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THE BATTLE OF BACKWARDNESS WITHIN BACKWARDNESS

By a provision in the Constitution, quotas and reservations have only been established to make up for fundamental, deeply embedded injustices that have been done to entire communities and castes. The purpose of reservations is to provide equal access and opportunity through the use of effective means.

Chief Justice DY Chandrachud presided over a seven-judge constitutional court that convened to determine whether or not states could establish classes under reserved categories without violating the Constitution.

Regarding whether a state government can create SC/ST quotas that subclassify members of these groups based on their deprivation and weakness for admission and public employment, the Supreme Court postponed making a decision. Before the supreme court was the question of the validity of the Punjab Scheduled Castes and Backward Classes (quota in Services) Act 2006, which granted Balkimis and Mazhabi Sikhs a "first preference" quota over 50% of all seats set aside for SCs. In 2020, the chief justice assembled a seven-judge bench due to concerns raised by a five-judge panel regarding the validity of the ruling in the 2005 case of *EV Chennaiah v State of Andra Pradesh*. In this instance, a five-judge bench invalidated an Andhra Pradesh law that established subcategories inside the SC Category. The Punjab Government argued before the Apex court that Chinnaiyah had wrongly interpreted SCs as one homogeneous class.

The bench correctly noted that any sub-classification will need a set of criteria, even though the goal of reservations is to assist communities in overcoming systemic and generational barriers. Quotas cannot be distributed just in theory. To guarantee that the quotas benefit the last person as well as communities, an effective selection process is essential. To produce a multidimensional index that objectively assesses the comparative disadvantage within the

SC/ST category, it simply considers factors other than SC/ST subgroup identities, such as gender, income, education, rural versus urban life, and family and individual wealth.

For the quota system to serve the intended objective, transparency is essential. It makes no sense to refuse such affirmative action to a poor Brahmin or to provide it to, example, a wealthy Dalit. Stated differently, people precede groups.

Sub-division of class is not unconstitutional and it was open to the state to categorize backward classes as backward and more backward. There is no constitutional bar to a state categorizing the backward classes as backward and more backward classes.¹

Two tests should be connectively applied for identifying backward classes: one, they should be comparable to the Schedule Castes and Schedule Tribes in the matter of their backwardness and two they should satisfy the means test, that is to say, the test of economic backwardness laid down by the State Government in the context of the prevailing economic conditions.

According to Chinnappa Reddy J “poverty, caste occupation and habitation are the principal factors contributing to social backwardness”. As regards caste, his view was that the caste system has firm links with economic power and that, “caste is the primary is the primary index of the social backwardness, so social backwardness is often readily identifiable concerning a person's caste”.²

A backward class reservation is optional under the constitution. Article 330(1)(B) and (C) of the Constitution indicates that the Schedule Tribe in the Autonomous districts of Assam is considered a different category from the other Schedule tribes. This demonstrates unequivocally that the schedule tribe sub-classification was intended by the constitution's authors, who included it in the language of the document itself and did not provide any legislature or administration the authority to create it.

“Ajyestaso akanishtasa ete Sam bhrataro va vridhuhu sowbhagaya”

No one is superior (ajyestasaha) or inferior (akanishtasaha). All are brothers (ete bhrataraha). All should strive for the interest of all and should progress collectively (sowbhagaya sam va vridhuhu)”³

¹ Indra Sawhney v UOI 1992 Supp (3) SCC 217

² Kumari Madhuri Patil v Addl. Commr. Tribal Development, (1994) 6 SCC 241

³ Rigveda-Mandal-5, Sukta-60, Mantra-5

The principle of equality can be stated thus: equals must be treated equally while unequal need to be treated differently, in as much as for the application of this principle in real life, we have to differentiate between those who are equal, are grouped and those who are different, are left out of the group. This is described as a fair categorization. For a classification to be considered legitimate, it must meet two requirements: first, the rationale used to differentiate one group of people from another must be grounded in a just objective, and second, the selection made to separate them must have a reasonable connection to the goal being pursued. However, neither identity of treatment nor mathematical precision nor absolute equality are necessary for categorization to be considered acceptable. The dual goals of Articles 15 and 16 are to give the underprivileged proper protection and, through particular measures, to increase their capacities so that they can compete with everyone else on their own.⁴

Equality is a dynamic concept with many aspects and dimensions and it cannot be "*cribbed, cabined and confined*" within traditional and doctrinaire limits.⁵

Reservation is the basic gateway to treading the path of all-round development.⁶ Three Articles are primarily germane, namely Article 14 (which embodies the generic principle of equality as a genus) and Articles 15 and 16, which implement the features of general equality, even though several other Articles are relevant for conveying the constitutional spirit.⁷

After giving the Chinnaiah case another look, the court found that the 1950 Constitutional (Schedule Castes) directive issued by the President accepted the state-by-state schedule caste as a single, homogenous group. The idea that this homogeneous group could not be changed played a significant role in the decision. Inequality has been brought about by reservation, even within the caste system. Rejecting subcategorization would be equivalent to acknowledging inequality as a human right, which is incompatible with the right to equality. Due to certain individuals usurping the quota privileges, there is a caste conflict inside the reserved class.

⁴ Janhit Abhiyan v Union of India (2019)

⁵ E P Royappa v State of Tamil Nadu 1974 AIR 555 1974 SCR (2) 348 1974 SCC (4) 3

4. K.C. Vasanth Kumar & Another vs State Of Karnataka

⁷ State of Kerala vs NM Thoma (2 SCC 310; 1976 (1) SCR 906)

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