

Subgroups Among SC/ ST

August 29, 2020

A five judge Bench of the Supreme Court held that **States can sub classify Scheduled Castes and Scheduled Tribes in the Central List to provide preferential treatment to the “weakest of the weak”**. The Constitution Bench, led by Justice Arun Mishra, said **reservation has created inequalities within the reserved castes itself. There is a “caste struggle” within the reserved class as the benefits of reservation are being usurped by a few**, the court pointed out.

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“The million dollar question is how to trickle down the benefit to the bottom rung. It is **clear that caste, occupation, and poverty are interwoven. The State cannot be deprived of the power to take care of the qualitative and quantitative difference between different classes, to take ameliorative measures**,” Justice Mishra wrote for the constitution bench. With this, **the Bench took a contrary view to a 2004 judgment delivered by another coordinate bench of five judges in the E.V. Chinniah case**. The Chinniah judgment had held that **allowing the states to unilaterally “make a class within a class of members of the Scheduled Castes” would amount to tinkering with the Presidential list**.

Now with two numerically equal Benches of judges holding contrary viewpoints, the **issue has been referred to a seven judge Bench of the court**. Justice Mishra’s judgment is significant as it fully **endorses the push to extend the creamy layer concept to the Scheduled Castes and Scheduled Tribes**. The judgment records that “once a mortgage always a mortgage” cannot be pressed into service for submitting that once a backward class of citizens, always such a backward class.

“Citizens cannot be treated to be socially and educationally

backward till perpetuity; those who have come up must be excluded like the creamy layer,” the judgment said. He noted that **“the entire basket of fruits cannot be given to the mighty at the cost of others under the guise of forming a homogeneous class”**. In his 78 page judgment for the Bench, Justice Mishra said the Scheduled Castes and Scheduled Tribes in the Central List do not constitute a “homogenous group”.

The Central list of Scheduled Castes and Tribes is notified by the President under Articles 341 and 342 of the Constitution. The consent of the Parliament is required to exclude or include castes in the list. In short, States cannot unilaterally add or pull out castes from the List. However, Justice Mishra disagreed. He reasoned that **subclassifications within the Presidential/ Central list does not amount to tinkering with it.** No caste is excluded from the list.