) prohibits discrimination on grounds such as religion, race, caste, sex, descent, place of birth, or residence.*³

There are also some enabling provisions in the Constitution regarding affirmative action because simply being equal is not going to change the existing imbalances. *Article 16(4) allows the State to make provisions for the reservation of appointments or posts in favour of any under-represented class of citizens in public services.*⁴ The clause is a means through which substantive equality can be achieved, and is not an exemption from equality.

Various constitutional amendments that have been made for increasing the representation of SCs and STs in the public service sector have substantially affected the legal structure of Article 16 of the Indian Constitution. The clause 16(4A) was introduced through the Constitution (*Seventy-Seventh Amendment*) Act, 1995, which gave the power to the state to make provisions for the reservation of promotions for SCs and STs when they were not adequately represented in the services of the state government. This amendment represented Parliament's pledge of guaranteeing not only entry-level representation but also career advancement for historically disadvantaged communities and was passed in reaction to judicial developments that had limited promotional quotas. The Constitution (*Eighty-First Amendment*) Act, 2000 further amended the Constitution by incorporating the provision of Article 16(4B), which enabled unfilled vacancies to be carried over from previous years and to constitute a separate category that could not be included within the total percentage of reservation.⁵ The objective behind such change was to counterbalance the continuous problem of under-representation of SCs and STs caused by the deficiency of eligible candidates in that particular year of recruitment.

³ THE CONSTITUTION OF INDIA. (n.d.). Available at: https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf.

⁴ THE CONSTITUTION OF INDIA. (n.d.). Available at: https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf.

⁵ Anushka (2014). *What is the purpose of Indian Constitution (81st Amendment), Act, 2000?* [online] Gktoday.in. Available at: <https://www.gktoday.in/what-is-the-purpose-of-indian-constitution-81st-amendment-act-2000/> [Accessed 4 Jul. 2026].

Adding to the strength of the reservation system, the Constitution (*Eighty-Second Amendment*) Act, 2000 made a change in Article 335 whereby the State could lower qualifying marks and criteria of assessment for SCs and STs in subjects connected with promotions.⁶ This is because the amendment was meant to ensure greater participation of marginalized communities in public administration, considering that adhering to uniform standards might lead to further perpetuation of existing inequities. To make sure that these benefits of promotional reservation did not become irrelevant, The Constitution (*Eighty-Fifth Amendment*) Act, 2001 has extended the concept of consequential seniority to the candidates of SCs and STs, who have been promoted by means of reservation. Taken together, these amendments clearly reveal the dynamism of the Constitution in achieving social justice and substantive equality.⁷ These bring up important questions about the quantity and distribution of the benefit of reservations and their equitable distribution, which form the core of the present debate on the question of the creamy layer and the State's continuing obligation to remedy past exclusion.

The notion of creamy layer exemption is strongly associated with Article 16 because public employment constitutes one of the key sectors within which reservation advantages apply. The Supreme Court especially in the case of *Indra Sawhney v. Union of India* stressed that reservation should help backward areas only and not the forward groups of the reserved classes. Thus, the objective of excluding the creamy layer is to ensure that the monopolization of the benefits by the relatively rich does not hamper the equality of opportunity under Article 16.

Article 21: Right to Life and Personal Liberty

*Article 21 states that no person shall be deprived of life or personal liberty except according to procedure established by law.*⁸ According to the judicial interpretation, apart from the right to physical survival, Article 21 now includes rights to dignity, education, livelihood, good health, and involvement in the society.

The connection between Article 21 and reservation is found in the idea that social justice and human dignity are essential parts of constitutionality. Reservation legislation aims to give historically underprivileged groups access to possibilities for employment, education, and other necessities for a life of dignity. In this way, affirmative action directly advances Article 21's

⁶ CaseMine. (2026). *CaseMine*. [online] Available at: <https://www.casemine.com/act/in/5a979daa4a93263ca60b7217> [Accessed 4 Jul. 2026].

⁷ Team, V.C. (2026). *85th Constitutional Amendment Act, Background, Provisions, Case Laws*. [online] User's blog. Available at: <https://vajiramandravi.com/current-affairs/85th-constitutional-amendment-act/> [Accessed 4 Jul. 2026].

