Sub-categorisation of SCs and STs

Why in news?

The Supreme Court reopened the debate on sub-categorisation of Scheduled Castes and Scheduled Tribes for reservations.

What is the story behind?

- Punjab's law applies a creamy layer for SCs, STs by giving preference to Balmikis and Mazhabi Sikhs.
- This is the case that reopened the debate.
- The Supreme Court ruled in favour of giving preferential treatment to certain SCs over others to ensure equal representation of all SCs.
- The case has been referred to a larger Bench to decide.
- This is because, in 2005, the Court ruled that state governments had no power to create sub-categories of SCs for reservation.
- The larger Bench will reconsider both judgments.

What is sub-categorisation of SCs?

- States have argued that among the SCs, there are some that remain under-represented despite reservation in comparison to other SCs.
- This inequality within the SCs is underlined in many reports.
- This has been addressed by framing special quotas for the under-represented.
- In Andhra Pradesh, Punjab, Tamil Nadu and Bihar, special quotas were introduced for the most vulnerable Dalits.
- In 2000, the Andhra Pradesh legislature passed a law reorganising 57 SCs into sub-groups.
- It split the 15% SC quota in educational institutions and government jobs in proportion to their population.
- However, this law was declared unconstitutional in the 2005 Supreme Court ruling.
- This ruling held that the states did not have the power to tinker with the Presidential list that identifies SCs and STs.

What is the Presidential list?

- As per Article 341 of the Constitution, those castes notified by the President

are called SCs and STs.
- This is called the Presidential list of the SCs and STs.
- A caste notified as SC in one state may not be a SC in another state.
- No community has been specified as SC in Arunachal Pradesh and Nagaland, and Andaman & Nicobar Islands and Lakshadweep.

What is the Supreme Court ruling regarding the list?

- In the 2005 E V Chinnaiah case, the Court ruled that only the President has the power to notify the inclusion or exclusion of a caste as a SC.
- It also said that the 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.
- It also added that the reservation in admission fell within its legislative domain.
- However, the court rejected this argument.
- The Constitution treats all SCs as a single homogeneous group.

What are the grounds for sub-categorisation?

- The basis of special protections for SCs comes from the fact that all these castes suffered **social inequity**.
- Untouchability was practised against all these castes irrespective of economic, education and other such factors.
- However, the Court has engaged with the argument on whether the benefits of reservation have trickled down to the weakest of the weak.
- **2018 ruling** - The concept of “creamy layer" was applied to promote the SCs for the first time.
- [This concept puts an income ceiling on those eligible for reservation.]
- The Supreme Court upheld this application to SCs in 2018.
- The central government has sought a review of the 2018 verdict and the case is currently pending.
- Punjab’s law applies a creamy layer for SCs, STs in reverse - by giving preference to Balmikis and Mazhabi Sikhs.
- **2005 ruling** - The court had held that special protection of SCs is based on the premise that all SCs must collectively enjoy the benefits of reservation regardless of interse inequality.
- This is because the protection is not based on educational, economic or other such factors but solely on those who suffered untouchability.
- The court also had held that merely giving preference does not amount to inclusion or exclusion of any caste in the list.
- **State’s argument** - The states have argued that the classification is done for a certain reason and does not violate the right to equality.

- The reason they have given is that the categorisation would achieve equitable representation of all SCs in government service.

What are the arguments against sub-categorisation?

- **Untouchability** - The argument is that the test of social and educational backwardness cannot be applied to SCs and STs.
- The special treatment is given to the SCs due to untouchability with which they suffer.
- **Vote-bank** - The petitioner's argument against allowing states to change the proportion of reservation is based on the fact that such decision would be taken to appease vote-banks.
- A President's list was envisaged to protect from such arbitrary change.
- **Jarnail Singh case** - The court held that the objective of reservation is to ensure that all backward classes march hand in hand.
- It added that this objective will not be ensured if only a select few get all the coveted services of the government.
- In the current case, the court relied on this case's ruling to buttress the point that social inequities exist even among SCs.
- However, since that ruling is pending for review, the petitioners argued against relying on it.
- The court ruled that the constitutional goal of social transformation cannot be achieved without taking into account changing social realities.

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