

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION
WRIT PETITION CIVIL NO. 682 OF 2025

IN THE MATTER OF:

Ramashankar Prajapati & Anr.

...Petitioners

Versus

Union of India & Ors.

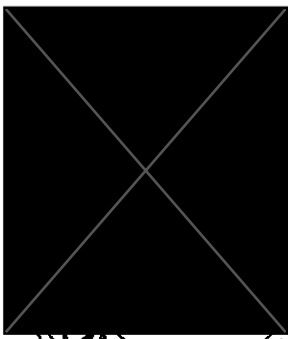
...Respondents

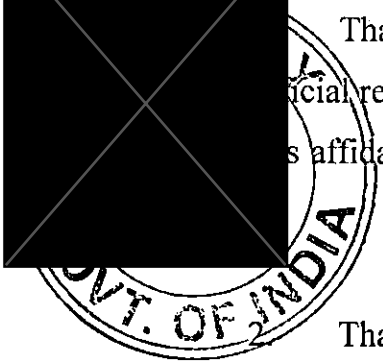
COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT

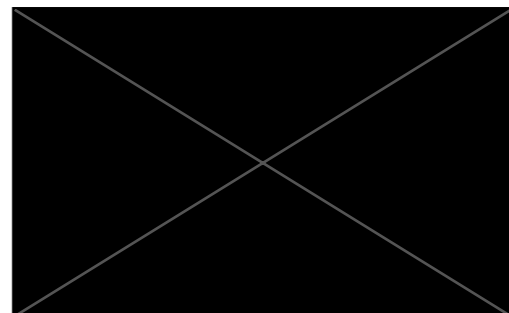
NO. 2

I, Rajeev Kumar, working as Under Secretary in the Department of Social Justice and Empowerment, Ministry of Social Justice and Empowerment, Government of India, GPOA, 

 do hereby solemnly affirm and state as under: -

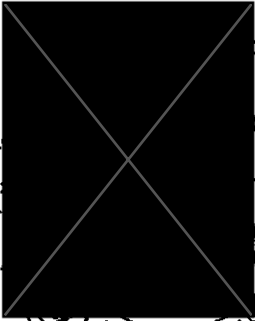
 That I am conversant with the facts of the case from the official records pertaining to the matter and I am competent to swear this affidavit on behalf of Union of India and I am authorized to do

 That I have read and understood the Synopsis, list of dates and the contents of the Writ Petition. At the outset, I deny each and every averment made in the aforesaid petition. Nothing shall be deemed to have admitted, though the same might have escaped specific denial.

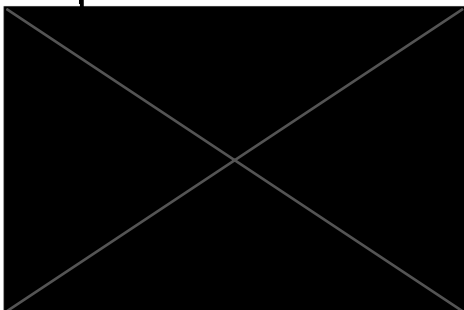


3. The Petitioners have prayed before this Hon'ble Court as under:

- i. Writ in the nature of mandamus or any other appropriate writ and directing the Respondent No. 2 frame policies for a more equitable and just system of reservation in government employment and educational opportunities thereby Ensuring Equitable Distribution of Reservation Benefits on A Merit-Cum-Means Approach; and/or
- ii. To implement/adopt the income-based preferences within each reserved category to ensure equitable distribution of benefits among economically weaker candidates belonging to Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), and Economically Weaker Sections (EWS);



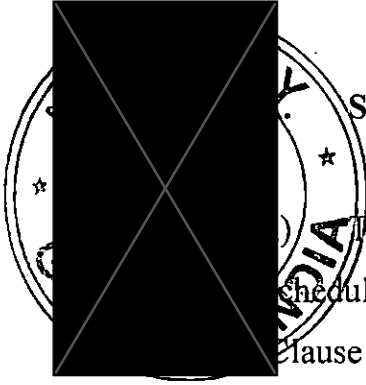
To frame guidelines to ensure that candidates from economically weaker backgrounds within each reserved category are treated as a sub-class, and accorded higher merit and priority in the selection process, in compliance with the law laid down by this Hon'ble Court in the landmark case of State of Punjab & Ors v Davinder Singh & Ors, Civil Appeal 2317/2011;

- iv. To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.
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PRELIMINARY SUBMISSIONS

4. That the answering respondent files this preliminary reply to the petition and places on record its initial submissions. The respondent respectfully reserves the right to file a detailed and comprehensive counter-affidavit with the leave of this Honorable Court. Nothing contained in this preliminary reply shall be construed as an admission of any allegation or contention made by the petitioner, and every such allegation is denied unless specifically admitted herein.