⁸ THE CONSTITUTION OF INDIA. (n.d.). Available at: https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf.

implementation. Constitutional guarantee of dignity is not limited only to the selected few who receive the benefit of such dignity but extends to all the people of the impoverished community too. If reservation benefits are frequently gained by socially and economically advanced families within reserved categories, the most vulnerable parts may remain excluded from opportunities vital for their development.

Article 341(2): Identification of Scheduled Castes

The constitutional provision related to the identification of Scheduled Castes is laid down in Article 341. Under Article 341(1), the President specifies the castes, races, or tribes that shall be deemed Scheduled Castes in a particular State or Union Territory. Moreover, under Article 341(2), no one except Parliament has the power to modify the list of Scheduled Castes through laws. The importance of this clause stems from the fact that it ensures the constitutional protection of Scheduled Caste identities and prevents any arbitrary changes that may be made by the State or administrative authority. Courts have consistently ruled that the Presidential List of Scheduled Castes cannot be changed by the government or the judiciary. The issue relating to creamy layer in SC reservations often cites Article 341(2). Those who are against this measure say that excluding specific people from enjoying benefits under reservation may have an indirect impact on the constitutional recognition of Scheduled Castes. Proponents point out that creamy layer does not disqualify a person from being included in the Scheduled Caste list; it just regulates their access to the quota system. Thus, although caste identification has been covered under Article 341(2), there are still doubts about affirmative action qualifications being distinguished through social and economic progressions without violating any constitutional provisions.

To Conclude

Together, Article 14, 16, 21, and 341(2) make up the essential basis of the constitution that the creamy layer exclusion dispute is predicated on. Article 21 is a reaffirmation of social justice and dignity through the constitution, while Article 14 and 16 emphasize equality and equal distribution of opportunities respectively. However, Scheduled Caste constitutional identity is safeguarded under the provisions of Article 341(2) of the constitution, which provides legal guidelines for its reform. To ensure a harmonious relationship between the objectives of representation, equality, and distributive justice in the Indian Constitution, the issue of exclusion of creamy layer from SC/ST reservations should be evaluated from this perspective.

Judicial evolution

The Supreme Court of India has played a very important role in shaping the implementation of the creamy layer principle and constitutional rules pertaining to reservation over the years. In order to ensure equal benefit sharing from the scheme of reservation, the Court has been reducing the scope of affirmative action through a series of judgments. The judicial process has slowly been tackling issues such as reservations in promotions, reservation within SCs/STs, and need for evidence-based policy making beginning with the adoption of the creamy layer principle for OBCs in *Indra Sawhney v. Union of India* (1992). This is shown through the fact that the Court has shifted its viewpoint from legal equality to substantive equality in realizing that affirmative action must benefit those who remain socially and educationally disadvantaged. The following important judgments illustrate this judicial evolution and provide the constitutional foundation for the present debate on the application of the creamy layer concept for SC/ST quotas.

Indra Sawhney v. Union of India (1992)⁹

The Mandal Commission case, *Indra Sawhney v. Union of India* (1992), marked the beginning of the judicial development of the creamy layer theory. Under the direction of B.P. Mandal, the Indian government established the Second Backward Classes Commission in 1979 to identify socially and educationally disadvantaged groups and suggest ways to improve them. The Commission suggested giving Other Backward Classes (OBCs) a 27% reservation in public employment. These suggestions were put into practice by the V.P. Singh Government in 1990 through an Office Memorandum, which was later contested before the Supreme Court. The petitioners challenged the standards used to designate backward classes and said that the reservation policy violated the constitutional principle of equality under Articles 14 and 16.

The issues before the Supreme Court included if the 27% reservation to OBCs was permissible under the Constitution; if economic criteria alone would suffice for reservation; if the reservation could exceed what was reasonably required by the Constitution; if reservations could be offered in promotions; and if the socially and economically advanced sections of the OBCs deserved reservation.

