

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2011
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

Between:
Dr. O.P.Shukla ...Petitioner
Union of India & Ors. Versus Respondents

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATES FOR THE PETITIONERS
BALAJI SRINIVASAN

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Office Report on Limitation

1.
- The petition is within time.
2.
- The petition is barred by time and there is delay of ____ days in filing the same against order dated. _____ and petition for condonation of _____ days delay has been filed.
3.
- There is delay of _____ days in refilling the petition and petition for condonation of ____ days delay in refilling has been filed.

BRANCH OFFICER

New Delhi
Dated:-

SYNOPSIS

The petitioner who is citizen of this country is seeking equitable distribution of benefits of reservation meant for depressed classes.

The petitioner had factually demonstrated in this petition that the ‘Reservation Policy’ that has been in force for the last 63 years is lopsided and fewer groups are getting the benefits.

This has resulted in these groups becoming advanced in all social parameters namely, literacy rate, political financial affluence, economic growth etc. In other words these groups no longer require benefits of reservation.

It is an established fact that various State Governments, as well as the Central Government has conducted various studies for measuring the actual beneficiaries of the Reservation Policy. All the Committees have enormously recommended that there should be the periodic review of Scheduled Castes and Scheduled Tribes requiring reservation.

It is also been found factually that none of the recommendation of these committees have been implemented.

Thereby playing a fraud on the Constitution and also on its citizens. This has resulted in total and complete violation of Article 14,15 & 16 of the Constitution of India.

The petitioner is constrained to approach this Court in its original jurisdiction is for the reason that, that relief has been sought against all the State of the Indian Union as well as the Central Government.
Hence this Petition.

LIST OF DATES

26.01.1952	People of India gave itself Constitution, in particular Articles 14, 15 & 16 provides for equality and specifically permitted the State to employ all tools to achieve equality.
1960-1965	The Central Government constituted High Power Official Committee for advising the Government of Revision of ‘list’ of Scheduled Castes and Scheduled Tribes. This Committee is known as ‘Lokur Committee’. This Committee unanimously recommended that there should be a periodic review of list of Scheduled Castes and Scheduled Tribes. So as to emergence of vested interest and ensure equitable distribution of benefits of reservation.
1972	The Government of Punjab enacted a law providing for 50% to Ravidasia Sikhs and 50% to Valmikis and Mazhabi Sikhs.

1990	State of Haryana appointed the “Backward Classes Commission” headed of Hon’ble Justice Mr. Gurnam Singh. This Committee found that the whole reservation has been concerned by one particular caste, and recommended categorization into two Blocks consisting SC Blocks-‘A’ and SC Block ‘B’.
1996-2000	The Government of Andhra Pradesh appointed a Committee headed by Hon’ble Justice Mr. P.Ramachandra Raju to enquire into the persistent demands raised by the extremely backward communities belonging to SCs. This Commission submitted its report which led to the enactment of law Andhra Pradesh Schedule Caste (Rationalization of Reservations) Act, 2000.
2007	Government of Bihar constituted ‘Maha Dalit Ayog’ (Extremely backward Scheduled Castes Commission). This Ayog recommended exclusion of four affluent and advanced Class /Castes.
2008	The Central Government yet again Constituted a Committee headed by Hon’ble Justice Mrs. Usha Mehra after the decision of this Court in E.V. Chinnai case.
	<p>This Commission examined a matter in detail and submitted its report. This Committee yet again recommended review of the list of Scheduled Castes and Scheduled Tribes in line with the recommendation of earlier Committee known as ‘Lokur Committee’.</p> <p>However, no steps whatsoever have been taken by the Union Government.</p>
	Hence this Writ Petition.

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. OF 2011
IN THE MATTER OF:

Dr. O.P.Shukla, S/o Late Shri. Banvari Lal,Aged About 64 years,
R/o F-15,Bhagat Singh Market, Gole Market, New Delhi-110001

Petitioner

Versus

1. Union of India
Represented by Cabinet
Cabinet Secretariate,
New Delhi
2. State of Assam
Represented by Chief Secretary
Assam Secretariat
Guwahati, Assam
3. State of Bihar
Represented by Chief Secretary
Bihar Secretariat
Patna, Bihar
4. State of Chhatisgarh
Represented by Chief Secretary
Chhatisgarh Secretariat

Raipur, Chhatisgarh
5. State of Goa
Represented by Chief Secretary
Goa Secretariat
Panaji, Goa
6. State of Gujarat
Represented by Chief Secretary
Gujarat Secretariat
Gandhinagar, Gujarat

7. State of Haryana

Represented by Chief Secretary

Haryana Secretariat

Chandigarh

8. State of Himachal Pradesh

Represented by Chief Secretary

Himachal Secretariat

Shimla, Himachal Pradesh

9. State of Jharkhand

Represented by Chief Secretary

Jharkhand Secretariat

Ranchi, Jharkhand

10. State of Rajasthan

Represented by Chief Secretary

Rajasthan Secretariat

Jaipur, Rajasthan

11. State of Karnataka

Represented by Chief Secretary

Karnataka Secretariat

Bangalore, Karnataka

12. State of Kerela

Represented by Chief Secretary

Kerela Secretariat

Thiruvananthapuram, Kerela

13. State of Madhya Pradesh

Represented by Chief Secretary

Madhya Pradesh Secretariat

Bhopal, Madhya Pradesh

14. State of Maharashtra

Represented by Chief Secretary

Maharashtra Secretariat

Mumbai, Maharashtra

15. State of Orissa

Represented by Chief Secretary

Orissa Secretariat

Bhubaneswar, Orissa

16. Union Territory of Pondicherry

Represented by Chief Secretary

Pondicherry Secretariat

Pondicherry

17. State of Punjab

Represented by Chief Secretary

Punjab Secretariat

Chandigarh

18. State of Tamil Nadu

Represented by Chief Secretary

Tamil Nadu Secretariat

Chennai, Tamil Nadu

19. State of Uttar Pradesh
Represented by Chief Secretary
Uttar Pradesh Secretariat
Lucknow, U.P.

20. State of West Bengal
Represented by Chief Secretary
West Bengal Secretariat
Kolkatta, West Bengal

21. Union Territory of Chandigarh
Represented by Chief Secretary
Chandigarh Secretariat
Chandigarh

22. State of Delhi
Represented by Chief Secretary
Delhi Secretariat
New Delhi

CONTESTING RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To,

The Hon'ble Chief justice of India, and his Companion Justices of the Supreme Court of India .

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH: -

1. That, the humble petitioner is preferring the instant Public Interest Litigation (Writ Petition) by way of invoking the writ jurisdiction of this Hon'ble Court under Articles 32 of the Constitution of India being aggrieved by the inaction of the Respondent(s) in reviewing the SCs & STs list / schedule under Arts. 341 & 342 of the Constitution and implementing the Lokur Committee recommendations of 1965 regarding exclusion of advanced/affluent Castes/Tribes from the scheduled reservation which has resulted in abuse of the affirmative action by the advance affluent class of SCs & STs and defeated the mandate of the Casteless society under the Constitution thereby, preventing the benefits to reach to genuinely needy SCs & STs beneficiaries.
- 1(a) That the petitioner has not made any representations to the respondent with respect to the reliefs claimed in this writ petition; namely ensuring equitable distribution of share of Reservation among 99% % Ati Dalit castes so as to ameliorate the sufferings of age old Ati Dalits amongst the SCs /STs.,
2. That the petitioner has not filed any other writ petition or any other petition before this Hon'ble court or before any Higher Court.
3. That this petition raises the following substantial questions of law of General and Public Importance for the kind consideration and decision of this Hon'ble court :

I. What is the scope and nature of power of the President of India under Articles 341 and 342 of the constitution? Whether the power conferred hereunder is not in the nature of the power coupled with the duty to include or exclude from time to time the respective Castes, Races or Tribes or any part of them for the purposes of making available the beneficial provisions of the constitution?

II. Whether the power under Articles 341 and 342 is to specify a respective Castes or Tribes etc. carries with it the duty to lay down the principles for the purpose of the exercise of such powers?

III. Whether further inclusion of other castes/ groups /races/ tribes without excluding socially advanced castes /tribes / from the S.Cs. & S.T.s list by the central Govt. amounts disregard of the interference to of Articles 341 & 342 of the Constitution?

IV. Whether the erroneous understanding and exercises of power under Articles 341 and 342 (inclusion and exclusion of SCs & STs in the schedule) has not led to the frustration of the objectives of Articles 5(4), 16(4) (equality and equality of opportunity), 46 and 335 of the constitution? Whether Articles 341 and 342 have to be so used/invoked towards advancement of equalities of opportunities to be ready deprived Sections of the community at any given point of time?

V. Whether the Respondent is legally correct in not implementing the Lokur Committee Recommendations of 1965 which had recommended exclusion of affluent Castes of the Scheduled Caste and Scheduled Tribes from the schedule? Whether the Respondent is justified in not excluding the socially, educationally and economically advanced Castes from the purview of the list/ schedule in spite of the directions/ queries raised by this Hon'ble court time and again?

VI. Whether non-exclusion of any advanced castes of persons from scheduled caste/ tribe from the list/schedule and getting them assimilated in the society is not against the basic objective of caste-less society as envisaged by the framers of the constitution?

VII. Whether in view of the reports submitted by various committees/ commissions constituted by Union of India and State Governments during the last sixty three years of reservation policy, the objective of empowerment/ advancement of any socially economically and educationally backward classes of citizens being found on such conditions from time to time has not been frustrated by the personnel inclusion of non-deprived Sections/Castes/Tribes in the Scheduled mortgage under Articles 341 and 342?

VIII. Whether the Union of India does not owe a constitutional duty of equitable distribution of the benefits of reservation under Article 15(4), 16(4), 46 and 335 of the Constitution amongst the target groups?

