Supreme Court on sub-categorisation of Schedules Castes (SCs)

Why in news?

In a recent judgment, a seven-judge Bench of the Supreme Court by a 6:1 majority ruling has permitted State governments to sub-classify SC/STs to advance the cause of affirmative action.

What is the constitutional position Scheduled Castes in India?

- **Recognition –** Under **the *Article 341(1)*** of the Indian Constitution, the *President of India can officially designate* certain groups as Scheduled Castes (SCs) in any State or Union territory.
- The said designation of SCs for states has to be done *in consultation with the Governor* and then be publicly notified.
- **Changes** – ***Article 341 (2)*** allows the Parliament to include or exclude any caste or tribe from the list.
- **Educational upliftment** - ***Article 15 (4)*** enables the State to make special provisions for the advancement of the SCs and STs.
- ***Article 15 (5)*** enables state to making any special provision for the advancement of the SCs and STs regarding their *admission to educational Institutions*.
    - It also includes the private educational institutions, whether aided or unaided by the State, except the minority educational Institutions.
- ***Article 46*** deals with promotion of educational and economic interests of SCs, STs and other weaker sections.

Article 15 (4) was added through first constitutional amendment act of 1951 while Article 15 (5) was added by the 93rd Amendment Act, 2005.

- **Employment provisions** – Article 16 (4A) allows the State to make any provision for reservation in matters of promotion, with consequential seniority, in the services under the State in favour of the SCs and STs which are not adequately represented in the services under the State.

Article 16 (4A) was added by the 77th Amendment Act of 1995 and it was modified by 85th Amendment Act of 2001 to include the provision of the consequential seniority.

- ***Article 335*** deals with the claims of scheduled castes and scheduled tribes to services

and posts.

Artic1e 335 in Part XVI is considered as a Directives outside Part IV of DPSP.

- **Political representation** – The reservation of seats for SCs and STs in the *Lok Sabha on the basis of population ratios*.
- Originally, it was to operate for ten years (ie, up to 1960), but it has been extended continuously since then by 10 years each time.
- Now, under the *104th Amendment Act of 2019*, this reservation is to last until 2030.

What is the recent issue and verdict?

- **Current case** – It was an appeal against the High Court judgement, which had struck down a state law empowering the government to sub-classify SC/STs for grant of quotas.
- **Issue** – The High Court in ***State of Punjab v Davinder Singh case*** had struck down a circular of the Punjab government that provided 50% seats to Balmikis and Mazhabi Sikhs out of the seats reserved for SCs by referring Chinnaiah case of 2005.
- Earlier in ***E.V. Chinnaiah case 2005***, the court had held that sub-classification amounted to tinkering with the Presidential list by the State legislature which is violative of Article 341(2).
- **Verdict** - *States have a right to sub-classify SCs* notified in the Presidential List with an objective to provide them ”more” preferential treatment in public employment and education.
- SCs inclusion in the President’s List by the Parliament under Article 341(2) did not mean they were a “uniform and internally homogenous unit” incapable of further sub-classification.
- Article 341(2) does not create an integrated homogenous class.
- It requires the *States to justify* the sub classification based on quantifiable and demonstrable data.
- It also explicitly *prohibits State governments from earmarking 100% reservation for a sub-class* to the exclusion of other castes in the President’s List.
- Four of the seven judges on the Bench separately said the government should *extend the “creamy layer principle” to SCs and STs*, like in the case of Other Backward Classes (OBC) category.

To know about the background of sub-categorization of SCs, click here

How sub-categorisation and creamy layer works in India?

- **Sub-categorisation -** A process of *creating sub-groups* within the existing categories for granting separate quotas for those who are more backwards among the communities in the Scheduled caste.
- **Need** – It aims to address the intra-category inequalities and ensure a more equitable distribution of benefits and opportunities among the most deprived and marginalised sections of society.
- **In India** – It is currently followed for OBCs.

- **Creamy Layer (CL)** – It refers to relatively *affluent and better-educated members* of a community.
- They are *excluded from reservation benefits* in government jobs and educational institutions.

The term 'Creamy Layer' was introduced by the Sattanathan Commission in 1971.

- **In India –** It was stressed by Supreme Court in ***Indra Sawhney Case of 1992*** to introduce the concept of 'Creamy layer' while providing reservation for OBCs.
- In 1993, ***Ram Nandan committee*** was constituted to identify creamy layer among OBCs.
    - Income criteria for CL in Backward Class – Rs.8 Lakh.

Why sub-categorization of SC/ST is needed?

- There is increased push for extending the principles of sub-categorization of OBC to SC castes as well.
- **Diversity** – Scheduled caste list consists of diverse groups of caste, races, and tribes of varying level of backwardness.
- **Substantive equality** – Social position of the constituents among the castes/groups is not comparable and substantive equality seeks to address these inherent differences to ensure actual fairness.
- **Dominant group** – Despite reservation, some *sub-castes are grossly underrepresented* compared to other dominant SCs and STs.
- **Principle of the unequals** - Unequal's have to be treated unequally to bring "real equality".
    - **Article 14** – S*ame law applies* only to those who are *"similarly situated"*.
- **Distributive justice** – To prevent concentration of the state resources with the same economically advanced section among SC's.
- Excluding those already benefitted *enables the unreached strata to get the benefit*.
- **Temporary nature of reservation** – Originally, it was envisaged as a temporary means to achieve social equality and excluding those benefited *will reduce the need for reservation*.

Tamil Nadu Arunthathiyars Reservation Act, 2009 gave separate reservation of 3% to Arunthathiyar community.

What are the challenges?

- **Constitutional issue** – States did not have the power to change the Presidential List of Scheduled Castes.
- **Different socio-economic states –** Same sub-caste will be at different socio economic position in different states and there will be confusion in state classification in central list.

- **Deciding the criteria** – Difficulties in finding the rational principle for sub classification.
- **Lack of caste Survey** – A quantifiable and demonstrable data is needed for providing more preferential treatment to a comparatively more downtrodden group within the class.
- **Vote bank politics** – It can lead to exploitation by political parties.
- **False exclusion** – Exclusion of deserving members of the dominant community from the benefit.
- **Rigidity of caste system** – Sub classifying the caste may strengthen caste hierarchy system.
- **Weak certification system** – Possibilities of obtaining non creamy layer certificates through fraudulent means.
- **Social vs Economic backwardness** - Special treatment is given to the Scheduled Caste because of the social injustice of untouchability that they have suffered through ages.
- Economic backwardness is temporary deprivation whereas the social backwardness is due to historical subjugation.

What is lies ahead?

- Ensure that the existing schemes & government benefits first reach these sections before any sub-categorisation as recommended by NCSC and NCST.
- Prevent the politicization of the issue.
- Conduct caste census to have concrete data to support sub-categorization.
- Ensure that the sub categorization does not affect the communal harmony among the community.
- Make special measures to identify the deprived in the excluded communities.

References

1. The Hindu | Scheduled Caste Sub Categorization
2. The Hindu | Subcategorization Explained
3. Indian Express | Use data, reason, don’t split to keep out

SHANKAR IAS PARLIAMENT
Information is Empowering