The nine-judge Constitution Bench rejected the additional 10% quota that was suggested based only on economic factors, but it affirmed the constitutionality of the 27% OBC reservation. More importantly, the Court established the idea of the "creamy layer," ruling that members of

⁹ Garg, R. (2022). *Indra Sawhney v. Union of India and Ors. (1992) : case analysis*. [online] iPleaders. Available at: <https://blog.iPLEaders.in/indra-sawhney-v-union-of-india-and-ors-1992-case-analysis/>.

the Other Backward Classes who are economically and socially advanced ought not to receive reservation advantages. The Court reasoned that reservations are not meant for people who have reached a level of advancement that allows them to compete on an equal basis with the rest of society, but rather for those who still suffer from social and educational backwardness. The creamier layers of the disadvantaged community will continue to take full advantage of such opportunities if they are still given such reserved privileges, robbing those who really require them within the disadvantaged community of these opportunities. For this reason, it became imperative to exclude the creamy layer from taking advantage of the opportunities available under affirmative action. Two other important foundational principles were also laid down by the Supreme Court. Firstly, it held that in normal situations, the percentage of reservations under Article 16(4) must never be more than 50%. Secondly, it held that the issue of promotion cannot come under the purview of reservation of Article 16(4), which is only applicable to the process of recruitment. This judgment set out the constitutional principle that affirmative action would continue to focus on the weakest and most deprived sections of the society and not those who had been able to overcome the disabilities justifying reservation, although the 'creamy layer' principle was confined to OBCs alone.

***M. Nagaraj v. Union of India (2006)*¹⁰**

The following significant development in reservations law occurred through the case of *M. Nagaraj v. Union of India (2006)*, where the legality of reservations in promotions to the SCs and STs was challenged. In its judgment in *Indra Sawhney v. Union of India (1992)*, the Supreme Court held that Article 16(4) could be availed of for making reservations for initial appointments but not promotions. In reaction, the 77th, 81st, 82nd, and 85th Constitutional Amendments were made in the parliament. This made it possible to carry over backlog vacancies, lowered qualifying marks in promotions tests, and consequential seniority of SC/ST candidates who got promoted on the basis of reservations. A challenge was brought before the Supreme Court against these constitutional changes as these violated the basic structure of the Constitution and the right to equality. The key issues before the Supreme Court related to the constitutional validity of the above-mentioned constitutional amendments, whether Parliament had the powers to confer preference to SCs and STs in respect of promotion, and if these preferences were consistent with the values of equality and administration under the Constitution.

¹⁰ Sylvine (2024). *M. Nagaraj & Ors. vs. Union of India & Ors. (2006)*. [online] iPleaders. Available at: <https://blog.ipleaders.in/reservation-promotion-m-nagaraj-case/>.

All four of the amendments in question were declared to be constitutional by the five-judge Constitution Bench because the bench thought that they were not inconsistent with the basic structure of the Constitution. However, the Court made it abundantly clear that these amendments merely facilitated but did not mandate these provisions. In other words, the Constitution did not mandatorily oblige the State to provide reservations in the matter of promotions. In accordance with Article 335 of the Constitution, the state which was to introduce the reservation in promotion had to provide quantitative data for meeting three crucial conditions: Firstly, that the Scheduled Castes and Scheduled Tribes were still backward. Secondly, that they were inadequately represented within the particular cadre or service. And finally, that the introduction of such reservation would not adversely affect the efficiency of administration. The Court has also pointed out that the reservations in promotions should not result in excessive reservations. This decision is an important milestone in the development of jurisprudence concerning the doctrine of reservations because it sought to reconcile the objectives of social justice under the Constitution with those of equality and efficiency. Even as the Court conceded to the power of Parliament to make reservations for promotions, it insisted that the same be made on the basis of objective data. A constitution based on data was formulated by M. Nagaraj regarding reservation in promotions, but not involving the creamy layer doctrine as regards to Scheduled Castes and Scheduled Tribes. The creamy layer doctrine was applied in relation to SCs and STs by virtue of the Supreme Court in the case of *Jarnail Singh v. Lachhmi Narain Gupta* (2018).

***E.V. Chinnaiah v. State of Andhra Pradesh (2004)*¹¹**

Yet another significant step towards quota jurisprudence was taken in *E.V. Chinnaiah v. State of Andhra Pradesh* (2004), where the Supreme Court had to examine whether the government of a State could make any further sub-classification within the Scheduled Castes for the purpose of reservation. In *Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act, 2000*, the Scheduled Castes were divided into four classes and their reservation quota was distributed among these groups. This decision by the State was justified on the ground that whereas some other socially backward sub-castes remained under-represented, some Scheduled Castes had been enjoying reservations in a disproportionate manner. The primary issue before the Court was whether the Legislature of a State was constitutionally empowered

¹¹ Dhyeyalaw.in. (2025). *Landmark Case: E.V. Chinnaiah v. State of Andhra Pradesh (2005) | Dhyeya Law*. [online] Available at: <https://www.dhyeyalaw.in/ev-chinnaiah-v-state-of-andhra-pradesh-2005-1-scc-394> [Accessed 4 Jul. 2026].

to sub-categorize the Scheduled Castes for the purpose of reservation or whether such an act would amount to an unconstitutional act under Article 341 of the Constitution that empowers the President and Parliament to do so.

