

Creamy Layer for SCs and STs

Why in news?

The Union government has called upon the Supreme Court to form a seven-judge Bench to reconsider its earlier decision to apply 'creamy layer' concept to SCs and STs.

What is the case on?

- In 2006, the Supreme Court ordered that the creamy layer of SCs and STs be kept out from enjoying the benefits of quotas on jobs and admissions.
- However, the successive governments have not implemented it.
- Instead, they have repeatedly urged the court to refer the matter to a bench of seven judges for reconsideration.
- The top court has since 2006 reaffirmed its decision at least nine times in various cases.
- Attorney general KK Venugopal demanded before current Chief Justice SA Bobde, dubbing the issue as "sensitive".
- The Chief Justice said he would take a call on the matter in two weeks.

How has the concept evolved?

- The creamy layer concept was first applied in the Indra Sawhney case, or the Mandal case in 1993, as a facet of the larger equality principle.
- Eight members of a nine-judge bench had then agreed that the creamy lawyer must be identified and excluded from the backward classes.
- The court had said that this would more appropriately serve the purpose and object of reservation.
- In 2006, in the Nagaraj case, the court said the creamy layer concept would be applied to SCs and STs as well.
- The concept involves application of a means test or imposition of an income limit.
- This is for the purpose of excluding people whose income is above the limit from the backward class.
- The creamy layer has to be excluded and economic criterion is to be adopted as an indicium or measure of social advancement.
- The court also added that socially advanced people must be excluded from reservations.

What are the contentions?

- The Attorney general had earlier claimed that the creamy lawyer concept was wrongly extended to SCs and STs in 2006 by a five-judge bench.
- It was not envisaged by a larger nine-judge bench that first applied the concept in 2000.
- A Constitution bench headed by the then Chief Justice Dipak Misra rejected the attorney general's plea.
- It was also reiterated that the concept would apply to SCs and STs, too.

What are the conditions to be met?

- While upholding Constitution amendments meant to preserve reservation, the Court contained an exposition of the equality principle.
- It hedged reservation against a set of constitutional requirements, without which the structure of equal opportunity would collapse.
- These were 'quantifiable data' to show -
 - i. the backwardness of a community
 - ii. the inadequacy of its representation in service
 - iii. the lack of adverse impact on "the overall efficiency of administration"
- This placed a question mark on the continuance of quota policies of various State governments due to non-compliance with these parameters.
- In *Jarnail Singh* (2018), another Constitution Bench reaffirmed the applicability of creamy layer norms to SC/STs.
- On this ground, it felt that *Nagaraj* case did not merit reconsideration.
- However, it ruled that *Nagaraj* verdict was wrong to require a demonstration of backwardness for the Scheduled Castes and Tribes.
- This was because it was directly contrary to the nine-judge Bench judgment in *Indra Sawhney* (1992).
- It was laid down in this that there was no need for a test of backwardness for SC/STs.
- It's because, they unquestionably fall within the expression 'backward class of citizens'.

What is the other challenge?

- The Centre has accepted that the 'creamy layer' norm is needed to ensure that only those genuinely backward get reservation benefits.
- Dalits have been acknowledged to be the most backward among the backward sections.
- The Centre is thus justifiably upset that this principle has been extended to Dalits.
- However, a problem is the question whether the exclusion of the advanced

sections among SC/ST candidates can be disallowed only for promotions.

- Most of them may not fall under the 'creamy layer' category at the entry level.
- However, after some years of service and promotions, they may reach an income level at which they fall under the 'creamy layer'.
- This may result in the defeat of the object of the Constitution amendments to protect reservation in promotions as well as consequential seniority.
- Another landmark verdict in the history of affirmative action jurisprudence may be needed to settle these questions.

Source: Economic Times, The Hindu

