

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. \n
- Also, the state had to collect 'quantifiable data on backwardness' of the SC/ST class if it wished to provide reservation in promotions. \n
- 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 <u>promotion</u> of SC/ST employees, the court held that the <u>creamy layer concept does apply</u>.

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• So now, only in <u>direct recruitment</u> of the SC/STs, the <u>creamy layer concept</u> <u>does not apply.</u>

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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. \n
- But notably, the SC/STs lack representation mainly at the Group A level which do not have direct recruitment provisions. \n
- 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. \n
- It was also to help them gain the strength they need to withstand it and to grow autonomously. γ_n
- The first part of Article 335 stipulates job reservations for SC/STs as a <u>right</u> of representation, not as a welfare measure. \n
- However, the creamy layer among SC/ST employees helps fulfil the second part of Article 335 that requires maintaining the "<u>efficiency of administration</u>".

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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. \n
- It is also a punishable offence to withhold one's caste status while seeking government employment. γn
- But allowing SC/ST candidates to compete in the general category would help thousands to leave the space for the less privileged among them. \n
- Also, by competing as non-reserved candidates, the well-qualified SC/ST group would corner a substantial number of open posts. \n
- So theoretically, SC/STs would end up garnering more posts than at present. $\space{\space{1.5}\$

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Source: The Hindu, Scroll