The Andhra Pradesh Act was declared unconstitutional by the Constitution Bench of five judges, which also held that all the castes included in the Presidential List under Article 341 are a homogenous class in regard to reservations. The court observed that once a caste becomes a member of the Presidential List, it ceases to be a distinguishable caste for the purpose of reservation. Consequently, states cannot subdivide the Scheduled Castes and provide different quotas, since such an act would amount to indirectly altering the Presidential List, which is the sole prerogative of the Parliament under Article 341(2). Sub-classifying the Scheduled Castes would also amount to violating the constitutional guarantee of equality because it would discriminate against the communities which were formerly recognized as equal to them. Since all the Scheduled Castes were treated as a single class of people constitutionally irrespective of differences in their levels of social, educational, and economic development, the decision took a formalist view towards equality. Thus, states were prevented from creating any internal quotas to ensure that the most backward sub-castes got the reservation benefits. Until the decision in *State of Punjab v. Davinder Singh* (2024) by a seven-judge Constitution Bench, where it was held that the Scheduled Castes are not homogenous in nature, and therefore, sub-classification of data would make the distribution of reservation benefits more equitable, this was the prevailing law for nearly two decades.

Jarnail Singh v. Lachhmi Narain Gupta (2018)¹²

In *Jarnail Singh v. Lachhmi Narain Gupta* (2018), the Supreme Court revisited the criteria established in the case of *M. Nagaraj v. Union of India* (2006) regarding the reservation of SCs and STs in promotions, which constituted the subsequent important landmark in the jurisprudence of reservations. After the judgment in the Nagaraj case, it was required from the states to prove quantitatively the under-representation of SCs and STs in public services, their backwardness, and that reservation in promotion will not affect administrative efficiency. Several governments argued that as the SCs and STs were already recognized as being backward because of their inclusion in the Presidential List as per Articles 341 and 342 of the Constitution, there was no necessity for them to prove their backwardness. The Supreme Court decided to reconsider the Nagaraj guidelines on account of this controversy. The foremost

¹² Manupatracademy.com. (2018). *Manupatra Academy*. [online] Available at: <https://www.manupatracademy.com/legalpost/manu-sc-1053-2018> [Accessed 4 Jul. 2026].

issues to be dealt with by the Supreme Court included whether the criteria laid down in M. Nagaraj had to be changed, whether the doctrine of creamy layer could be extended to SCs and STs, and whether States must prove the backwardness of SCs and STs before giving any promotion reservation.

The decision in M. Nagaraj was partly sustained and partly modified by the Supreme Court. It held that since the backwardness of the Scheduled Castes and Scheduled Tribes is already recognized constitutionally by the Presidential Lists, it is unnecessary for the states to collect quantitative evidence on the backwardness of such communities. However, it sustained the requirement that the states must show inadequate representation of SCs and STs in the relevant cadre and ensure that the reservation in promotion does not affect administrative efficiency under Article 335. Perhaps the most important aspect was that the creamy layer concept was extended to include members of Schedule Castes and Schedule Tribes in terms of promotion reservations. This is because it was argued that there is no point in providing such advantages to the socially and economically more privileged members of such groups for an indefinite period of time since that would defeat the whole purpose of affirmative action. With respect to the M. Nagaraj case, the judgment has been regarded as an important milestone in the evolution of reservation law due to the strengthening of the principles laid down in the earlier case. Not only does this judgment reinforce the constitutional mandate of ensuring that the beneficiaries of reservation include those who are actually suffering from disadvantage but at the same time it also removes the unnecessary burden of proving the backwardness of the SCs and STs. By expanding the principle of creamy layer to SCs and STs in promotional reservations, the Court took Indian reservation law closer to targeted affirmative action.