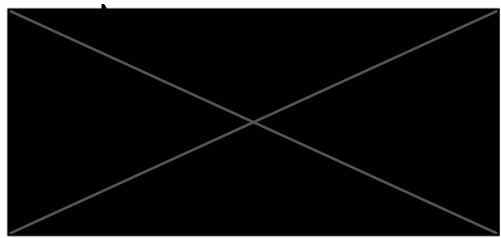
5. That the present petition seeks the Government to frame a policy for equitable and just system of reservation, to address the issue raised in the petition, answering respondent seeks liberty of this Hon'ble Court to explain the procedure for notification and criteria followed for identification of Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes/ Socially and Educationally Backward Classes (OBCs/SEBCs), and Economically Weaker Sections (EWS) are as under:-



Scheduled Castes.

The constitutional provisions regarding notification of Scheduled Castes are as under:-

Clause (24) of **Article 366** of the Constitution defines "**Scheduled Castes**" as such "castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be

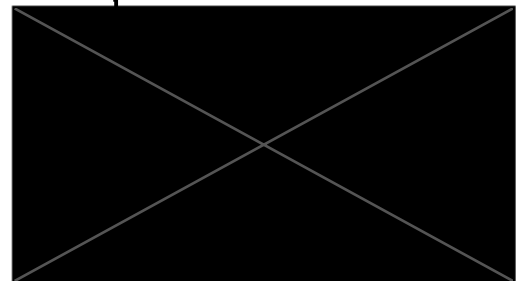


Scheduled Castes for the purpose of the Constitution." Article 341 is reproduced below:-

341(1) The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Thus, first list of Scheduled Castes (SCs) in relation to a State or Union Territory is by a notified Order of the President, after consultation with the concerned State Government. Any amendment in the list of SCs, once notified by the President under clause (1) of Articles 341 can be made only by an Act of Parliament in view of clause (2) of Article 341. Exclusion even of a part or a group of caste from the list of SCs can only be done by an Act of the Parliament and it is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of



(ii) In drawing up the lists of SCs the test applied is extreme social, educational and economic backwardness arising out of traditional practice of untouchability.

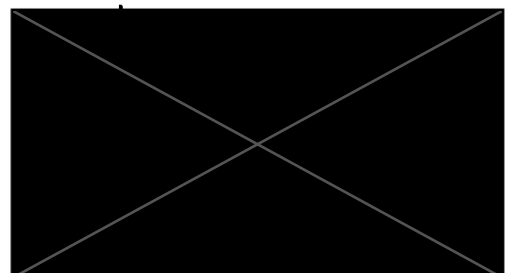
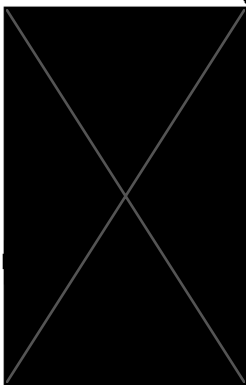
B. Scheduled Tribes

(i) The constitutional provisions regarding notification of Scheduled Tribes are as under:-

Article 366 (25) of the Constitution defines Scheduled Tribes as such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution. Article 342 is reproduced below:-

342(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or



tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

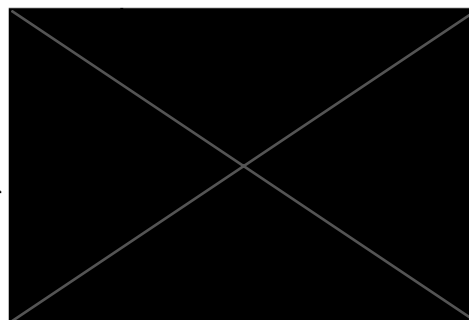
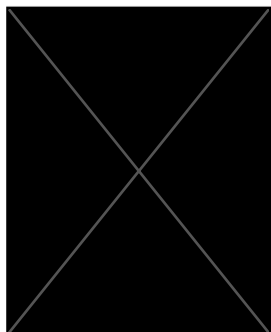
Thus, first list of Scheduled Tribes (STs) in relation to a State or Union Territory is by a notified Order of the President, after consultation with the concerned State Government. Any amendment in the lists of STs, once notified by the President under clause (1) of Articles 342, can be made only by an Act of Parliament in view of clause (2) of Article 342. Exclusion even of a part or a group of tribe from the list of STs can be done only by the Parliament and it is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of STs.

