



**Research Paper**

## **Creamy Layer Implications for SCs and STs**

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Creamy layer is once again in news, but with a different application this time. The concept is not in news and it has been in air for quite some time. Creamy layer in the context of reservations implies restriction imposed on the advanced segments of reserved communities from using the benefits of reservations. It is expected to help the backward segments of the beneficiaries of reservations, which have been grossly underrepresented in the government employment. It is assumed that in the absence of creamy layer the advanced segments of the reserved communities, which are relatively more open to opportunities, would grab all the benefits of reservations denying the same to the poorest of the poor among their communities.

The recent Supreme Court's opinion in the case of M. Nagaraj vs. Union of India creamy layer among SCs and STs has generated a serious debate as the issue has got several significant implications. Different social groups and political parties have come out with mixed reactions to this, which indicate the complex nature of the problem. In view of its importance in terms of its larger application to the society it would be worthwhile to discuss and throw some light on its different dimensions and possible implications at large.

Creamy layer among SCs and STs has never been an issue of concern as so far no one has felt its need, since these sections are largely underrepresented in the government services and decision-making bodies in proportion to their population. Today, after 55 years of independence, the condition remains more or less the same. At the union and state levels thousands of government jobs that are earmarked for SCs and STs are lying unfilled for quite some years for want of deserved or qualified candidates. The total percentage of SCs and STs in government services has never crossed 5 percent at any given point of time (V.T.Rajsekhar). Though the SC and ST representation in the government services is gradually increasing, the pace at which it taking place has been rather slow. It has also been recognized that it is only in class III and class IV posts these communities were adequately represented but their representation in class I and class II services remains dismal due to non-availability of deserved candidates from these communities.

Before embarking on to creamy layer discourse, one must understand the nature and purpose of reservations so that one can assess its impact in a right perspective. Reservations were provided to these communities in India not primarily on the basis of their social backwardness but on “Untouchability” (P.S.Krishnan) that they have been suffer from for ages. Untouchability is a practice deeply rooted in an economically and socially exploitative system which is worse than slavery, which denies the basic human dignity in its most extreme form (S.R.Sankaran). In such a system, crippled with Untouchability, socio-economic development becomes secondary to basic human existence with dignity. The practice of Untouchability completely excludes a major segment of the Indian society; dalits from the main stream by excluding them from social space. If there is no “space” for a human being in the larger society - life becomes absolutely meaningless as human being are social beings. When the society is insensitive, rigid and stands against the inclusion of the dalits it becomes the responsibility of a state to create it for its citizens so as to include them into its fold. Reservations came into existence to serve this purpose only. This was also precisely the reason for the founding fathers of the constitution to insert the right to equality as the “first” fundamental right rather than the right to “life” as equality offers a space for everyone. If the problems of dalit were only economic in nature, the remedies would have been appropriately economic. It was perhaps well thought the economic development couldn't bring social integration unless the dalits are included in the social system and participate as equal citizens. Therefore, reservations to SCs and STs should not be simply viewed as a means to their economic development alone as it involves much important dimensions like social inclusion, human dignity and respect. But its opponents consider this as loss, while the protagonists, SCs and STs see it as a basic support to their existence. Thus, the reservations have become such a sensitive issue that today no political party could win elections without supporting the policies of reservations.

Given the delicate nature of the issue, one must deal carefully with the notion of reservations. But sadly it seems the socio-economic prejudices of the Indian social system have dominated the judiciary so much so that in several cases of atrocities against dalits justice has not been done as several pronouncements indicate. With verdicts of this kind, the confidence of Dalits on judiciary is gradually declining which indicates a dangerous trend. The Judiciary, which has hardly convicted any one even in cases like Tsundur and Karamchedu where four and ten Dalits were respectively brutally killed in Andhra Pradesh, comes out, all of a sudden with its opinion on the fair distribution of the benefits of reservations among the SCs and STs. The Judiciary, which has been insensitive to atrocities on dalits now shows more interest in the creamy layer among SCs and STs. Thus, the Judiciary with such a bad track of record against the Dalits opines for a fair distribution of employment opportunities among SCs and STs. Interestingly the judiciary, which has never been serious on filling up the backlog vacancies, now offers an opinion without anybody's request on

creamy layer, which is taken with suspicion by dalits. Understanding well the attitude of the judiciary towards the dalit the former President of India, K.R. Narayanan opined that Reservation Policy be applicable even for the judges.

The opinion of the 5-member bench of the Supreme Court in the Nagaraj case raises some important questions with regard to its uncalled for opinion on creamy layer. Given the complacent track record of judiciary on issues related to dalits one is sure to get many doubts on its seriousness on the issue. Is the creamy layer a part of the Nagaraj's case? Or is it voice from any quarter of the society that the judiciary represents? Then what were the real motives behind this enthusiasm? Though the judiciary is free to express its opinion on any issue, but what is its logic of creamy layer when 30,000 backlog posts are lying vacant for want of deserved candidates (NDTV NEWS Report on 27-11-2006 ) from SCs and STs? Today dalits are trying to find out answers to these questions from their own experiences.

