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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MICRO-CLASSIFICATION OF THE SCHEDULED CASTES AND SCHEDULED TRIBES: A RIGHT STEP TOWARDS AFFIRMATIVE ACTION

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Abstract

Equality is the primary objective to be achieved for maintaining the humanity and its dignity. It is enshrined as Fundamental right in the Indian Constitution¹. It can be achieved by ensuring Affirmative Action or Positive Discrimination for upliftment of down-trodden peoples in the society. It acts as catalyst for discriminated one to bring in the mainstream society. This Research Paper goes in-depth regarding all the facets of the sub-classification of Scheduled Castes (SC) and Scheduled Tribes (ST) along with its impact. In accordance with Davinder Singh Case Judgement², the Government of Haryana have sub-classified the SC into two sub-categories viz. Disadvantaged Scheduled Castes (DSC) and Other Divided Castes (OSC).

Keywords: *Affirmative Action, Sub-classification, Discrimination, Disadvantaged Scheduled Castes, Creamy Layer.*

Introduction

Affirmative Actions are those policies (steps) which are taken by the Central and State Government for eliminating the discrimination & inequalities among the society. The Indian Constitution provides significant position to Equality in the Preamble itself, viz. Equality of Status and Opportunity. This is marked by the enabling Provisions in the form Articles 15 and 16 of the Indian Constitution. These affirmative actions are supported by the Michael Sandel³ Book having Chapter No. 7, namely “Arguing Affirmative Action.” He supported it upon the basis of Compensatory and Diversity grounds. The affirmative action policies have been critically analysed by the Arun Shourie, in his book written in

¹ Articles 12,14,15,16,17,19,21, 341 and 342 of the Indian Constitution.

² State of Punjab v. Davinder Singh 2024 SCC Online SC 1860.

³ Michael J. Sandel, Justice: What is the right thing to do?, Straus and Giroux, 2009.

the form Essays, namely Falling over Backwards⁴. Till date, there has been affirmative action policies have been based primarily upon the basis of Castes particularly with respect to SC and ST. Several Castes have been divided into these two pools where there was no consideration of the Creamy Layer Criteria among the middle class peoples of these two pools. Now, there has been move towards inclusion of Creamy Layer concept in these categories and finding out which Castes of these categories had gained benefits in terms of reservation in the education and Government Jobs sector and who were less or not gained benefits of this policies. This creamy layer was particularly applicable for several years from Indra Sawhney Judgement⁵.

Legal Sanctions behind Reasonable Classification of SC and ST

The history of Affirmative Action in India starts back to Indian Constitutional Assembly Debates while making a Draft Constitution for the Indian People⁶. The Indian Constitution supports till date in the form of the Articles 12,14,15,16,17,19,21, 341 and 342, viz.

Article 15 (3) of the Indian Constitution:

Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15 (4) of the Indian Constitution:

Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

⁴ Arun Shourie, Falling Over Backwards, Harper Collins Publishers, India, 2012.

⁵ Indra Sawhney v. Union of India, AIR 1993 SC 477.

⁶ Sujit Chaudhary & Pratap Bhanu Mehta, The Oxford Handbook of the Indian constitution, Oxford University Press, 2016.

Article 16 (4) of the Indian Constitution:

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Sub-Classification (Micro-classification) of SC and ST Categories

This sub-classification was upheld by the Supreme Court of India only regarding the Other Backward Classes (OBC) by bifurcating it into BC-A and BC-B sub-classes⁷. This was not allowed till the Decision of **Davinder Singh Case**⁸. But after the Judgement of this Case, it allowed regarding the Sub-classification of SC and ST further without any hue and cry only after empirical study (data collection) about the impact already whether in positive or negative manner regarding the various castes included in the SC and ST pool.

The Supreme Court of India in its decision delivered a Landmark Judgement and allowed the Central and State Governments to sub-classify the reserve categories group for the sake of reservation purposes. This was 7 Bench Judgement having clear majority of 6:1 which over-ruled the decision of **E.V. Chinniah Case**⁹. Justice Bala Trivedi has given his dissenting view as against the Majority Judges opinion.

Analysis of the Decision of Case: State of Punjab v. Davinder Singh¹⁰

Facts of the Case:

The roots of this Case belongs to *Punjab SC and BC (Reservation in Services) Act, 2006* under which Section 4(2) provides 25 % reservation for SC and 12 % for BC in the direct recruitment for the Services in Punjab. Section 4(5) specified that 50% of SC Quota shall be offered to **Balmikis and Mazhabi Sikhs** as the first preference as against the others. The legality of this Section was challenged before the Punjab & Haryana High Court. This was declared as unconstitutional or invalid upon the basis of the decision of previous **E.V.Chinniah Case**¹¹. But Punjab Government further appealed against this decision in the Supreme Court which was put forth before 3 Judges Bench. But this was further

⁷ Supra Note 4.

⁸ State of Punjab v. Davinder Singh 2024 SCC Online SC 1860.

⁹ E.V. Chiannah v. State of A.P., AIR 2005 SC 162.

¹⁰ Supra note 7.

¹¹ Supra Note 8.

referred to a Larger Bench for its decision and heard by the Larger Bench.

Similar, Case was filled before the Punjab & Haryana High Court regarding the cancellation of the Notification issued by the Haryana Government pertaining to sub-classification of the SC into Block A and Block B. This clarified that 50- 50 % reservation will belong to both Blocks A and B that upset the already followed reservation system with respect to their Castes and percentage by sub-classification of the Castes into different Blocks as compared to previous one. The High Court quashed the notification and *Special Leave Petition (SLP)*¹² was filed by the Government of Haryana.