***State of Punjab v. Davinder Singh (2024)*¹³**

The latest and most important development in reservation jurisprudence took place in the case of State of Punjab v. Davinder Singh (2024), when the Supreme Court examined whether their judgment in E.V. Chinniah v. State of Andhra Pradesh (2004) was indeed correct. This controversy arose from the passing of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 by the Punjab government, according to which the Balmiki and Mazhabi Sikh castes, who were considered the most backward Scheduled Castes in the state, were given first preference for 50% of the Scheduled Caste quota. Based on the earlier precedent laid down in E.V. Chinniah, wherein it was held that the Scheduled Castes were a

¹³ Dhyeyalaw.in. (2024). Available at: <https://www.dhyeyalaw.in/state-of-punjab-v-davinder-singh>.

homogenous group, and hence, could not be subdivided, the Punjab and Haryana High Court ruled the provision invalid. The matter then came to the notice of a Seven-Judge Constitution Bench of the Supreme Court for determination of its constitutionality. The basic issues before the Supreme Court were whether the states had the right under the constitution to bifurcate the Scheduled Castes and Scheduled Tribes into smaller groups for the purpose of reservations, whether such bifurcation would amount to amendment of the Presidential List as per Article 341 of the constitution, and whether the decision in E.V. Chinnaiah correctly construed the affirmative action provision in the constitution.

The decision rendered by the Bench, by a ratio of 6:1, overrules the decision in E.V. Chinnaiah's case holds that Scheduled Castes and Scheduled Tribes cannot be termed as homogeneous categories. The Court held that although all groups mentioned in the Presidential Order have historically been subjected to prejudice, their levels of social, educational, and economic backwardness differ. It differentiated between the powers of the State under Articles 15(4) and 16(4) to formulate schemes for a balanced enjoyment of reservations and the power of the President under Article 341 to designate Scheduled Castes. Therefore, the Court held that sub-categories within the SC/STs can be made by the State if there is objective proof that a certain sub-category is relatively more backward than others. Furthermore, the Court held that the classification cannot in any way lead to complete denial of other Scheduled Caste/Scheduled Tribe groups from reservation benefits. In addition, the Court was in favor of the application of the "creamy layer" concept among the Scheduled Castes and Scheduled Tribes and said that the less privileged members of these classes must not be the ones to continually enjoy reservation benefits at the cost of the more privileged members of these classes. This is an indication of a fundamental change in the reservation policy doctrine in India by moving from the formalism principle seen in E.V. Chinnaiah to that of substantive equality. It is clear from the judgment by the Supreme Court that affirmative action needs to reach out to those who remain the most oppressed by identifying the internal divisions within Scheduled Castes and Scheduled Tribes. Apart from ensuring a strong basis for the application of the exclusion system in SC/ST reservations, the judgment is constitutionally robust on data-based reservation policies.

Need for creamy layer exclusion

1. Reservation for SCs and STs is Based on Historical Discrimination, Not Economic Poverty

The primary reason why the creamy layer principle should not be extended to SCs and

STs is that instead of correcting the problem of economic backwardness, reservation in this case aims at rectifying centuries of caste discrimination, untouchability, and social segregation. Backwardness among SCs and STs is a consequence of discrimination and oppression, while the backwardness among OBCs is determined by certain social and educational criteria. Caste discrimination and social stigma cannot be overcome through economic development. Thus, the constitutional objective of redressing historical wrongs would be defeated if economically developed SCs and STs are disqualified.

Counter Argument - Although this idea is constitutionally sound, it does not necessarily support giving reservation benefits to people who have already made significant progress in their social, academic, and economic lives. Reservations are intended to provide opportunity to individuals who are still affected by historical injustice, in addition to making up for past wrongs. The goal of affirmative action is defeated if a tiny percentage of advanced households consistently get reservation benefits, depriving the most disadvantaged people of the same community of meaningful access to public employment and education.

2. Social Discrimination Continues Despite Economic Advancement

It is also believed by many scholars that financial prosperity does not remove the caste identity. Even if someone belonging to the SC/ST category is financially successful, he will be subjected to discrimination in the areas of housing, employment, marriage, social contact, and untouchability. Disqualification of rich people from reservations would not help reduce the social discrimination that they face.

Counter Argument - It is also argued that members of SC/ST communities continue to experience caste-based discrimination regardless of their economic status. Although caste prejudice undoubtedly persists, reservation is only one of several constitutional mechanisms for addressing discrimination. Anti-discrimination laws, constitutional safeguards, and statutory protections continue to remain available to all members of SC/ST communities irrespective of whether they qualify for reservation. Therefore, excluding the creamy layer from reservation benefits does not deprive them of constitutional protection against discrimination; it merely ensures a more equitable distribution of affirmative action benefits within the community.