IX. In case reservation policy has failed to achieve its objectives, whether the time has not come to abolish blanket reservation policy and evolve a new mechanism in order to uplift and empower the really marginalized sections of the society?

X. Whether periodical extension of reservation policy after every ten years under Article 330 & 332 of the Constitution, is against the spirit of the constitution perennial extension as was not envisaged by the framers of the constitution?

XI. Whether the Government can re-design the reservation policy in order to extend the benefits from the lowest ladder of Scheduled Caste and Scheduled Tribes i.e. first to the extremely backward, then backward Dalits/poor and so on and so forth instead of continuing the present practice of nurturing only 5-10 powerful and advanced castes of Scheduled Caste and Scheduled Tribes who are cornering the benefits of the majority of the genuine and deserving/ neglected sections of the Scheduled Caste and Scheduled Tribes?

1. **The brief facts of the case are as follows:-**

4.1 The petitioner belongs to the extremely backward Community/Caste among the Scheduled Caste e.g. Balmiki of the Indian Society. The petitioner is a former JM (ITAT)/Addl. Secy., Ministry of Law & Justice, Government of India as well as a social activist and one of the early activists in promotion of genuine pro-poor public interest litigation in the country. He had worked in association with various former Judges, Legal luminaries, Scholars, Lawyers and Social Activists. He had raised several social issues of general and public importance before this Hon`ble Supreme Court and High Courts, important among them are (1) medical care and treatment to destitute patients in Delhi (1983), (2) illegal detention of several Jhuggi Dwellers of Sultanpuri Delhi by Delhi Police (1984), (3) removal of garbage depot/dumping ground situated in front of the famous Valmiki Temple on Mandir Marg, New Delhi, where father of the Nation Mahatma Gandhi stayed during 1946-1947, just before he was killed, consequently the depot was removed in 1996 when the then Prime Minister Shri Narsimha Rao visited the historical temple/ place, (4) derogatory and insulting remarks made by the Shri Niranjana Dev Tirath Shankaracharya of Puri (Orissa) against Dr BR Ambedkar and Dalits on the issue of temple entry (1988), (5) Eviction of residents of the Harijan (sweeper and scavenger) colony, Samaipur Badli, Delhi(1992), (6) Constitution of the National Commission for Safai Karamcharis by the NDA Government, wherein persons who were hostile to sweepers and scavengers were inducted as chairman/members etc. and finally they were removed from their respective position by the government (2005). Besides, cases were filed against the (1) practice of untouchability (1992), (2) for equitable distribution of drinking/ potable water and supply of electricity/power in the re-settlement colonies in Delhi and (3) Bonded Labour etc.

4.2 The petitioner is working for the upliftment and welfare of the sweepers and scavengers and extremely backward communities for the last 35 years. He is presently the president of National Coordination Committee for Revision of Reservation Policy and NGO consisting of representatives of extremely backward communities of S.C.s & S.T.s from all over India. The Coordination Committee in association with various social organizations has been working for the review of the scheduled under Article 341 & 342 implementation of the recommendations of Lokur Committee- 1965 and exclusion of advance and affluent Castes/Tribes of SCs & STs from the purview of reservation policy since long, as the benefits of reservation have not percolated down to the genuine and deserving beneficiaries during last 62 years. Consequently the basic purpose of the affirmative action as envisaged by the framers of the constitution has been defeated.

4.3 The Coordination Committee had organized a national conference in Delhi in July 2007

and again in 2009, 2010 and 2011 and demanded the review of the reservation list and implementation in view of the holdings of the recommendations of Lokur Committee- 1965 and extension of the SCs & STs advance/affluent/Castes/Tribes as laid down by the Hon'ble Supreme Court in M. Nagraja & Ors Vs. Union of India. (2006) and A.K.Thakur Vs. Union of India (2009) to ensure equitable distribution of benefits of quota amongst the Ati Dalits, or most backward classes.

4.4 The Coordination Committee had submitted a mass petition signed by representatives of the Ati Dalit communities from all over the country to the Hon'ble Chief Justice of India, Hon'ble Prime Minister and Hon'ble Union Law Minister on 3.8.2007 wherein implementation of the recommendations of Lokur Committee and to exclude creamy layer from SCs & STs reservation was demanded so that the share of quota benefits could reach the extremely backward and marginalized section of Ati Dalit communities of the society, being the intended beneficiaries of the quota policy. But there was no response from any side.

4.5. Genesis: The genesis of the problem of inequitable distribution of reservation benefits among SCs & STs, has been a contentious issue since reservation policy came into operation in the country. The framers of the Constitution were apprehensive about the fair distribution of the reservation benefits amongst the SCs & STs. Their fear was that due to the inequitable distribution, a **“Vested Interest Class”** within the SCs & STs may emerge as a result of the special privilege provided to these Communities under the Constitution. On the other hand, various Government studies and reports eventually found that the benefits were not percolating down to the real and genuine beneficiaries. Resultantly, the intent and purpose of reservation or affirmative action for depressed or disadvantaged class stands defeated.

Studies and action by Government: There are innumerable strong evidences, on the basis, of which it can easily be demonstrated that there are few selfish and hostile Castes & Tribes in the SCs & STs who are eventually against any kind of affirmative action of the Government of India or any State Governments for providing concessions to the extremely backward community amongst SCs & STs. These groups/castes/tribes are not ready to share any benefit with the others at the cost of their own interests.

It may be relevant to state that as early as 1965, the Lokur Committee Report, recommended exclusion of certain advanced castes/tribes such as (1) Chamar, (2) Mahar, (3) Mala, (4) Dusad, (Paswan), (5) Passi and Dhobi etc. which was vehemently opposed by the then Dalit leaders. The committee had also recommended for abolition of reservation in the phased manner. Besides, the Lokur committee for the first time pointed out about the "Vested Interest Class/Caste" that had emerged within the SCs & STs as a result of concessions given to them.

Likewise, in 1975, the Government of Punjab formulated a policy for separate reservation for the neglected sections of SCs i.e. 50% for Balmiki and Mazbi Sikhs, the extremely backward communities in SCs and 50% for the rest. The Chamar leaders opposed this action of the Government. Similarly in Haryana, Justice Gurnam Singh Commission Report in 1990 recommended separate reservation for the neglected sections of the SCs communities. The Haryana Government dividing the SC in two blocks i.e. A Block and B Block provided the separate reservation. But, after the decision of the Hon'ble Supreme Court in E.V. Chinnai of 2004, the separate reservation in Haryana & Punjab was got abolished from the Punjab & Haryana High Court by the Chamar leaders of Haryana.

4.6. That the opposition to categorization of SCs and STs in Andhra Pradesh High Court and in the Supreme Court of India, which finally resulted in the decision of E V Chinnai, which in ultimate analysis became instrumental in the abolition of categorization in A.P. in 2003/2004 and also in Punjab and Haryana in 2006. Earlier in 2001, State of UP abolished categorization

of SC & STs.

4.7. On 30.08.2007, the Government of Bihar constituted a Commission namely "Maha Dalit Ayog" (Extremely Backward Dalit Commission) for the purpose of identifying as to who are backward. This exercise was achieved by identifying the groups that have advanced sufficiently to be treated as advanced groups thus no longer require reservation. The Government of Bihar excluded Dhobi, Chamar, Dusad and Passi, Later on re-inducted the three dominant Castes except Dusad making Maha Dalit Ayog meaningless.

4.8. On the basis of the reports of Commissions/Committees, it can be demonstrated that very few castes/communities - sometime only one or two castes/communities in a State - have been enjoying the benefits of reservation. Whereas large population of Scheduled Castes and Scheduled Tribes (96%) have been deprived of these benefits during last 63years.

4.9.Recommendations of the Commissions/Committees:

I. Central Government (1956-65):

During 1956-65 various commissions/ committees were constituted by the Central Government such as a) Commissioner for Scheduled Caste and Scheduled Tribe, b) Estimate committee, c) Dhebar Committee and d) Lokur Committee. These commissions / committees were unanimous on one issue that the benefits of reservation are not going to the genuine and deserving beneficiaries. These commissions have unanimously recommended after thoroughly considering all issues that:

- a) Affluent/ advanced amongst scheduled caste and tribes should be de- scheduled in phased manner.
- b) Preference should be given to the less advanced Harijans/ Depressed Classes.

The Commissioner for SCs & STs in its 1956-57 and 1957-58 report also observed that Backward Classes do not want to leave reservation rather they want to grab the same due to their **vested interest**. Consequently, the real beneficiaries have been ignored of their share in the reservation. The Commissioner, inter-alia, observed as under: -

“Backwardness has a tendency to perpetuate itself and those who are listed as backward try to remain as such due to various concessions and benefits they derive, and thus backwardness becomes a vested interest.”

The Estimates Committee in its 48th Report for the year 1958-59 made a similar observation, which read as under: -

“While the Committee considers that it is desirable that preference be given to the less advanced among the Scheduled Castes and Scheduled Tribes in provision of all facilities, they would like to observe that the tendency on the part of some to get concessions is undesirable and must be discouraged.”

Lokur Committee (1965):

The Central Government during early sixties (1960) was receiving proposals/complaints for revision of list of SCs/STs from various States & Union Territories. Consequently, a High Power Official Committee namely – “Advisory Committee on the Revision of the lists of Scheduled Castes and Scheduled Tribes” known as “**Lokur Committee**” was set up by the Central Government in 1965. The committee was consisting of Mr. B.N. Lokur, Union Law Secretary, as Chairman, Mr. A.D. Pandey, Joint Secretary, Ministry of Home Affairs as Member and Mr. N. Sundram, Director, Backward Classes Welfare Department of Social Security as Member Secretary.