Similar, Case was that of Government of Tamil Nadu by which notification it allowed 16 % reservation belonging to the SC be reserved only for the **Arunthathiyars** in Educational Institutions and Government posts. It was also challenged before the Supreme Court for notification against the spirit of **E.V.Chianniah Case** Judgement.

These all 3 Cases came before the Apex Court regarding the final Decision of sub-classification in SC and ST categories.

The various Issues raised along with the Justification given in this Case are as following:

a) Sub-classification of Reserved Class:

This was allowed by the Supreme Court against **E.V.Chianniah Case**¹³ Decision upon the basis of the intelligible differentia with satisfaction of rational classification with the establishment of the real object sought to be achieved.

b) SC belongs to homogeneous or heterogeneous group:

The Supreme Court held that it belongs to heterogeneous group as per consideration of their empirical and historical evidences because various castes are having different level of socio- economic backwardness in the society. Hence, State is allowed to sub-classify upon the rational and intelligible differentiation.

c) Article 341 creates homogeneous or heterogeneous group through “Deemed” fiction:

The Court clarified that word “Deemed”¹⁴ does not indicate all the castes in the

¹² SLP is filed under Article 136 of the Indian Constitution.

¹³ Supra Note 8.

¹⁴ “Deemed” is mentioned under Article 341 of the Indian Constitution.

homogeneous group because it signifies only towards inclusion of the castes in the List, not their undifferentiated class i.e. heterogeneous group.

d) Any limits to the scope of sub-classification:

The Court held that sub-classification is valid as per Issue No. 1 and it will promote substantive equality as per the support provided by the Empirical study. The State should maintain the administrative efficiency along with the sub-classification.

e) Criteria for sub-classification:

The Court held that sub-classification is upon the basis of inadequacy of representation in the services of the State and that representation should be “effective” representation.

f) Applicability of the Criteria of Creamy Layer to SC and ST:

The Court allowed the applicability of this principle to SC and ST for real benefits of the truly disadvantaged people, not the apparent one who qualifies the Creamy Layer Criteria.

g) Advantages to Second Generation or not:

The court limited the benefits only to the First Generation, not allowed to pass on the next generation because benefit gained by any family during 1st generation will be considered as developed one, not still backward. Otherwise same family clan will develop from generation to generation without providing the chances to other disadvantaged ones.

h) Empirical Study regarding collection of Data:

The Court upheld this yardstick so that scientifically gathered accurate and comprehensive data should be considered as the only basis of any sub-classification, not any apparent one. After achieving the equality index, those castes should be deprived of these non-required benefits with the inclusion of any new castes as per their inequality in the society.

i) Benefits to the Most-disadvantaged groups:

The Court supported the micro-classification only for supporting the most-

disadvantaged groups so as to keep out the most benefit driven castes while including the Least- advantageous castes.

*This decision of sub-classification supports the substantial equality and resolves the socio- economic discrimination. Upon the basis of this decision, the notifications by the Government of Punjab and Haryana are valid one. Specifically, notification of Government of Haryana to divide castes of SC's into 2 block upon the basis of the recommendations of Haryana Scheduled Castes Commission: **Disadvantaged Social Castes (36 Castes in DSC) and Other Scheduled Castes (15 Castes in OSC)**¹⁵ is bold step because it specifically provides quota of the 50 % of the overall reservation of the SC category to only DSC which includes only those castes who are more disadvantageous viz. Balmikis, Dhanaks, Mazhabi Sikhs and Bazigars as compared to Chamars, Ravidassia, Ramdassia, Mochis and Jatavs in Haryana who have comparatively attain more benefits of the reservation as compared to above specified Chamars and Jatavs. Despite having more than half of the population of the SC, DSC held only 35 % Government Jobs while major beneficiary group OSC have been receiving the benefits of the reservation from generation to generation in the same family without allowing chance of progress towards disadvantageous DSC's. That is why micro-classification becomes the necessity of the time for the overall progress of the SC and ST.*

Conclusion

The Decision of the Supreme Court of India regarding micro-classification of SC and ST is valid due to its Legal and economic viability. It will bring affirmative action in more speedy and efficient manner without any chances of leakage of the benefits towards the apparently needy people. This will help as important tool in achieving the targets of equality and social justice without any discrimination. It provides substantial framework for the benefits of really needy SC and ST people so that who achieve equality through this framework can be sieved out and new ones can be included upon the basis scientifically driven comprehensive data. The advantages only to the first generation of the family and specific application of Creamy Layer principle is better step for sieving out non-needy persons from this system of SC and ST as held by the Supreme Court of India.

¹⁵ Haryana State Commission for the Scheduled Castes: Report on the Socio-Economic Status of Scheduled Castes in Haryana, 2023.

Even the Caste Based Census or other type of data derived will prove to be real milestone in the success of achieving the target of Equality. There should be independent data verification process so that its credibility and transparency be maintained without any hassle. The clear objective norms should be considered as the only basis of the sub-classification. It should not be based upon the politically driven data or politically motivated decisions so that avoid any allegation of corruption or nepotism or lack of the accountability. It will lead ultimately towards the reduced reliability upon the reservation system that is the only target of achieving the equality in the society with complete elimination of inequality.