3. Constitutional Recognition of Backwardness

Articles 341 and 342 of the Constitution empower the President to declare Scheduled Castes and Scheduled Tribes. When any caste becomes part of the Presidential Lists under Articles 341 and 342 of the Constitution, its backwardness is deemed constitutional. The opposition contends that bringing in a creamy layer amounts to questioning the constitutional status of backwardness since it would mean that some people belonging to these castes are no longer backward.

Counter Argument - Another argument is that the creamy layer doctrine should not be applied because Articles 341 and 342 of the Constitution acknowledge the backwardness of Scheduled Castes and Scheduled Tribes. However, classifying a community as a Scheduled Caste or Scheduled Tribe is distinct from choosing whose members should get reservation privileges. The Supreme Court acknowledged in *Jarnail Singh v. Lachhmi Narain Gupta* (2018) and reiterated in *State of Punjab v. Davinder Singh* (2024) that a community's constitutional recognition does not bar the State from taking action to guarantee that reservation benefits reach those who are still truly disadvantaged.

4. Reservation is a Means of Ensuring Representation

Reservation for SCs and STs is both a method to provide appropriate representation in the institutions and also an anti-poverty program. The idea is to involve the marginalized sections of the society in government jobs and administration. Excluding the creamy layer from the list of reservations might go against the constitutional purpose of providing representation of these sections in high positions.

Counter Argument - Critics further argue that SCs and STs may be underrepresented in public institutions if the creamy layer is excluded. However, the proposed reform does not abolish reservation or limit the overall quota accessible to these communities. It simply prevents the benefits from being concentrated in the hands of a highly privileged minority by redistributing them among members of the same category. By giving economically disadvantaged families and first-generation students access to previously unattainable opportunities, such redistribution is expected to increase rather than decrease representation.

5. Risk of Weakening Constitutional Safeguards

It can be argued that the establishment of the creamy layer would, in the long run, make

the reach of reservation available to SCs and STs less. Since these sections of society still face structural barriers, leaving out certain segments might make the constitutionally guaranteed rights aimed at providing equality meaningless. The creamy layer policy, in the long run, might end up being a means of decreasing reserve.

Counter Argument - Finally, some critics fear that applying the creamy layer principle will diminish the constitutional commitment to affirmative action. However, the proposed reform does not attempt to diminish reservation but to strengthen its effectiveness. A restricted constitutional resource, reservations are meant to improve the lot of people who are still socially and educationally underprivileged. Ensuring that its benefits reach the most vulnerable parts of SC/ST communities strengthens the validity, justice, and constitutional purpose of affirmative action. A well-crafted creamy layer exclusion ensures that reservation benefits are spread more fairly among those for whom they were originally intended, thus promoting substantive equality rather than eroding social justice.

Why we need creamy layer exclusion - Our opinion

Dr B R Ambedkar, the chief architect of the Indian constitution introduced reservation policy to uplift those sections of society that had been historically oppressed, socially excluded and economically disadvantaged before independence. Its objective was to ensure equality, social justice and equal opportunities in education, employment and public life to all citizens. However, over time a creamy layer has emerged within these communities - a section that is economically advanced, socially empowered and educationally privileged. These groups repeatedly benefit from reservations, while the most backward sections remain deprived. This defeats the original purpose of the policy that is to promote merit, allowing deserving and needy students to access the same opportunities as the privileged and the elite group. As education is the most effective tool for lower and middle classes to overcome social barriers and improve their standard of living.

Proposed policy Framework

1. Establish a National Creamy Layer Identification Authority (NCLIA)

It is important that a separate statutory body be constituted at the national level to frame, supervise, and review on a periodic basis the standards that form the creamy layer definition. At present, the process of determining is scattered and dependent mainly on administrative authorities, thus resulting in disparities between various regions. A

specialized body made up of constitutional experts, economists, sociologists, statisticians, and people from marginalized groups will ensure an uniform application across the country. The authority must also publish yearly reports and recommendations for the purpose of maintaining transparency and modifying the criteria based on the changes in socio-economic factors.

