



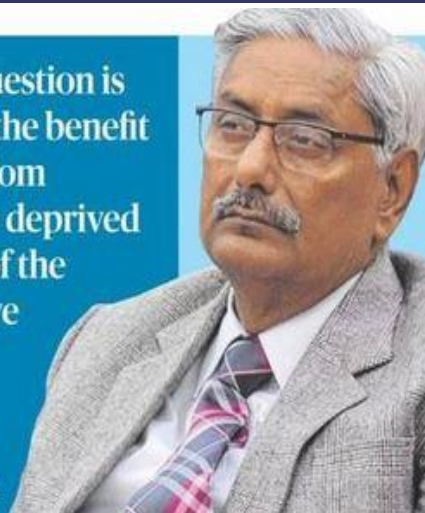
The 'quota within quota' debate

Context:

- 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.

 The million-dollar question is how to trickle down the benefit [of reservation] to the bottom rung... The State cannot be deprived of the power to take care of the qualitative and quantitative difference between different classes... to take ameliorative measures

JUSTICE ARUN MISHRA, Supreme Court



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

Special quotas framed by some states:

1. **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.
2. **In 2000, the Andhra Pradesh legislature** passed a law reorganising 57 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 **2005 E V Chinnaiah Case**.
3. **Punjab** too has had laws that gave preference to Balmikis and Mazhabi Sikhs within the SC quota.

Can States declare a caste as Schedule Caste?

- 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.

What are the grounds for sub-categorisation?

- **Inequality within Scheduled Castes as benefits have not trickled down:** States have argued that among the SCs, there are some castes that remain grossly under-represented despite reservation in comparison to other Scheduled Castes
- Thus, the benefits of reservation have not trickled down to the “weakest of the weak” and this calls for sub-categorisation.
- **Concept of Creamy Layer:** The “creamy layer” concept puts an income ceiling on those eligible for reservation.
- While this concept applies to OBC, it was applied to promotions of SCs for the first time in 2018 in **Jarnail Singh** v Lachmi Narain Gupta case
- The central government has sought a review of the 2018 verdict and the case is currently pending.
- **Sub-categorisation does not violate Article 341:** In the E V Chinnaiah case in 2005, Supreme 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.
- **Does not Violate Right to Equality:** Sub-categorisation would achieve equitable representation of all SCs in government service and would bring about “real equality” or “proportional equality”.

What are the arguments against Sub-Categorisation?

- **The test or requirement of social & educational backwardness** cannot be applied to Scheduled Castes and Scheduled Tribes. The special treatment is given to 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.”

29.08.2020

Saturday



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- **Integrity of President's SC list** will be endangered as such decisions will be made to appease one vote-bank or the other.

Conclusion:

- 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.