Therefore, the creamy layer proposal can be seen as a part of the natural apathy of the upper strata of the society towards dalits. It has also been understood from the experience that whatever proposals or modifications are suggested with respect to the reservations that are all aimed at raising some dust against it only. Therefore, the dalits perceive the creamy layer proposal as yet another stroke to dilute the spirit of the reservations to further exclude them.

Creamy layer at this juncture may also pose a threat to the overall progress of of SC and STs as it had several negative implications for them. It is a known fact that any community needs a middle class to guide and inspire the rest of its community. It is also a fact that a small articulate and assertive section has emerged from among these communities with a middle class nature. This middle class is essential for the SCs and STs as these groups suffer from lack of basic interaction with the other upper castes, which is important for human beings for their overall development. This advanced class offers an immediate role model to the rest of its community, which could direct and inspire the backward segments. In fact it is an open secret that in every issue of atrocities against dalits it is this assertive and articulate section, which has been quite active in initiating some or the other action process. In such a situation if creamy layer is separated from these communities it would become counter productive for the development of these communities.

Creamy layer may become a strong divisive force to split Dalits' cohesive group and destroy its identity. At a time when the identity is considered as an indicator for various socio-economic developmental schemes of the country, creamy layer may further push the dalits into divided lot. This could possibly result in encouraging members of the creamy layer to be silent spectators on the issues

of larger interest of their communities as it eventually increases the gap between different reserved communities.

As the creamy layer is mainly intended to keep the candidates of the advanced segments of these communities outside the purview of reservations, the availability of qualified candidates for various posts may go down to a great extent. The consequences of such a situation would be advantageous for upper castes. It is because after subsequent advertisements these posts may be de-reserved so as to make them available for the open category. It is here that the reserved communities perceive the entire process of creamy layer as a part of the much larger conspiracy.

The recent judgment of the Supreme Court on reservations in promotions will also remain meaningless as the entire group I job holders of these communities form a part of the creamy layer. For instance a Scheduled caste candidate by just entering into a university as an assistant registrar automatically foregoes his opportunities thrown open by the reservation in future as he becomes a part of creamy layer. In this manner all assistant registrars belonging to these communities if disqualified from using reservations on account of becoming a part of creamy layer how would reservations help them in promotions? On entering in to a higher job a person of these communities automatically loses his reservation. This needs to be studied from realistic stand point of view.

Apart from the above arguments the concept of creamy also carries some weight as it has a spirit of “Justice” to the poorest of the poor through a fair and democratic distribution of opportunities opened by the reservations. Therefore in view of its significance it is also not wise to rule out its relevance in toto, as there are signs of backward sections of these communities coming forward. Thus, a more rationale and just distributive system, which would not affect the overall progress of these communities, may be offered, keeping the future also in view. For this purpose, a “Two Tier” Creamy layer model may be proposed where the total reservation benefits earmarked for a particular reserved community could be distributed within that community only and used by that community alone.

In this model, for instance, the Scheduled Castes may be divided into two groups; a Common Group (CG) and a Creamy Layer Group (CLG). When the quota allotted to this community is to be filled up, the first priority must be given to the Common Group by throwing open all the posts/seats available. Then the second priority should be given to the Creamy Layer Group by offering them the left-over posts/seats, if any (Ananda Rao Patibandla) In this model- no body would be discriminated as the two groups get a fair opportunity which is based on the principle of ‘justice to the poorest of the poor first’. The same model could also be applied to any community but measures must be taken to see to it that no post allotted to these communities would be de-reserved at any point of time. Thus,

the “Two Tier” Creamy Layer model would certainly offer a rational and meaningful solution to the on going controversy.

To sum up, the unsolicited opinion of the judiciary about creamy layer among SCs and STs has serious implications. It is a faulty notion to see reservations from economic perspective alone obliterating the wider functional context, inclusive policy of the state. The inclusive dimension of the reservations is vital for healthy society even in the years ahead. It is likely that the conspiratorial creamy layer concept would do more harm than good to the SC and ST communities as its implication is hazardous.

**Notes:**

- [1]. V.T.Rajasekhar has been quoted from his speech in the Summit of the power Less, on 21-11-2006.
- [2]. Creamy layer sans cream, Edit-opinion, Tehelka, 18 November 2006.
- [3]. S.R.Sankaran, Fifty years of reservations, Indian journal of Human Rights, January, 2000.
- [4]. Interview with Mr. Patibandla. Anda Rao, A Dalit scholar, from Andhrapradesh.