

The creamy layer myth: Cash can't wash away caste

The Supreme Court's call for SC/ST subcategorisation aims for fairer quota distribution, but risks political meddling and impact on vulnerable castes.

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The Supreme Court's silence on what is a "creamy layer" and the viability of it within the SC/ST quota remains a bone of contention. | Photo Credit: Sushil Kumar Verma

The recent Supreme Court judgment on subcategorisation of SC/ST has reopened the Pandora's box of "creamy layer". This article seeks to discuss two fundamental aspects of the judgment. First, we need to evaluate what is subcategorisation and whether it is required. The second important parameter that needs reassessment is the concept of "creamy layer", something that has not been sufficiently engaged with until now. There is a sense of arbitrariness with which it is used for OBC.

While the seven-member bench led by Chief Justice of India D.Y. Chandrachud upheld the principle of subcategorisation, it also underscored the need to have adequate "quantifiable and demonstrable data" for it rather than basing it on political expediency. However, the Supreme Court's silence on what a "creamy layer" is and its viability within the SC/ST quota remains a bone of contention.

Are Scheduled Castes a homogenous community?

The Supreme Court judgment has stated: “Sub-categorisation is a must. They (SC) are not a homogenous group and putting everyone together is depriving some sub-sections of the SC community.” The Supreme Court has further spoken about the differences among SC communities as it appears from their social and educational backwardness. This viewpoint needs a critical re-evaluation, as there is no data yet to establish the social-educational differences and, more importantly, it needs to be studied whether upward mobility among caste groups has led to the eradication of caste bias.

The Constitution in Article 341 talks about the power of the President to designate castes, races, or tribes as “Scheduled Castes” in a State or Union Territory. There is no explicit discussion of “untouchability” per se in this Article. However, sociological inquiry tells us that SC or Dalits (as they are popularly referred to) are historically oppressed communities who have been subject to “untouchability”. Untouchability means rendering a community’s touch or proximity to their body as impure or defiling because of their caste location.

Dr B.R. Ambedkar in his work *The Untouchables: Who Were They and Why They Became Untouchables* wrote that the caste system in India is a “unique” social phenomenon that renders an entire community defiled by virtue of its caste positionality. He argued that in non-Hindu society, exclusion due to defiling by virtue of occupation or “impure” association has rendered only the individual untouchable; however, within Hindu society, it has led to a complete and “permanent segregation” of an entire community (*Dr. Babasaheb Ambedkar Writings and Speeches*, 7(2):286).

Untouchability remains a harsh reality even today. It is visible in the [caste violence](#) that the Dalit community faces every day. Data is not available on which subcastes of Dalit communities are most vulnerable to violence, but the increasing instances of violence against SC/ST communities reflect their continued vulnerability vis-à-vis the dominant castes.

The idea of the “creamy layer” invalidates itself on the fundamental ground that the rendering of a community as untouchability continues even today despite reservation. Reservation might have ensured educational and employment opportunities for the SC/ST community (albeit minimal) but the scourge of untouchability continues.

So, one might argue that within SC/ST communities, there could be differences in mobility, but the experience of untouchability and violence remains “homogenous” even after 76 years of Independence.

Moreover, it will be important to inquire whether internal differences due to differential mobility within sub-caste groups have in turn led to the practice of untouchability. A study by Thorat and Joshi (2020) showed that even within the SC and ST communities, untouchability is practiced by 15 per cent and 22 per cent of the people, respectively.

However, it will be important to cross-check such data to establish it as an all-India phenomenon. Divergent responses from north and south India, with regard to the acceptance of subcategorisation, show that a lot of data mining and brainstorming needs to be done before subcategorisation is implemented.

Select empirical evidence shows that differential gaps between subcaste groups do exist, and such studies can be an important case-in-point to begin with. However, one cannot ignore the discursive non-engagement with and ignorance about this aspect of caste, whether it be in academic circles or in the political will to understand subcategorisation.

