



Income and quotas

SC lays bare the limits of using economic criteria to determine reservation eligibility.

Creamy layer:

1. The Supreme Court's ruling that economic criterion alone cannot be used to classify a member of a Backward Class as belonging to the 'creamy layer' adds an interesting nuance to the jurisprudence of affirmative action. There was a time when backwardness was primarily related to the inadequate social and educational advancement of a group.
2. Ever since the Court, in Indra Sawhney (1992), introduced the concept of 'creamy layer' — a term describing the well-off among the Backward Classes — and declared that this section should be denied reservation benefits, the original idea of including groups based on social backwardness was matched by a parallel exercise to exclude the more advanced among them. This position has crystallised into law.
3. Many support the formulation that once caste is accepted as a basis for determining backwardness, there is nothing wrong with excluding the affluent among the eligible castes.
4. The Union government has unreservedly accepted the 'creamy layer' rule and formulated criteria for identifying those who fall under the category.
5. The proponents of economic criteria feel that genuine social justice means reservation benefits should be restricted to the poorer among the backward; while sections championing Backward Class assertion disfavour any dilution of the social basis for reservation.

Haryana case:

1. The Court's latest judgment in a Haryana case corrects a grave error by the State. It has struck down a notification fixing an annual income of ₹6 lakh as the sole criterion to identify whether a family belongs to the creamy layer.
2. It was contrary to Indra Sawhney that had spoken of different criteria, including being the children of high-ranking constitutional functionaries, employees of a certain rank in the Union and State governments, those affluent enough to employ others, or with significant property and agricultural holdings and, of course, an identified annual income.



3. The Court has found that the Haryana criterion based on income alone was contrary to its own law that specifies that the creamy layer would be identified through social, economic and other factors.
4. The Constitution permitted special provisions in favour of 'socially and educationally backward classes' through the First Amendment, as well as reservation in government employment for 'backward classes'.
5. Judicial discourse introduced a 50% ceiling and the creamy layer concept as constitutional limitations on reservation benefits. However, the 103rd Constitution Amendment, by which 10% reservation for the 'economically weaker sections (EWS)' has been introduced, has significantly altered the affirmative action programme.
6. With the current income ceiling being ₹8 lakh per annum for availing of both OBC and EWS quotas, there is a strange and questionable balance between the OBC and EWS segments in terms of eligibility, even though the size of the respective quotas vary.

Helping and hindering justice

Technology can be a game-changer, but it is not a panacea for the ills plaguing courts.

Going Digital has concerns in India

1. In early June, while dealing with issues arising in connection with the CoWIN portal, the Supreme Court pointed out some of the major impediments in the delivery of vaccines to the people at large.
2. They were: inadequate digital literacy across the country, inadequate digital penetration, and serious issues of bandwidth and connectivity, particularly in remote and inaccessible regions.
3. Despite the ambition of bringing the benefits of vaccination to every human being in the country, the policy was falling short of its goal because of the inherent difficulties pointed out.
4. The premise in the observations of the court was that relying solely on digital transformation may not be a sound idea.



5. It could result in the exclusion of a large section of the population on account of the enumerated shortfalls. Soon after this, the government said that CoWIN registration would no longer be mandatory for vaccination.

Rising to the challenge

1. What the court observed about the delivery of vaccines through digital portals alone is equally true of the delivery of justice, which is as important as ensuring the health of the people of the country.
2. Although the courts have risen to the challenge posed by the COVID-19 pandemic, by using existing technology at an unprecedented scale and speed, it is proving to be an uphill task.
3. In the wake of the pandemic, courts began using facilities like e-filing in true earnest. In May 2020, the Supreme Court also introduced another innovation: a new system of e-filing and artificial intelligence-enabled referencing. This was meant to herald efficiency, transparency and access to court delivery services for every user.
4. The judiciary's effort is not merely a one-off action to tide over the pandemic-created emergency. It also seeks to harness technology in overcoming and resolving the intractable ills that have for long dogged the judiciary.
5. These include the massive backlog of cases and unacceptable levels of judicial vacancies across the country at all levels. Deep house cleaning is required in each court and there also needs to be an outreach to all litigants in a cost-effective, convenient and efficient manner.
6. Perhaps, this could be the opportune time for making lasting changes that could transform the creaking justice delivery system in India. But an over-reliance on technology is not a panacea to all the ills plaguing the courts and if done without forethought, could become counterproductive.

Digitalizing court issues:

1. Evidence shows that despite considerable investment to digitalise judicial infrastructure and administration, beginning with Phase 1 of the e-Courts in 2007, the judiciary's performance during the pandemic period has left a lot to be desired.
2. In absolute terms, data show that pendency reached an all-time high during this year of virtual functioning of the courts. In the case of district courts,



pendency rose sharply by 18.2% between December 31, 2019, and December 31, 2020, according to the National Judicial Data Grid.

3. Across the 25 High Courts, pendency witnessed its sharpest increase of 20.4% in 2019-2020. This, of course, does not include all those matters that were never filed.