The sole purpose of setting up of the Lokur Committee was to advise on the proposals received by the Government for revision of the existing list of SCs & STs. The Lokur Committee, thereafter, submitted its report along with the recommendations to the Government of India. The Lokur Committee in its Report recommended for gradually de-scheduling of some of the advanced Castes and Tribes from the scheduled in a phased manner. The Lokur Committee, inter-alia, observed as under:-

“In the interest of national integration we feel that the time has come when the question of de-scheduling of relatively advanced communities should receive serious and urgent consideration. To accelerate the pace of de-scheduling a deadline may perhaps be fixed when the lists of Scheduled Castes and Tribes are totally dispensed with”.

In its report, the Committee has made pointed reference to the emergence of **vested interests** as a result of special privileges granted to these communities. The Lokur Committee also recommended intensive survey to ascertain socio-economic progress made by each of the SCs & STs from time to time. The Committee further suggested:

“in framing development schemes for Scheduled Castes and Tribes, priority be given to the welfare of the most backward among them. This is in conformity with the recommendations of the Dhebar Committee.”

The Lokur Committee was in favour of abolishing reservation and thus, fixed 1975 as the deadline for complete abolition of reservation.

Lokur Committee recommended exclusion of advanced and affluent communities from the Scheduled /List vide para 16 of the report which read as under: -

“In view of the weighty views expressed above and in the interests of national integration, we feel that the time has come when the question of de-scheduling of relatively advanced communities should receive serious and urgent consideration. Consistently with this approach, several persons who appeared before us, including some eminent social workers, brought the following communities to our notice, which, in their opinion, are relatively advanced and could forthwith be de-scheduled:

Table

State	Caste	Tribe
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Andhra Pradesh	Mala	
Assam	Jhalo-malo,Jalia Kaibartta, Dhupi/Dhobi	Jaintia,Kachari,Khasi,Kuki Mizo (Lusei)
Bihar	Chamar,Dhobi	
Gujarat	Vankar/Dhed	
Kerala	Vannan,Mannan,Perumannan Velan	
Madhya Pradesh	Chamar,Jatav,Satnami,Mahar	Bhilala,Rajgond
Madras	Mannan,Velan,Vannan	
Maharashtra	Mahar	Mahadeo Koli,Kokna
Mysore	Bhovi	Kachari ,Kuki,Naga
Nagaland		
Orissa	Dhoba/Dhobi	Bhottada,Bhumia
Punjab	Chamar	
Uttar Pradesh	Chamar,Dhobi	
West Bengal	Dhoba/Dhobi,Namasudra Rajbanshi,Sunri	

However, till date no action whatsoever has been taken. The Government has also not given any explanation whatsoever.

II. STATE GOVERNMENTS

(i). Government of Punjab (1972)- The Govt. of Punjab in view of the persistent demand for the separate reservation within reservation, and to do social justice with the extremely backward communities of the SCs the Government took a policy decision for sub-categorization of reservation. The Govt. divided 22% quota of reservation between the SCs and provided 50% to Ravidasia Sikhs and 50% to Valmikis and Mazhabi Sikhs. The Court have upheld the report/policy. Thus, it requiring the Governments to periodically review the beneficiaries of the “reservation list”.

(ii) Government of Haryana (1990) - In 1990, the Government of Haryana appointed “Backward Classes Commission” headed by Justice Gurnam Singh. The Commission found that the whole reservation benefits has been cornered by one particular caste consisting of 6 sub castes of Jatavs/Chamars as the benefits were not percolating down to rest of the other 36 Communities/Castes. Consequently, on the basis of the recommendations, on the pattern of Punjab, the “reservation list” came to be divided the whole reservation into Block ‘A’ and Block ‘B’, eventually putting 36 Communities in Block ‘A’ and the rest of the communities of Chamar Caste in Block ‘B’. This decision was subject matter of challenge in the Court and the same has been upheld.

(iii) In so far as State of Uttar Pradesh is concerned, initially it whole heartedly accepted the fact that the benefits of reservation was not percolating to all the communities. In other words, the benefits to these depressed communities, are in a lopsided manner. In order to ascertain the factual position, in the year 2001, it appointed a committee headed by Sri. Hukam Singh. This committee factually found that, the benefits of reservation was not percolating down to the most depressed classes. Further it recommended that categorization of SC & ST communities. Initially these recommendations were wholeheartedly accepted the State Government and sought to implement the same. Subsequently, for inexplicable reasons this policy has been reversed.

(iv.) Reservation within Reservation: Its effect in Haryana:- In order to demonstrate the effect of bifurcation of Reservation on the socio - economic status of Ati Dalit, it is pertinent to

mention the data given by Justice Gurnam Singh committee relating to State of Haryana. As per the report, the representation of the various castes of the Scheduled Castes in Government services was as under:-

I - Community wise strength of Officers belonging to All India Services as on 1.1.90

1	2	3	4
Chamars	Valmikis	Dhanaks	Other 34 castes of Scheduled Castes
IAS 32	1	1	*
IPS 3	2	*	*
IFS 5	2	*	*

II - Position of the Vacancies filled up:

I. Before the notification dated 9.11.1994

Class	Total Posts	Chamar	Balmiki	Dhanak	Other 34 Castes
Class ‘I’	147	121	20	06	-
Class ‘II’	399	368	18	13	-
Class III’	18454	16608	1107	554	185

II. Result of the bifurcation of reservation in Block ‘A’ which comprised of total 36 Scheduled Castes and Block ‘B’ comprised of only 6 Scheduled Castes.

III - Position after the notification dated 9.11.1994

(Source : Economic & Statistical Organization, Govt. of Haryana

As on 31.3.95

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block(36) castes
Class ‘I’ Officers	174	6	4
Class ‘II’	757	0	0
Class ‘III’	21618	354	350

As on 31.3.96

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block (36) castes
Class ‘I’ Officers	173	0	0
Class ‘II’	903	76	70
Class ‘III’	22776	587	571

As on 31.3.97

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block(36) castes
Class ‘I’	173	0	0
Class ‘II’	853	0	0
Class ‘III’	23237	236	225

As on 31.3.98

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block (36) castes
Class ‘I’ Officers	189	9	7
Class ‘II’	838	0	0
Class ‘III’	24764	785	742

As on 31.3.99

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block (36) castes
Class ‘I’ Officers	205	9	7
Class ‘II’	879	22	19
Class ‘III’	24342	0	0

As on 31.3.2000

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block (36) castes
Class ‘I’ Officers	218	7	6
Class ‘II’	955	39	37
Class ‘III’	25140	412	386

As on 31.3.2001

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block(36) castes
Class ‘I’ Officers	235	9	8
Class ‘II’	988	17	16
Class ‘III’	25745	306	299

As on 31.3.2002

Class	Total Posts filled Up by SCs	‘B’ Block (6 castes)	‘A’ Block(36) castes
Class ‘I’	215	0	0
Class ‘II’	1044	29	27
Class ‘III’	25173	0	0

As on 31.3.2003

Class	Total Posts filled up by SCs	‘B’ Block (6 castes)	‘A’ Block(36) castes
Class ‘I’	253	20	18
Class ‘II’	1027	0	0
Class ‘III’	24788	0	0

IV - Political Reservation

Community wise strength of MLAS in Haryana Vidhan Sabha constituted in 1987.

1	2	3	4
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Chamars	Valmikis	Dhanaks	Other 34 castes of Scheduled Castes
15	2	*	*

V - Representation of SCs & STs in State Assembly in Haryana 2005-2010

17 Constituencies reserved for SCs & STs	Chamar	Balmiki	Dhanak		B a j i g a r		Odh	Other Comm.
	12	2		1		1	1	0

From the perusal of the above, it emerges that Block "A" (36 Communities) was having insignificant representation up to 1990, but after the bifurcation of the schedule caste of Haryana in Block A & B in 1994, Block A became almost equal to dominant castes (Chamar) during 1995-2003. Thus Block "B" communities lost their monopoly by virtue of the division of reservation in Haryana and Ati Dalit got their share in the state administration and other spheres. Strangely, this order has been withdrawn and no explanation whatsoever, has been given.

(III) Government of Andhra Pradesh (1996):

Likewise, the Government of Andhra Pradesh appointed Justice P.Ramchandra Raju (Retd.) Commission in 1996 to enquire into the persistent demands raised by the extremely backward communities belonging to SCs stating that large number of benefits have gone to a particular sub-castes among SCs and thereby demanding for categorization of sub-castes among SCs into ‘A’, ‘B’, ‘C’ and ‘D’. Justice Raju Commission submitted its report in 1997. On the basis of the recommendations, Andhra Pradesh Government enacted a law – Andhra Pradesh Schedule Caste (Rationalization of Reservations) Act, 2000, whereby the whole SCs communities were divided into four categories ‘A’, ‘B’, ‘C’ and ‘D’ demarcating their share of reservation i.e. Group ‘A’ 1%, Group ‘B’ 7%, Group ‘C’ 6% and Group ‘D’ 1% respectively.

(IV) Government of Bihar (2007):

The Govt. of Bihar constituted “Maha Dalit Ayog” (extremely backward scheduled caste commission) vides Notification dated 30th August, 2007. The Ayog recommended exclusion of four affluent and advanced castes out of 22 Scheduled Castes/ tribes of the state of Bihar such as Dusad (Paswan), Chamar, Pasi (chowdhry), Dhobi from the Schedule. But later on Pasi (chowdhry) Dhobi and Chamar caste were included /added in the list prepared for extremely backward dalits (Maha dalit). It may be relevant to state that 20 years ago, it was recommended to de- schedule the dominant castes such as Dhobi and Passi from the schedule. Surprisingly, these groups, which were considered to be affluent 20 years ago, have been included/added again in the scheduled by the present government of Bihar. Right now there are four sub- castes amongst Ati Dalit in state of Bihar such as (1) Musahar, (2) Dom, (3) Mehtar and (4) Naut which are extremely backward. There is not a single PCS, IAS, IPS or any class one officer from the Ati dalits in Bihar. There are a few clerks in some Districts of Bihar only. Besides, in grade IV, there is not a single peon except sweeper from Mehtar Community.