Judicial overreach

Some people have argued that subcategorisation is inevitable as certain subcastes have reached a better position and hence are blocking the upward mobility of other subcastes. However, the fundamental question that needs to be asked is whether caste-based reservation was introduced to address the problem of differential mobility or if it was about adequate representation to ensure social justice. [Article 335](#) of the Constitution states: “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”



Samata Sainik Dal (SSD) organised the “Samata Jagar rally” in protest against the apex court verdict, diluting Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in Nagpur in 2018. | Photo Credit: S Sudarshan

Clearly, the Constitution strives to ensure that people from the SC/ST communities have adequate representation in appointments for inclusivity. Since the Constitution does not have a provision for subcategorisation based on the differential mobility of castes, the Supreme Court reading Article 335 along with Article 16(4) to talk about subcategorisation on the basis of “backwardness” is judicial overreach.

Where is ‘quantifiable and demonstrable’ data?

Yet another drawback of the current judgment is that it is not based on any evidential data. [Caste-based census](#), along with data on employment within sub-caste groups, is an essential prerequisite for subcategorisation. Making a provision for subcategorisation without this would be a vacuous effort.

There is no denying that some studies have explicitly shown the dominance of upwardly mobile subcaste groups over other communities such as Valmiki, Dom, Mushahar, Madiga, and Matang, but it is important to evaluate whether subcategorisation will actually benefit such communities.

It is important to discuss the “roster system” in this context. In the absence of the more backward subcastes among the SC/ST communities in the educational space, the “creamy layer” provision will only ensure that such seats are declared NFS (not found suitable) and eventually converted to the general category. Thus, the intention of subcategorisation will not be served. In fact, it will go against the spirit of Article 335 of the Constitution that ensures the representation of SC/ST communities.



“The “creamy-layer” provision is absolutely unnecessary as caste based reservation is not about poverty eradication; rather, it is a step towards social equity and justice.”

The “creamy-layer” provision is absolutely unnecessary as caste-based reservation is not about poverty eradication; rather, it is a step towards social equity and justice. Even the discussion on the “creamy layer” within OBCs needs to be revisited along similar lines. The oppression due to caste comes from structures such as varna and jati that have kept Shudras, Ati-Shudras, and Adivasis outside the resource benefits. Economic mobility per se does not ensure social inclusivity. For instance, when Babu Jagjivan Ram was part of the Union Cabinet, he visited the Sampooranandji temple in Varanasi and after his visit, the temple was “purified” with Gangajal. Similarly, the temple in Madhubani in Bihar was purified after Jitan Ram Manjhi, the then Chief Minister of Bihar, visited it in 2014. In 2017,

after the then Uttar Pradesh Chief Minister Akhilesh Yadav vacated his bungalow, a purification ceremony was performed there.

Is subcategorisation and implementation of ‘creamy layer’ anti-caste?

One must also ask whether the judgment is anti-caste (that is, it will eradicate caste) or if it will perpetuate caste antagonism. Pushing subcategorisation to the State List will make the SC/ST community vulnerable to political opportunism. The most backward castes may not be able to negotiate their positions. This might widen the social divide of the more deprived sections within the SC/ST community. One can discuss the case of Mahadalits of Bihar, where eventually most of the subcastes of Dalit eventually ended up becoming Mahadalit.

It is also important to mention that the upwardly mobile SC groups have been those communities that had a visible presence within the Ambedkarite movement. The politically conscious Dalits are at the forefront of the anti-caste movement in different forms. The attempt to subcategorise opens the Dalit discourse to the threat of appropriation.

Hence, any subcategorisation without adequate data at the national level will only open up a Pandora’s box. Social justice, which is at the core of the Constitution, cannot be left to the vagaries of political opportunism.

Political parties such as the Bahujan Samaj Party, Lok Janshakti Party (Ram Vilas), Rashtriya Janata Dal, and Aazad Samaj Party have questioned subcategorisation while highlighting the banality of the “creamy layer” approach. While economic mobility does not determine social acceptance or ensure justice for the Dalit community, there is no denying the fact that it is important to accommodate the neglected subcaste groups within SC/ST communities. There can be sub-reservation quotas (quota within quota) for such identified communities. There can also be preferential deprivation points for such identified subcaste groups.

But sweeping everything under one carpet through concepts like the “creamy layer” and without an in-depth engagement and conversation on the issue of caste will only create impediments in the path of equitable representation that the reservation system aims to establish.

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The opinions expressed here are personal.

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