The way forward

1. We need to address uneven digital access: while mobile phones are widely owned and used, access to the Internet remains limited to urban users. Lawyers in semi-urban and rural districts find online hearings challenging, mostly due to connectivity issues and unfamiliarity with this way of working.
2. Just as doctors cannot be replaced by chatbots, technology, no matter how advanced, cannot be a substitute for judges of whom there remains a big shortfall. The India Justice Report 2020 pegs vacancies in the High Court at 38% (2018-19) and in lower courts at 22% for the same period.
3. If deployed with adequate data-based planning and safeguards, technological tools can be a game-changer. However, technology is not per se value-neutral — that is, it is not immune to biases — and therefore, it must be properly evaluated for us to see whether it works to increase the power imbalance between citizens and the state or whether it affirms and furthers citizens' rights.
4. The open court is a cardinal principle in the delivery of justice. The question of public access cannot be pushed to the sidelines but must be a central consideration. The shortage of technical infrastructure has too often meant that access to online hearings is curtailed. This ad hoc deviation cannot be allowed to become a habit of convenience.

The latest Vision Document for Phase III of the e-Courts Project seeks to address the judiciary's digital deprivation. It envisages an infrastructure for the judicial system that is 'natively digital' and reflects the effect that the pandemic has had on India's judicial timeline and thinking. However, we must keep in mind that there will always be an inherent resistance to change, whether for good or bad. Therefore, two preconditions need to be addressed: adequate trained manpower, and tailoring systems to the specifications and contexts that we require. This is more a matter of mindset — not just of judges, but of litigants and lawyers as well, and is linked closely to trust in digital interventions.



It's time for Industry 4.0

Adopting Industry 4.0 technologies would make MSMEs more efficient and competitive.

Industry 4.0:

1. The term 'Industry 4.0' was coined by the German government in 2011. Additive manufacturing, Internet of Things, Cyber-Physical Systems, Augmented Reality/Virtual Reality and data analytics are some of the technologies associated with Industry 4.0.
2. With the help of these technologies, the manufacturing industry will be able to make data-driven decisions. The reduced costs of electronics like sensors, transmitters, and the cloud have allowed us to capture the data produced during operational activities.
3. With the availability of advanced algorithms, this captured data can be analysed for decision-making in real-time. Thus, Industry 4.0 integrated 'data' with manufacturing and Information Technology.
4. To take advantage of data-driven decision-making, the governments of other countries also coined their own industrial initiatives like Industry 4.0. For example, the U.S. calls it Smart Manufacturing, China calls it Made in China 2025, and India refers it to as Make in India or Digital India.

Industry 4.0 for MSMEs:

1. Micro, Small and Medium Enterprises (MSMEs) are expected to become the backbone of India as the economy grows larger. MSMEs form more than 95% of the industries in India, produce more than 45% of the total manufacturing output and employ more than 40% of the workforce.
2. According to the Economic Survey 2020-21, over 6 crore MSMEs employ more than 11 crore people and contribute roughly 30% to the GDP and half of the country's export.
3. MSMEs are also ancillaries to larger enterprises, leading to a seamless supply chain integration. As a result, making MSMEs more efficient will be advantageous for the whole economy.

MSME Challenges:

1. However, MSMEs face challenges when it comes to adopting new technologies such as Industry 4.0. First, they lack awareness regarding



Industry 4.0 and its benefits. They consider such technologies disruptive and having the potential to demolish their existing system.

2. However, Industry 4.0 believes in improving the existing system. Scientific literature provides evidence of sensors and WiFi networks being integrated with old machines like lathes and mills to improve their performance.
3. Second, MSMEs will need to make major financial investments to adopt Industry 4.0. Investing in the right set of technologies will need experts and consultants as well.
4. Third, for any new technology to be adopted, an organisation requires a positive organisational culture and the support of people. MSMEs need to believe in the advantages that Industry 4.0 technologies can offer.
5. Fourth, the frameworks and steps that can assist MSMEs in adopting Industry 4.0 technologies have been missing. In this regard, MSMEs need to understand the data they are producing from all their operational activities. Based on such data, their readiness can be evaluated.
6. Finally, MSMEs should develop their own vision of Industry 4.0 technologies that they want to adopt and identify the relevant tools and practices they need for such a tailored vision.

Transcending impediments

1. Though adoption of Industry 4.0 technologies by MSMEs requires transcending a labyrinth of impediments, it will make them more competitive as they will be able to offer world-class quality products to customers.
2. Additionally, delivery timings and the flexibility to meet different needs will improve. As India joined the group of top 50 countries in the global innovation index for the first time in 2020, it is imperative for its MSMEs to embrace Industry 4.0 technologies without any hesitation.
3. Proper sensitisation of the Government of India, higher education institutions, practitioners, entrepreneurs, industrial associations, trade unions, venture capitalists, consultants and research agencies would help to speed up this task.
4. This becomes imperative given the manufacturing challenges abruptly posed by the COVID-19 pandemic when most of the healthcare infrastructure in India is MSME-dependent.