Creamy Layer in SC/ST Promotions

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What is the issue?

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The Supreme Court's recent ruling, approving creamy layer concept to SC/ST promotions, has some concerns in terms of equality and career growth.

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What is the change made?

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- The 2006 verdict on Nagaraj vs Union of India brought in a creamy layer filter for promotions for SC/ST employees.
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- Also, the state had to collect 'quantifiable data on backwardness' of the SC/ST class if it wished to provide reservation in promotions.
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- Correcting only the second anomaly, the court has now held that the government need not collect quantifiable data to demonstrate backwardness of SC/STs.
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- But when it comes to promotion of SC/ST employees, the court held that the creamy layer concept does apply.
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- So now, only in direct recruitment of the SC/STs, the creamy layer concept does not apply.
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- However, the state governments have the discretion to invoke Articles 16 (4A) and 16 (4B).
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- This is to provide for reservations in promotions for Scheduled Castes and Scheduled Tribes with consequential seniority.
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- "Consequential seniority" refers to promotions made purely on reservation basis despite another person waiting for promotion being actually senior to him/her.
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What are the concerns?

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- **Against Precedence -** It has been clearly stated in Indra Sawhney (1992) case, that any discussion on creamy layer “has no relevance” in the context of SC/STs.
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- **Representation** - Going by the creamy layer ceiling of Rs 8 lakh per annum, even “Group D” functionaries will come under the definition of creamy layer.
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- But notably, the SC/STs lack representation mainly at the Group A level which do not have direct recruitment provisions.
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- Promotions are the way through which members of SC/ST communities make it to this level.
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- So the consequence of the judgement will be that promotions will stop even at the Group D and Group C levels.
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- **Protection** - The SC/STs are given job reservations not because they are poor but because they are excluded.
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- The Constitution made the Scheduled Castes and Scheduled Tribes as a separate category of subjects to protect them from caste aggression.
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- It was also to help them gain the strength they need to withstand it and to grow autonomously.
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- The first part of Article 335 stipulates job reservations for SC/STs as a right of representation, not as a welfare measure.
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- However, the creamy layer among SC/ST employees helps fulfil the second part of Article 335 that requires maintaining the “efficiency of administration”.

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- So the recent judgement largely undoes the affirmative action of ensuring equality of opportunity.
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- **Right to opt out** - The court also failed to address this, as at present, an SC/ST candidate does not have the right to reject reservations.
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- It is also a punishable offence to withhold one’s caste status while seeking government employment.
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- But allowing SC/ST candidates to compete in the general category would help thousands to leave the space for the less privileged among them.
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- Also, by competing as non-reserved candidates, the well-qualified SC/ST group would corner a substantial number of open posts.
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- So theoretically, SC/STs would end up garnering more posts than at present.
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Source: The Hindu, Scroll

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