As per the Census of India 2001, the relevant data with regard to the socio-economic and educational status of scheduled castes is given below: -

“The literacy among the Scheduled Castes of Bihar is dismally low. The over all literacy rate of SCs is 28.5 per cent at 2001 census which is nearly half of that recorded for all SCs at the national level (54.7 per cent). Male and female literates constitute 40.2 per cent and 15.6 per cent respectively. These figures are lower than those at the national level (66.6 per cent & 41.9 per cent). Among the numerically larger castes, Dhobi have registered the highest over all literacy as well as female literacy followed by Pasi, Dusadh and Chamar. Musahar have shown the lowest literacy rate.”

Statement – 2: Literacy Rate

Literacy rate	AIISCs (Bihar)	Dhobi	Passi	Dusadh	Chamar	Bhulya	Musahar
Persons	28.5	43.9	40.6	33.0	32.1	13.3	9
Females	15.6	27.9	25.3	18.5	16.8	6.5	3.9

9. Among the literates, 39.7 per cent of SCs are either without any educational level or have attained education below primary level. The proportion of literates who have attained education up to primary and middle levels constitute 28.4 per cent & 13.1 per cent respectively. As many as 15.1 per cent literates are educated up to matric/ secondary/higher secondary etc. Graduates & above are 3.6 per cent while non -technical & technical diploma holders constitute a meager 0.1 per cent only.
10. Among the major castes, Dhobi have the highest proportion of matriculates (19.7 per cent) whereas, Musahar and Bhuiya have the lowest proportion of matriculates (6 per cent each). Chamar have every, 7th literates, a matriculate, whereas Dusadh and Pasi have every 6th literate, a matriculate.
11. It may be discerned from the educational levels attained by all SCs, the dropout rate is high after primary level as the percentage of middle level literates is less than half of the primary level literates. Number of students' decline sharply from secondary level onwards.

Statement – 3: Level of Education among the major Scheduled Castes

				Education al level attained			
Name of SCs	Literate without educational level	Below primary	Primary	Middle	Matric/Second ary/Higher Secondary/Inte rmediate	Technical & Non-technic al, diploma, etc	Graduat e and above
All scheduled castes	6.6	33.1	28.4	13.1	15.1	0.1	3.6
Bhuiya	15.3	44.1	26.5	7.4	6	Nil	0.6
Chamar	5.9	33.6	28.5	13.4	15	0.1	3.5
Dhobi	4.5	28.3	27	14.9	19.7	0.2	5.4
Dusadh	6	32	28.5	13.7	16.1	0.1	3.5
Musahar	15.3	44	27.8	6.7	5.5	Nil	0.8
Pasi	5.7	30	27.1	13.4	17.9	0.2	5.6

12. Out of the total 38.8 lakh SC children in the age group 5 -14 years, 11.4 lakh attend school, constituting 29.4 per cent. Alarmingly, as many as 70.6 per cent (27.4 lakh) children in the corresponding age group do not go to school. Among the major SCs, Dhobi have the highest share of school going children followed by Pasi, Dusadh and Chamar.

Statement - 4: Percentage of school going population in the age group 5-14 yrs.

Age Group	All SCs	Chamar	Dusadh	Musahar	Pasi	Dhabi	Bhuiya
5-14 yrs.	29.4	33.7	34.1	9.8	39.4	45.6	15.1

Work Participation Rate (WPR)

13. The Work Participation Rate (WPR) of the Scheduled Caste population is 39.7 per cent which is marginally lower than that of all SCs at the national level (40.4 per cent). While there has been a marginal decline in male WPR from 50.4 per cent to 49.2 per cent, female WPR has increased from 23.3 per cent to 29.5 per cent during 1991-2001. Among the total workers, 71 per cent are main workers and this proportion is almost comparable with that of all SCs at the national level (73 per cent).

14. Among the major groups, Musahar and Bhuiya have WPR higher than the national average for all SCs, whereas Chamar, Dusadh, Pasi and Dhobi have WPR lower than the state as well as national averages.

Category of workers

15. 'Agricultural Laborers' constitute the highest proportion of 77.6 per cent among all workers. This implies that more than three fourth of the total SC workers are 'Agricultural Laborers'. This figure is higher than the national average (45.6 per cent). 'Other Workers' constitute 11.2 per cent which is lower if compared to the national average of 30.5 per cent in respect of all SCs. 'Cultivators' account for 7.9 percent against the national average of 20 per cent. Workers engaged in Household Industry (HHI) constitute 3.3 per cent which is at par with the national average for SCs (3.9 percent).

16. Among the, major castes, Musahar have the highest proportion of 'Agricultural laborers' followed by Bhuiya, Chamar and Dusadh whereas in 'Other Workers' category, Pasi are leading followed by Dhobi.

Statement- 5:

Percentage Distribution of Workers in four Economic Categories

Economic category	All Scheduled Castes	Chamar	Dusadh	Musahar	Pasi	Dhobi	Bhuiya
Cultivators	7.9	7.9	10.3	2.7	12.3	14.8	6.6
Agricultural Labourers	17.6	80.2	75.9	92.5	46.5	48.1	86.8
HHI Workers	3.3	2.1	1.6	0.8	12.2	9.6	1.0
Other Workers	11.2	9.8	12.2	4.0	29.0	27.5	5.6

(V) –Central Government (2008) :

Justice Usha Mehra Commission Report, May 2008:

After the decision of the Supreme Court in E. V. Chinnaiah in 2004, Government of India appointed one member commission - "National Commission To Examine The Issue Of Sub

-Categorization of Scheduled Castes in Andhra Pradesh" headed by Justice Usha Mehra vide resolution dated 15th November, 2006 by the Ministry of Social Justice and Empowerment. This Commission examined the matter extensively and discussed the issues elaborately. She submitted report in May 2008. Justice Mehra discussed, besides other, following important issues: (I) Test for inclusion in the scheduled castes list, (ii) Categorization in AP and other states, (iii) Justice P. Ramchandra Raju Commission findings and lastly (IV) Commissions Recommendations.

(i) The test for inclusion in the list of Scheduled Castes, evolved by this Commission at para 6 of its report reproduced below:

"(a) The test applied for inclusion in the list of Scheduled Castes is 'extreme social, educational and economic backwardness arising out of traditional practice of untouchability.'

(b) The Hon'ble Supreme Court in their judgment reported in AIR 1976 SC 490 in the case of State of Kerala and another Vs. N. M. Thomas and others at para 63 has observed:

"The important task of construing the articles of a Constitution is not an exercise in mere syllogism. It necessitates an effort to find the true purpose and object, which underlies that article. The historical background, the felt necessities of the time, the balancing of the conflicting interests must all enter into the crumble when the court is engaged in the delicate task of construing the provisions of a Constitution." Keeping in mind the historical facts regarding inclusion of communities in the list of Scheduled Castes it is evident from the subsequent paragraphs that untouchability was considered as the factor for such inclusions in the list of Scheduled Castes."

(c) During the framing of the constitution, the Constituent Assembly recognized "that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability" and that "this evil practice of untouchability was not recognized by any other religion".

(d) A reference was also made to the Report of the Advisory Committee on the Revision of Lists of Scheduled Castes and Scheduled Tribes, Government of India, which is cited below to further clarify the criteria adopted for drawing the list of Scheduled Castes:-

"The relevant records show that in drawing up the list of Scheduled Castes, the test applied was the social, educational and economic backwardness arising out of historical custom of untouchability. The list of Scheduled Castes drawn in 1950 was a revised version of the list of Scheduled Castes under the Government of India (Scheduled Castes) Order, 1936, made under the Government of India Act, 1935 which in turn was the continuation of the earlier list of "depressed classes". The depressed classes, it is well known, were systematically categorized in 1931 by the Census Commissioner for India who had given the following instructions for the purpose of such categorization: -

"I have explained depressed castes as castes, contact with whom entails purification on the part of high caste Hindus. It is not intended that the term should have any reference to occupation as such but to those castes which by reasons of their traditional position in Hindu society are denied access to temples, for instance, or have to use separate wells or are not allowed to sit inside a school house but have to remain outside or suffer similar social disabilities...."

The Commission extensively discussed B.N. Lokur Committee on the issue of the revision of the list of Scheduled Castes and Scheduled Tribes at page 37 of her report, which has already been, discussed in the preceding paragraphs of the petition.

(ii) Sub Categorization in A.P. and other States:-

The Commission while discussing categorization in A.P. also referred to categorization in Haryana and Kanataka to derive support for justifying her conclusion on categorization. Categorization in Haryana and Punjab has been discussed in the foregoing paragraphs of the petition; hence for the sake of brevity it is not reproduced here.

At page 45 of her report discussed the observation of the Supreme Court on the issue Categorization of Backward Classes in Indra Sawhney's decision, which inter alias reads as under:

"(a) In the matter related with Indra Sawhney and Others Vs. Union of India (1992) Supp. (3) SCC 210 in the Supreme Court of India, it was asked whether backward classes can be further divided into backward and more backward categories?

(b) In this matter, it was held that there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. So even among backward classes, there can be a sub-classification on a reasonable basis. Whether the backward classes can be classified into Backward and More Backward would depend upon the facts of each case. However, for each of them a special quota has to be prescribed..."

Justice Mehra on pages 140, 145, 146 and 149 of her report in the context of Andhra Pradesh categorization further observed:

(iii). In view of three resolution passed by the State Assembly, supported by all the parties, it is clear that sub categorization in the State has a wide support.

(f) The criteria of reservation for Scheduled Castes are untouchability, which gets replaced by 'caste' after classification. The intention of reservation is national integration.