2. *Integrate Income Verification with PAN, Aadhaar, and Digital Tax Records*

The veracity of financial disclosures determines how well creamy layer exclusion works. Consequently, data from PAN records, databases linked with Aadhaar, income tax documents, property registrations, and other such financial databases must be synchronized with income verification processes. This will reduce the risk of any misstatements and concealing the income. In addition to this, automated verification system would reduce bureaucratic lags and red tape , enhance efficiency in administration, and make sure that the benefits of the reservation policy reach only the eligible persons.

3. *Conduct Periodic Socio-Economic and Educational Surveys*

Some of the complex dimensions of social mobility may be overlooked when using the economic perspective alone to gauge development. To measure education levels, employment status, access to professional opportunities, ownership of land, differences between urban and rural populations, and inter-generational mobility, the government must conduct comprehensive socioeconomic surveys every five years. Apart from guaranteeing that the creamy layer standards remain relevant and evidence-based as opposed to being arbitrary or obsolete, these surveys will provide empirical information to guide policy-making.

4. *Introduce a First-Generation Advancement Principle*

A more equitable form of reservation would focus on first generation students, first generation graduates, and first generation government officials belonging to the SC/ST community. Such families that have enjoyed the benefits of reservations for a number of generations often benefit from connections that others lack in terms of professionals, education, and social capital. Prioritizing those who belong to the first generation would ensure that opportunities are accessible to those who have not undergone upward social mobility but are structurally disadvantaged.

5. *Develop a Reservation Benefit Tracking System*

In order to track the generation-by-generation distribution of the benefits of reservations, the government should establish a private national database. The objective would not be monitoring but evaluation of policies. It will be easier to determine whether benefits have been confined to just a few families or whether they have been available to a broader segment of the society. These policymakers can employ the information generated through this process to make their affirmative action programs more effective and provide necessary changes based on facts.

Conclusion

One of the critical constitutional questions in contemporary affirmative action law in India is that of the exclusion of the creamy layer in relation to reservation policies for Scheduled Castes and Scheduled Tribes. Ultimately, the issue is not that of whether reservation should be maintained, but that of whether the people to which the Constitution was meant to provide it have been receiving it. Reservation was introduced as a revolutionary measure in response to centuries of caste-based oppression and exclusion. However, even in limited communities, there have been instances of inequalities emerging in the course of evolution in Indian society, leading to legitimate concerns regarding the distribution of such constitutional benefits.

Equality, representation, dignity, and social justice have been carefully balanced in the constitution through Articles 14, 16, 21, and 341. The judicial history, starting from *Indra Sawhney vs. Union of India* case and then continuing with *M. Nagaraj, Jarnail Singh*, and *State of Punjab vs. Davinder Singh*, shows a steady evolution from a purely legal interpretation of equality to a broader understanding of the concept of substantive equality. To avoid the monopoly of the constitutional privileges by the advanced sections of the reserved communities, the Supreme Court has recognized the need for affirmative action to remain flexible and responsive to social conditions.

This essay argues that use of creamy layer exclusion in respect of Scheduled Castes and Scheduled Tribes is not an act that goes against social justice and constitutional recognition of these classes. It only helps in ensuring that the individuals who continue to be left out in terms of their social, educational, and economic status get the benefit of reservation. The removal of the creamy layer only restricts the availability of a certain constitutional resource in such a manner that this would better serve the objective of distributive justice; however, this does not

eradicate caste-based discrimination nor exclude individuals from the constitutional guarantee against discrimination.

However, any application of creamy layer exclusion needs to be done carefully and within an evidence-based framework. To avoid arbitrary exclusions and preserve public trust in the reservation system, transparent criteria, regular socioeconomic surveys, digital authentication methods, and independent institutional control are crucial. Similarly, mechanisms such as prioritization of first-generation beneficiaries and establishment of a robust monitoring system for reservation benefits can ensure that affirmative action benefits those who have been historically marginalized even among the reserved groups.

In the final analysis, however, the constitution tries to achieve equality of substance and not merely of form. The objective of the constitution is to create a society where the left-off individuals get the chance of social mobility, injustices of history are truly remedied, and chances are fairly distributed. The reservation scheme of India can be made more egalitarian, effective, and in line with the intentions of Dr. B. R. Ambedkar by adopting an effective creamy layer exclusion policy through empirical evidence and constitutional reasoning. This would enable reservations to be used as a means of bringing about social change and justice in full accordance with the constitutional principle of affirmative action.