The reservation in services is provided to Scheduled Castes as they were grossly under-represented in services of the State. This contention is supported by the Apex Court in the case of Indra Sawhney vs. Union of India (Para 364) wherein the Supreme Court has observed that "Not adequately represented in service under the State is the only test for identification of a class under Article 16(4)".

By doing sub-categorization, the State Government has only divided the existing list of Scheduled Castes so that benefits are distributed in justifiable manner. In turn it will create a more suitable ground for national integration. When a community is cornering major share at the cost of other communities then a little ground is left for national integration....."

" That if the reservation benefits are not equitably distributed among all the castes, then it is also the duty and responsibility of the State to take necessary remedial measures - be it rationalization, categorization, sub-classification or apportionment - to rectify the flaws and attain equitable distribution of reservation to all the castes of SCs.

17. As per Article 46, the State is vested with the responsibility of protecting all castes of Scheduled Castes from social injustice as guaranteed by Article 46 that says "The State shall promote with special care the educational and economic interest of Scheduled Castes..... and shall protect them from social injustice and all forms of exploitation".

18. When the State of Andhra Pradesh in spite of formulating various beneficial schemes for Scheduled Castes found that many Scheduled Castes were still discriminated, subjected to disabilities, disadvantages, indignities and were suffering as hardly one or two Castes among

Scheduled Castes were cornering all the benefits of reservations, it took initiative to take positive action to alleviate inequality amongst the Scheduled Castes in the State of Andhra Pradesh.

19. Keeping the above principles in mind Andhra Pradesh Assembly passed unanimous resolution cutting across the party lines supporting sub-categorization of Scheduled Caste for reservations for the purposes of educational institutions as well as jobs under the State.

20. The Andhra Pradesh Legislative Assembly on 22/04/1998 had passed the resolution unanimously on need to categories Scheduled Castes reservation into A, B, C, D as recommended by Justice Ramachandra Raju commission.

Pursuant thereto Andhra Pradesh Assembly unanimously passed the Scheduled Caste Reservation (Rationalization) Act 20 of 2000 on 15t April 2000.

The Act 20 of 2000 was challenged by one Mr. E.V.Chinnaiah in the High Court of Andhra Pradesh. The High Court of Andhra Pradesh upheld the Act 20 of 2000. Being not satisfied, Mr. E. V. Chinnaiah challenged the same in the Supreme Court. The Apex Court vide its judgment dated 5.11.2004 reported in (2005) I SCC 394, set aside the Act 20 of 2000 mainly on two grounds, namely: -

- (i) Apportionment of reservations to Scheduled Castes to sub-groups within the castes cannot be done by the State Legislature, only the Parliament is competent to do so.
- (ii) Even Parliament does not have the power to do so since Constitution has intended that Scheduled Castes and Scheduled Tribes are indivisible homogenous entries.

21. In the light of the observations made by the Hon'ble Supreme Court in E.V. Chinnaiah's case and to ensure that every tribe, race or caste of Scheduled Caste is adequately represented the-

"Andhra Pradesh Legislative Assembly again passed unanimous resolution on 10.12.2004 recommending the Government of India to take up the matter in the Parliament for enabling sub- categorization of the various castes, tribes or races of Scheduled Castes by the State".

22. The Government of India appointed this Commission to answer the references already reproduced in chapter No-I of the Report.

23. As already pointed out, there are 60 different castes among Scheduled Castes in the State of Andhra Pradesh. From amongst them several castes are leading nomadic and semi-nomadic life. They are almost depending on begging as their profession. Similarly Relli, Mehtar, Paki, Moti and Thoti and other allied castes are still doing manual scavenging. They live in severe poverty and illiteracy. They are socially discriminated and exploited. This has led to severe developmental inequalities amongst Scheduled Castes, therefore, most of the Scheduled Castes in Andhra Pradesh pleaded before "this Commission that in order to enable all the 60 castes of Scheduled Castes to achieve uniform development, and adequate representation in educational institutions as well as in jobs, it is inevitable that reservation in educational institutions and job under the State be guaranteed to all the categories of Scheduled Castes.

21. State of Andhra Pradesh after going through the report of Justice Ramachandra Raju 'Commission, felt it necessary for the purpose of giving full effect to the provision of reservations, categorized Scheduled Castes into four categories i.e. A, B, C & D keeping in

view, their common profession, social set up, backwardness etc. State realized that the Scheduled Castes who have achieved benefits and gained means to develop their capability can only on the basis of their original birthmark, not be equated with those who though included in the Presidential List are yet deprived of these means and capabilities and in fact have become unequal vis-a-vis the former. Therefore came to the opinion that categorization was justified..."

(iv) The Commission thoroughly analyzed socio economic and educational status of depressed classes, via a vis, recommendation of various commissions, reproduced below:-

" 22. In the State of Andhra Pradesh, Relli and Madiga together form 50.21% of the Scheduled Castes whereas Mala and its allied castes form 42.78% of the Scheduled Castes, but Mala and its allied castes are enjoying 70% representation in Class I and Class III posts in the State Services.

The population of Scheduled Castes and their representation in various institutions as per census 2001 as informed by various organizations in their representations is indicated hereunder in the following tables: -

TABLES

Madiga	60.74 Lakhs
Malas	51.39 lakhs
Relli	1.21 lakhs
Adi Andhra	1 .42 lakhs

In the State Public Sector Undertaking: -

Madiga	31.0 %
Malas	61.8 %
Relli	0.25 %
Adi Andhra	2 .77 %

In the Local Bodies: -

Madiga	37 %
Mala	43.3 %
Relli	9.0 %
Adi Andhra	9 .9 %

Educational Institutions: -

Mala	57.2 %
Madiga	38.18 %
Adi Andhra	0.56 %
Relli	0.56 %

Andhra Pradesh Secretariat: -

Mala	59.5 %
Madiga	34.4 %
Adi Andhra	4.0 %
Relli	1.2 %

IPS Officers in the State: -

Mala	76.92%
Madiga	23.0%
No other castes represented.	

IPS Officer in other States: -

Mala	86.21%
Madiga	13.79%
Other castes not represented at all.	

Office of Deputy Collector: -

Mala	78.13%
Madiga	21.18%

Magistrates:-

Mala	86.21%
Madiga	13.79%
No other castes got this benefit..."	

(VI) The Commission recommended as under:

“36. Under the circumstances, this Commission is of the view that in order to give effective representations to the various castes, races or tribes of Scheduled Castes in relation to, a State or UT, the Constitution of India may be amended to 'provide for sub-categorization / micro-classification of various castes or groups included in the list of Scheduled Caste vide Article 341(1) & (2). It may be provided by the said Constitutional amendment that the sub-categorization / micro-classification shall be done by the Parliament by law on the basis of recommendations made by the Legislature of a State by way of a unanimous resolution to the effect as to what percentage of reservation should be given to various castes, races or tribes of Scheduled Caste included in the list specified in a notification under Article 341 for the purpose

of reservation in the service of the States as well as in educational Institutions. It may also be provided by the said amendment that the State legislature shall make such recommendations on the basis of the data collected by it through a judicial commission to be headed, at least, by a sitting or retired High Court Judge. The Commission shall collect the data regarding representations of various castes, races or tribes of the Scheduled Castes in the service of the State as well as in Educational Institutions. The Judicial Commission and on its recommendation, the State legislature shall indicate specifically as to what percentage of reservation benefits shall be given to which caste, races or tribes of Scheduled Caste or part of or group within in any caste, races or tribes thereof based on their population ratio.

37. The commission thus recommends that Article 341 of the Constitution of India be amended and clause (3) thereto may be added as under:-

341 (3) Parliament may by law provide for sub- categorization or de sub categorization of caste, race or tribe or part of or group within any caste, race or tribe specified in a notification issued under clause (1) or by law made by parliament under clause (2) upon receiving a resolution from legislature of a State/U.T. passed unanimously."

4.10. A. HIGH COURT OF ANDHRA PRADESH 2000:

As already stated earlier, the validity of the Act, 2000 was challenged by one E.V. Chinnaiah, The High Court in its order upheld the decision taken by the Andhra Pradesh Government, upholding sub-categorization of various castes and groups in the list of Scheduled Castes.

B. Supreme Court 2004:

Thereafter, this Judgment of the High Court was challenged in the Supreme Court and the Hon'ble Supreme Court in E.V. Chinnaiah Vs. State of Andhra Pradesh vide its impugned order dated 5.11.2004 allowed the appeal. The Court in its order held that as per Article 341 and 342 of the Constitution, SCs or STs are one, they cannot be divided into sub-categories for the purpose of reservation. The Court observed that it is not permissible under the Constitution to make any distinction between SCs & STs and thus set aside the judgment of the A.P. High Court.

C. Fallout of E.V. Chinnaiah's Judgment:

Consequently, the dominant caste (Chamars) among the SCs & STs of Punjab and Haryana, who were against sharing of the benefits of reservation with other members of SCs & STs, filed writ petitions before the Punjab & Haryana High Court for quashing the orders of division of reservation issued by Government of Punjab and Haryana in 1975 and 1994 respectively. One Gajey Singh Muwal of Ravi Dass Sabha Haryana and Chaudhary Jagjit Singh (Ravidasia by Caste) who happened to be Minister in the Amrinder Singh Government in Punjab, filed petitions in the Punjab & Haryana High Court.

The Hon'ble High Court, following the decision of the Supreme Court in E.V. Chinnaiah in both the cases, quashed the Government order of Punjab and Haryana vide two different orders dated 6.7.2006 and 25.7.2006. Against these orders, a group of people belonging to Group 'A' category of SCs & STs filed Special Leave Petition (SLP) in Supreme Court of India which is pending before this Hon'ble Court. Thus, due to the decision of the Punjab and Haryana High Court, the whole fight for social justice for the Extremely Backward Classes becomes redundant.

4.11. Supreme Court on exclusion of advance castes / tribes/ Creamy Layer:

The Hon'ble Supreme Court, while dealing with the matters relating to reservation for SCs & STs and OBCs, made various observation stating clearly that a very small (tiny) section of the target group are enjoying the benefits whereas real beneficiaries have been badly ignored. The

Hon'ble Supreme Court in N.M. Thomas Vs. State of Kerala, inter-alias, held: -

“There exists a dual society among Harijans – a tiny elite gobbling up the benefits and the darker layers sleeping distant away from the special concession”.

The Hon'ble Supreme Court in another very celebrated case A.B.S.K. Sangh (Rly.) Vs. Union of India in para 99, observed as under: -

“The argument was that there are rich and influential harijans who rob all the privileges leaving the serf-level sufferers as suppressed as ever. The Administration may well innovate and classify to weed out the creamy layer of SCs / STs...”

The Hon'ble Supreme Court in another celebrated case in M. Nagraj & Ors. Vs. Union of India & Ors.(2006) inter alia extended the principle of “Creamy Layer” laid down in Indra Sawhney Vs Union of India 1992 Supp.(3) SSC 217, to the Scheduled Castes & Schedules Tribes also.

The Hon'ble SC in Ashok Kumar Thakur vs State of Bihar, (1995) 5 SCC 403 (Para 3 and 7), inter alia observed as under:

"It is necessary that the benefit of the reservation must reach the poorest and the weakest section of the class."

The Hon'ble SC in Indra Sawhney's case very categorically observed:

"The creamy layer in a caste is not socially or educationally backward, rather it is on par with forward and therefore has to be excluded from the purview of reservation otherwise it would be violative of Arts. 14 16(1) and 16(4)."

The issue of creamy layer has been dealt with extensively in couple of cases such as Indra Sawhney and Nair Service Society vs. State of Kerala, (2007) 4 SCC 1, 17. The Hon'ble SC asked the Union of India as to “WHY IS NO GROUP EVER EXCLUDED FROM QUOTA” The court sarcastically commented:

“Inclusion of a caste in the list would mean that it was previously socially advanced and did not figure among the backward class communities. But with time, their social status deteriorated and they had to be included in the list. This means more and more castes are getting backward as there are only inclusions and none being excluded from the list," it said. (The Times of India, Lucknow Wednesday, September 26, 2007)

4.12. Discussion in the Parliament

The issue in question has been very rarely discussed in the Parliament on various occasions during the discussion on the constitutional amendment Bill in 1959, 1969, 1980, 1989, 2000 and 2009 for the extension of legislative reservation for further period of 10 years under Articles 330 - 332. From the debates of Lok Sabha and Rajya Sabha, it has been observed that majority of the Dalit leaders belonging to the advanced communities have always been in favour of extension of reservation for further period of time on the one hand and against de-scheduling or removing the affluent class/caste from the purview of the reservation policy on the other. However, Mr. B.P. Maurya, a prominent Dalit leader was against the Vested Interest Class /affluent class amongst the SCs & STs that had emerged after independence of the country. While speaking on the 45th Constitution Amendment Bill on 25th January 1980, during the debates in the Rajya Sabha for further extension of period for another 10 years, Mr. Maurya moved an amendment in Article 334 of the Constitution, suggested that the following should be added: -

“Explanation: In this Article the expression Scheduled Castes means who are socially, educationally and economically backward.”

Mr. Maurya said that he was proposing this amendment only in order to eliminate the Vested Interest amongst the SCs, who are enjoying these benefits of reservation for the last 30 years. He said, by amending the Article, the weaker sections among the SCs will be in a position to

enjoy these benefits, which had never been enjoyed by them.

4.13. Article-14 (Equality) vs. Articles 341 and 342 (inclusion and exclusion) of Scheduled Castes and Scheduled Tribes in the Schedules:

Articles 14, 15(4), 16(4), 46, 330, 332 and 335 of the Constitution have been designed to promote social, economic and political justice to the deprived sections of the society i.e. Scheduled Castes and Scheduled Tribes. Whereas, Articles 341 and 342 mandate about inclusion and exclusion of race / group / caste / Tribes in the Schedule. Article 366(24) and 366(25) define the terms “Scheduled Castes” and “Scheduled Tribes”, which read as under:

“Article - 366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(24) “Scheduled Castes” means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution”

(25) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribal communities or parts of or groups within such Tribal agricultural land communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;

This country during last sixty three years has witnessed the gross misuse of Articles 341 and 342 by the successive Governments whereby various castes/races or groups/tribes have been included in the Schedule without making any empirical study and that too for political consideration. On the contrary not a single community/caste/tribe has been excluded from the list. The Hon'ble Supreme Court on various occasions has commented very adversely on the manner these provisions have been abused for ulterior motives. It may be recalled that the Lokur Commission in 1965 has had occasion to examine the effects of benefits of reservation on the target groups. The Commission found that very few castes/communities were getting the benefits whereas the majority was denied the same. The Commission recommended for exclusion of certain affluent castes/tribes from the Schedule. The emphasis of the Commission in its report was to give more preferential treatment to the neglected sections of the target group but despite the Commission's recommendations the successive Governments/political parties have been encouraging inclusion of more and more castes/tribes in the Schedule instead of excluding the advance castes/tribes who have enjoyed the benefits of reservation for a longer period and have become advanced in all respects i.e. socially, educationally and politically etc.

Article 15(4) underlines two conditions for making classification i.e. (i) social backwardness and (ii) educational backwardness. The provisions allow State for making any special provisions for the advancement of Scheduled Castes and Scheduled Tribes. Article 15(4) reads as under:-

“Article 15(4) nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

Similarly, Article 16(4) also allows State for making any provisions for the reservation of appointments or posts in favor of any backward class of citizens. Article 16(4), inter alias, reads as under:-

“Article 16(4) nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

4.14. The main objective of these provisions is to promote equality amongst the society in general and advancement and upliftment of weaker sections of the society in particular. The

term “backward class” is a general term, which includes Scheduled Castes and Scheduled Tribes also. The Constitution itself has specified as to who will determine the backwardness. The Constitution has given this power to the State(s) under Article 15(4) and 16(4) of the Constitution.

4.15. The Punjab and Haryana High Court had an occasion to analyze these provisions in the case of Kanwaljit Singh Sidhu P.C.S. (Executive) and other vs. State of Punjab and others, C.W.P.No.3723 of 1979, decided on 17.5.1980. In this case reservation within reservation (i.e. 50% to Balmiki & Mazabi sikh and 50 % to rest of the SCs) provided by the Govt. of Punjab was challenged. The Full Bench of the Punjab and Haryana High Court has nicely analyzed the import of Articles 15(4) and 16(4) of the Constitution. The paragraphs 19, 20 and 21 of the judgment are relevant, which are reproduced below:-

“19. Once it is accepted that every caste which is mentioned in the Presidential notification which becomes part of scheduled castes, by virtue of Article 341 of the Constitution is ipso facto treated as socially and educationally backward class, by virtue of that label and in the Presidential notification this particular class of citizens is mentioned by the caste name, then all the persons, belonging to that particular caste, have to be treated as belonging to a class which is socially and educationally backward. This group of socially and educationally backward persons either has to be mentioned by individual names, which would be difficult, or by caste label. In the circumstances, the only compendium way of describing them is to describe the entire caste to which they belong to be an educationally and socially backward class. In the circumstances, therefore, it cannot be said that the reservation effected for Balmikis or Mazbi Sikhs (both classes in English language are known as sweepers or scavengers) is solely on the basis of caste. The dominant criterion that has gone into consideration is the social and educational backwardness of all people belonging to Balmikis or Mazbi Sikhs caste. What is more besides this caste or class label, they have additionally to satisfy an objective and secular requirement of inadequacy of their representation in the Government services.”

“20. Mr. Kuldeep Singh then urged that where was the material on the record to come to the conclusion that in fact in Services the representation of Balmikis and Mazbi Sikhs, in comparison to other groups of the scheduled castes, was so inadequate as to justify preferential treatment for them within the groups of scheduled castes. The learned counsel further urged that mere ipse dixit of the Government in this regard is not to be accepted. There can be no doubt about the fact that it is always open to the Court to be satisfied in this regard, but in the present case, there is not even a word in the entire petition saying that the representation in the Services of Balmikis and Mazbi Sikhs is, in fact, inadequate. When such is the position, it would be improper not to accept the assertion of the State that, in fact, the State Government was satisfied that the representation of Balmikis and Mazbi Sikhs, as compared to other groups of scheduled castes was, in fact, inadequate and it was that fact that led to the promulgation of the impugned instructions.”

“21. For the reasons aforesaid, we hold that the impugned instruction prescribing 50 percent reservation for Mazbi Sikhs out of the quota reserved for scheduled castes is constitutionally valid. In this view of the matter, we expressly over-rule the view taken in Sadhu Singh’s case (supra) that the instructions contained a rule of preference and could not be held to be providing for reservation within reservation.”

4.16. The Hon'ble Supreme Court in the case of E.V.Chinnaiah vs. State of Andhra Pradesh

2004 (A) SCALE dated 5.11.2004 had extensively examined this issue and the Court, inter alia, held that Scheduled Castes and Scheduled Tribes are one unit under Articles 341 and 342 and they cannot be further sub-divided for the purpose of giving separate reservation. It may be recalled that the Constitution Bench of the Supreme Court in *Indra Sawhney and Others vs. Union of India*, 1992 Supp.(3) SCC 210, had examined this issue in 1992 before the *E.V.Chinnaiah* decision and the Hon'ble Court inter -alias held as under:-

“... That there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. So even among backward classes, there can be a sub-classification on a reasonable basis. Whether the backward classes can be classified into Backward and More Backward would depend upon the facts of each case. However, for each of them a special quota has to be prescribed.”

4.17. It is respectfully submitted that in case the State Governments are not empowered or allowed to determine as to who is forward and who is backward and who have and who have no adequate representation in services under the state within Scheduled Castes or Scheduled Tribes for the purpose of giving equal opportunity in the appointments or posts or for taking any affirmative action for their welfare. Also, if the interpretation of Articles 341 and 342 given by the Constitutional Bench of the Hon'ble Supreme Court in *E.V.Chinnaiah* is taken to be correct, then the whole objective of equality and equal opportunity enshrined in Articles 15(4) and 16(4) of the Constitution appears to have been defeated. Hence, it can be concluded that Articles 341 and 342 are directly in conflict with Articles 15(4) and 16(4), 46, 330, 332 and 335 of the Constitution.

4. 18. Objective of Reservation:

The intention of the framers of the Constitution for providing reservation in the Constitution precisely was to uplift the weaker sections, socially economically, politically and educationally and to bring them into the “**main stream of the society.**” Besides, the objective was to compensate the depressed classes and untouchables for the discrimination and disabilities suffered by them since centuries and to create an egalitarian society. Professor D.N. Sandanshiv while describing objective of reservation said: -

“Reservations are meant to ensure that no community is deprived of its rightful place in a true democracy. It is not a caste or class concession, it is a compensatory device to negate the disabilities and handicaps imposed by the poisonous caste system.”

Justice Venugopal observed: -

“...It is preferential treatment to stimulate the development of their neglected talents and absorb them occupationally and educationally in the main stream of national life. It is compensatory preference to liberate the oppressed and depressed from their age long social and cultural shackles. It is acting as a stimulus and catalyst for their uplift and their advancement.”

The Hon'ble Supreme Court in **Ashok Kumar Gupta vs. State of U.P.** Underlines the objective of reservation: -

“Every citizen or group of people has right to share in governance of the State. The Scheduled Castes and Scheduled Tribes equally being citizens have a right in governance of the State.”

Hon'ble Supreme Court in **Delhi Transport Corporation vs. D.T.C. Mazdoor Congress** has further observed: -

“Law is a social engineering to remove the existing imbalance and to further the progress, serving the needs of the socialist Democratic Bharat under the rule of law. The prevailing social condition and actuality of life are to be taken into account in adjudging whether or not the impugned legislation would subserve the purpose of the society.”

The Hon'ble Supreme Court in **Union of India Vs. Madhav** has described the objective

of reservation as “means to ensuring socio-economic justice for S.Cs/S.Ts,”

The Supreme Court in **Indira Sawhney’s** case further elaborates the social economic issue by observing: -

“Objective of reservation is not only to alleviate poverty but also to share governance by the Reservationists Classes.”

The majority of the judges held: -

“The objective behind article 16(4) is empowerment of the deprived backward communities to give them a share in the administrative apparatus in the governance of the community.”

The Hon’ble Supreme Court in **N.M. Thomas’s** case (in para 47), inter-alias, further observed: -

“... Obviously, Article 16 (4) was not designed to get more **harijans** into Government as scavengers and sweepers but as ‘officers’ and ‘bosses’, so that administrative power may become the common property of the high and low, homogenized and integrated into one community...”

But the facts remain that sweepers and scavengers could get menial jobs only (sweeping and scavenging) during the last 63 years as the posts (Class IV) meant for these communities have been monopolized by the advanced sections of SCs & STs and other higher castes people which is clear from the foregoing data’s/ figures.

4.19. The Govt. of India in order to overcome the implications of the decision in the case of E.V. Chinnaiah and to address the grievances of the ati dalits, has recently constituted Justice Usha Mehra Committee. The one member committee submitted its report on 1st May 2008 to the Government supporting the model of Haryana and recommended division of sub-groups within SC for equitable distribution of benefits of reservation. But she perhaps has avoided the issue of exclusion of creamy layer or affluent Castes as suggested by the Supreme Court in M. Nagraj case. Justice Mehra also recommended for amendment of Article 341 & 342 of the Constitution.

4.20. It is amply clear that the Constitution of India provides protection and safeguards to the deprived sections to catch up and compete successfully with their more fortunate brethren and sisters in all spheres of life. The objective underlying these concessions is not just to give those jobs and financial help but to uplift

them and facilitate them to secure proper place in the society, so that they can absorb themselves in the mainstream of the national life.

4.21. The Constitution, however, no where promise or mandate to make them Tatas, Birlas or Ambanis, nor it promises to always appoint them President of India, Chief Justice of India, Prime minister of India. The mandate of the Constitution is that once they (SCs & STs) are in the mainstream they are free to do anything. They can become anything according to their ability and capability at their own. Making SCs & STs millionaire or entrepreneurs, etc. at the cost of the public exchequer and others is not the mandate of the Constitution.

4.22. Eventually, it was the duty of the successive Governments to prescribe the limit of benefits of reservation. But unfortunately, the Government(s) failed in their constitutional duty leading to the present situation, wherein a SCs or STs millionaire still consider himself/ herself to be SCs or STs. Those who are IAS, IFS or Class One Officer are still not ready to leave the reservation for others. There are several families in the country, who are influential and politically strong

MLA/MP/Minister/ Governor/Chairman of statutory bodies etc., Judicial Officers, Judges, etc. Besides, there are families having several Class I & II Officers (IAS/IPS/PCS etc.), and

financially very strong, having business houses, petrol pumps, land/properties, etc., but unfortunately, they still want to avail the benefits of reservation.

4.23. What about the Extremely Backward Classes/Castes (EBC) who are engaged in menial work (scavenging) and have been subjected to be untouchables not by Higher Castes but by so-called Dalits? What about those who are backward among backwards, who are poor among poor, and untouchable among untouchables? Now, who is factually disadvantaged / deprived Dalit or actual Dalit? What about their future? Who requires reservation? The objectives can only be achieved by the exclusion of affluent caste/ creamy layer from the purview of reservation amongst SCs/STs and to ensure equitable distribution of share of Reservation among 99 % Ati Dalits.

In this background of the matter, it is submitted that in view of the decisions/observations/holdings of the Hon'ble Supreme Court of India, respondents should be directed to take firm steps (a) to review the scheduled or reservation policy and (b) to implement the Lokur committee's recommendations so as to ameliorate the sufferings of age old Ati Dalits amongst the SCs /STs.

4.24. On being aggrieved by the inaction of the Respondents, the Petitioner is filing the present Writ Petition before this Hon'ble Court on the following amongst other grounds:

5. GROUNDS:

I. Because the Respondent has failed to extend the principle of exclusion of creamy layer so as to ameliorate the sufferings of age old Ati Dalits amongst the SCs /STs as per the reports of various commissions and committees constituted from time to time and the law laid down by the Hon'ble Supreme Court of India.

II. Because the inaction of the Respondent is violative of Articles 14, 15 and Article 16 of the constitution of India.

III. Because the Respondent has failed to protect the Extremely Backward Classes/Castes (EBC) who are engaged in menial work (scavenging) and have been subjected to untouchability not by Higher Castes but also by so-called Dalits.

It is humbly submitted that the language of Article 16(4) of the Constitution of India is clear and unambiguous. Article 16(4) reads as under:

“Equality of opportunity in matters of public employment.

(1) XXXX

(2) XXXX

(3) XXXX

(4) Nothing in this Article shall prevent the State from making any provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in service under the State.”

Further Article 16(4) (A) also provide for the power of the State to make provision for reservation in the matter of promotion with consequential seniority to any class of or classes of post under the State in favour of Schedule Castes and Scheduled Tribes, which in the opinion of the State are not adequately represented in the service under the State. In the respectful submission of the petitioner that both sub articles (4) as well as (4 A) of Article 16 contemplate that the state will have power to provide for reservation for scheduled castes and scheduled tribes if in the opinion of the State they are not adequately represented in the service under the State. As a matter of fact in sub article (4) of Article 16, the scheduled castes and scheduled tribes have been clubbed with the backwards class of citizens and subject to their having not been adequately represented in the service under the State, State has power to make provision for their reservations. It is, therefore, respectfully submitted that the plain and simple reading of

the provisions of Article 16(4) shows that the State has power to provide for reservation for Scheduled Castes and Scheduled Tribes provided they are not adequately represented. It will be pertinent to note here that the provisions of article 16(4) with respect to public employment is quite different from the provision under Section 15(4). Article 15(4) reads as under:-

“Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.”

The above provision does not co-relate advancement of socially and educationally backward classes of citizens or Scheduled Castes and Scheduled Tribes, rather mandate overhaul development of these sections with adequacy of their representation.

The question whether Schedule Castes and Scheduled Tribes are also included in the expression “backward class of citizens” was considered by 9 Judges’ Bench of this Hon’ble Court in the case of *Indra Sawhney Vs. Union of India* 1992 Suppl. (3) SCC 217. While dealing with Question No.5, i.e. “Whether backward classes can be further divided into backward and more backward categories” this Hon’ble Court in para 803 held as under”:-

“803. There is another way of looking at this issue. Article 16(4) recognizes only one class viz. “backward class of citizens”. It does not speak separately of Scheduled Castes and Scheduled Tribes, as does Article 15(4). Even so, it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression “backward class of citizens” and that separate reservations can be provided in their favour. It is a well-accepted throughout the country. What is the logic behind it? It is that if Scheduled Castes/Tribes and Other Backward Classes are lumped together, OBCs will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorization as between more backward and backward. We do not mean to say, we may reiterate that this should be done. We are only saying that if a State chooses to do it, it is not impressible in law.”

In para 802 of the Judgments, this Hon’ble Court while giving an example of Andhra Pradesh help as under:-

“802. We are of the opinion that there is no constitutional or legal bar to a State Categorizing the backward classes as backward and more backward. We are not saying that it ought to be done. We are concerned with the question if a State makes such a categorization, whether it would be invalid? We think no. Let us take the criteria evolved by Mandal Commission. Any cast, group or class which scored eleven or more points was treated as a backward class. Now, it is not as if all the several thousands of castes/groups/classes scored identical points. There may be some castes/group which have scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between these two sets of castes/groups/classes. To give an illustration, take two occupational groups viz., goldsmiths and vaddes (traditional stone-cutters in Andhra Pradesh) both included within Other Backward Classes. None can deny that goldsmiths are far less backward than vaddes. If both of them are grouped together and reservation provided, the inevitable result would be that goldsmiths would take away all the reserved posts leaving none for vaddesh. In such a situation, a State may think it advisable to make a categorization even among other backward classes so as to ensure that the more backward among the backward classes obtain the benefits intended for them. Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State- and so long as it is reasonably done, the Court may not intervene. In this connection, reference may be made to the categorization obtaining in Andhra Pradesh. The Backward Classes have been divided into four categories. Group A comprises “Aboriginal tribes, vimukta jatis, nomadic and semi-nomadic tribes etc.” Group B comprises professional group like tappers, weavers, carpenters, ironsmiths, goldsmiths, kamalins etc. Group C pertains to “Scheduled Castes and to Christianity and their progeny”, while Group D comprises all other classes/communities/group, which are not included in Groups A, B and C. The 25% vacancies

reserved for backward classes are sub-divided between them in proportion to their respective population. This categorization was justified in *Balram (State of A.P. Vs. U.S.V. Balram, (1972) 1 SCC 660)*. This is merely to show that even among backward classes, there can be a sub-classification on a reasonable basis.”

That further the question of adequacy of representation in the services under the State was considered under question No.3(f) in para 798 at page 727 of the report. This Hon’ble Court held as under:

“**798.** Not only should a class be a backward class for meriting reservations, it should also be adequately represented in the services under the State. The language of clause (4) makes it clear that the question whether a backward class of citizen is not adequately represented in the service under the State is a matter within the subjective satisfaction of the State. This is evident from the fact that the said requirement is preceded by the words “In the opinion of the State”. This opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is, there must be some material upon which the opinion is formed. Indeed, in this matter the court should show due deference to the opinion of the State which in the present context, means the executive. The executive is supposed to know the existing conditions in the society, drawn as it is from among the representatives of the people in Parliament/Legislature. It does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within subjective satisfaction of the executive are well and extensively stated in *Barium Chemicals Vs. Company Law Board 1966 Sup. SCR 311* which need not be repeated here. Suffice it to mention that the said principles apply equally in the case of a constitutional provision like Article 16(4) which expressly places the particular fact (inadequate representation) within the subjective judgment of the State/executive.”

A perusal of the law laid down by 9 Judge Constitution Bench of this Hon’ble Court thus is clear and unambiguous.

That it is respectfully submitted that the decision of this Hon’ble Court in the matter of *E.V. Chinnaiah Vs. State of A.P. 2005 (1) SCC 394*, the basic distinction between the two articles and contemplation under Article 16(4) for providing reservation for the scheduled castes and scheduled tribes if in the opinion of the State they are not adequately represented in the service under the State, has escaped the notice of their Lordships. Further the law laid down by this Hon’ble Court in *Indra Sawhney* case was also not brought to the notice of this Hon’ble Court. In the said judgment (*Chinnaiah Case*), this Hon’ble Court overlooking the clear and unambiguous language of article 16(4) and 16(4A) and Law laid down by this Hon’ble Court and have considered the same from the point of view of Article 341 of the Constitution. In the respectful submissions of the petitioner, Article 341 of the Constitution has a provision which empowers the President of India to specify castes, races or tribes or part of or groups within caste, races or tribes which shall for the purpose of this Constitution be deemed to be scheduled castes or scheduled tribes in relation to that State or Union territory, as the case may be. This Hon’ble Court in *Chinnaiah’s case (supra)* has taken a view that once the President makes a classification under Article 341 and further classification thereof for the purpose of Article 15(4) and 16(4) is not permissible. With utmost humility at the command of the petitioner, it is respectfully submitted that the view taken by this Hon’ble Court in *Chinnaiah Case* is contrary to Article 16(4) and law laid down by this Hon’ble Court in the case of *Indra Sawhney (supra)*, and this view requires reconsideration. In fact this view is per in quarian.

IV. Because the Respondent No.1 is unjustified in not extending the principles of creamy layer to the Scheduled Caste and Scheduled Tribes in spite of the various decision of the Supreme Court.

V. Because the Respondent No.1 is unjustified in not implementing the Lokur Committee's recommendations of 1965 which had recommended exclusion of advance castes/tribes from the Schedule. The Respondent is unjustified in not excluding the socially advanced castes/ tribes from the from the purview of the list/ schedule in spite of the queries raised and directions given by this Hon'ble court from time and again.

VI. Because non-exclusion of any advanced caste/ tribe from the list / schedule and get them assimilated in the society is against the basic objective of the constitution of caste less society.

VII. Because during the last sixty two years of reservation policy, the objective envisage by the framers of the Constitution has not been achieved and the very purpose of the reservation policy has been frustrated, as it is evident from the reports submitted by various committees/ commissions constituted by Union of India and State Governments on various occasions.

VIII. Because the target groups 99% % castes have not at all been benefited during the last sixty-two years of reservation policy. Rather it has resulted in creation of a vested interest class amongst the Scheduled Caste and Scheduled Tribes which themselves is behaving and practicing untouchability like Brahmins (upper castes) with extremely backward dalit communities.

IX. Because Respondents owe a constitutional duty of equitable distribution of the benefits of reservation amongst the target groups. The Respondents however have badly failed to take adequate steps to achieve that objective.

X. Because as the reservation policy has failed to achieve its objectives, now the time has come to review and/or abolish the reservation policy and evolve a new mechanism in order to uplift the marginalized sections of the society.

XI. Because periodical extension of the blanket reservation policy after every ten years is unconstitutional and even against the spirit of the constitution, as it was never envisage by the framers of the constitution to continue this policy for indefinite period.

XII. Because the inclusion of larger number of castes /races / tribes without excluding socially advanced castes /tribes / creamy layer in the S.Cs.& S.Ts list by the central Government clearly amounts to abuse of Article 341 & 342 of the Constitution.

XIII. Because nurturing/empowering economically, educationally, politically and socially only a selective 5-10 castes/tribes (1%) amongst the target groups in view of Lokur Committee report and denying to majority of castes is against the constitutional right to equality, equality of opportunity, enshrined under Article 14,15,16 of the Constitution.

XIV. Because the selective 5-10 castes/tribes amongst the target groups have become financially so strong this can squarely be compared to the higher castes of the society. Therefore, further empowering them by way of giving them continued and further reservation will amount to unjust enrichment and will amount to infringement under Article 14, 15(4), 16(4) and 46 of the Constitution.

XV. Because the Respondent No.1 should review and re-devise the reservation policy under the Constitution of India and should start giving benefits from the lowest ladder of Scheduled Caste and Scheduled Tribes i.e. first to the extremely backward, then backward and so on and so forth instead of continuing the present practice wherein only 1% powerful castes of Scheduled Caste and Scheduled Tribes are cornering the benefits and the 99% genuine deserving communities of neglected sections of the Scheduled Caste and Scheduled Tribes are being ignored.

XVI. Because it is evident that during last 63 years non schedule castes and schedule tribe has

paid the cost of reservation due to discrimination. Similarly 99% extremely backward communities has also continuously been paying the cost of reservation due to the prejudices that has emerged in the society after the reservation policy was introduced, in case it is not possible to accede the aforesaid proposal/suggestions, in that situation can 99% of extremely backward communities be de-scheduled from the list of the quota so that they are not subjected to any further atrocities in the society.

XVII. Because the Respondent has failed to protect the constitutional rights of 99% population of Dalit communities belong to appx. Castes 1091 + Tribes 586 total =1677.

XVIII. Because the inaction on the part of the Respondents is against the principles of natural justice.

XIX. Because the petitioner craves leave to add/amend /alter any or all ground or grounds of the writ petition before /or at the time of hearing of this petition at a later stage, if so advised or the situation so arise.

6. The petitioner has not filed any other or similar petition, writ or appeal before the Hon’ble Supreme Court or before any other High Court in India for the relief prayed for in this petition or any similar relief.

7. That there is no other efficacious remedy than to approach this Hon’ble Supreme Court since the matter needs scrutiny and an authoritative pronouncement of this Hon’ble Court at the highest level.

PRAYER

In the aforementioned facts, circumstances, premises and in the interest of natural justice, it is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to: -

- A. Declare the powers, scope and ambit of Article 341 and 342 of Constitution of India, for equitable distribution of reservation among depressed classes.
- B. Issue a writ of Mandamus or any other appropriate writ, order or direction thereby directing the Respondents to take firm steps to implement the recommendations of Lokur Committee and exclude Chamar, Mala , Mahar, Meena , Dusad Passi and Dhobi etc from the schedule/list.or ;
- C. Issue a writ of Mandamus or any other appropriate writ, thereby directing the Respondents for equitable distribution of share of Reservation among 99% % Ati Dalit castes so as to ameliorate the sufferings of age old Ati Dalits amongst the SCs /STs.,
- D. Issue any other writ, order or direction as this Hon’ble Court may deem fit, just and proper in the facts and circumstances of the present case to give complete relief to the petitioner.

AND FOR THIS ACT OF KINDNESS THEPETITIONER AS IN DUTY
BOUND SHALL EVER PRAY.

Drawn by- Mr. Abhishek Garg,Ms. Jaikriti S Jadeja, Advocates Settled by	Filed by- Balaji Srinivasan Advocate for Petitioner
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Mr. R. Venkatramani,Senior Advocate	
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