(ii) The criteria for determining characteristics of a community for specification as Scheduled Tribes are:-

- (a) Indication of primitive traits;
- (b) Distinctive culture;
- (c) Geographical isolation;
- (d) Shyness of contact with community at large; and
- (e) Backwardness

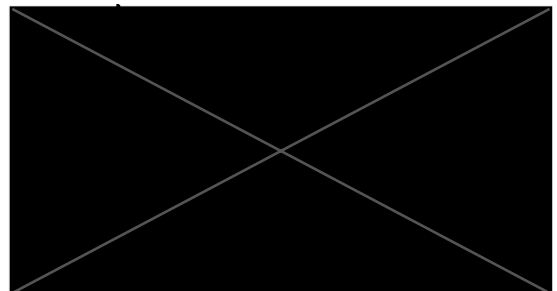
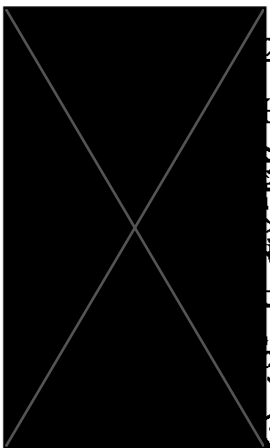
C. Other Backward Classes (Socially and Educationally Backward Classes)

Vide the Department of Personnel and Training (DoPT)'s Office Memorandum dated August 13, 1990, the recommendation of the Mandal Commission with regard to a 27%



reservation for Socially and Educationally Backward Classes (SEBCs)/ Other Backward Classes (OBCs) in the services of the Government of India was implemented. It was also decided that the OBCs/SEBCs would comprise, in the first phase, the castes and communities which were common to both the lists in the report of the Mandal Commission and the State Governments' Lists. The Supreme Court of India in its Judgment in the Indra Sawhney case, directed the Government of India to constitute a permanent body for examining the requests for inclusion or exclusion of any of the castes/communities/group of persons in the list of socially and educationally backward classes (SEBCs) {commonly known as the Other Backward Classes (OBCs)}. Pursuant to this, the National Commission for Backward Classes (NCBC) was set up under the provisions of the National Commission for Backward Classes Act, 1993. Thereafter, as per the advice tendered by the erstwhile NCBC, action was being taken by the Central Government from time to time for inclusion or correction or deletion of castes/communities in the Central List of OBCs/SEBCs.

Vide the Constitution (One Hundred and Second Amendment) Act, 2018 Act, subsequently modified vide the Constitution (One Hundred and Fifth Amendment) Act, 2021, new Articles 342A and 366 (26C) have been inserted in the Constitution for providing procedure for notification of socially and educationally backward classes (SEBCs)/Other Backward Classes (OBCs) which is reproduced below:-



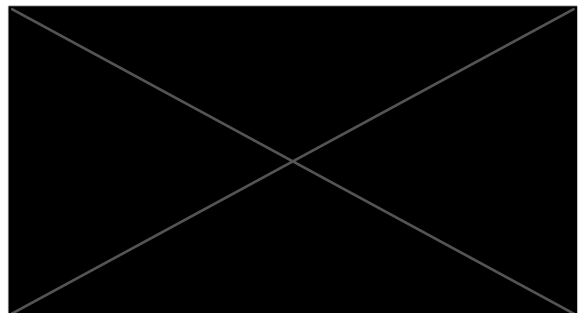
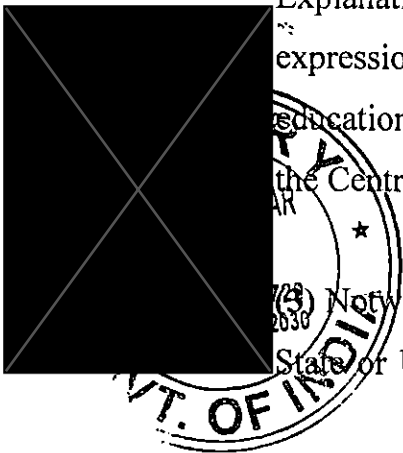
Article 366(26C) of the Constitution defines socially and educationally backward classes as such backward classes as are so deemed under article 342A for the purposes of the Central Government or the State or Union territory, as the case may be. Article 342 A is reproduced below:-

342A. Socially and educationally backward classes — (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes in the Central List which shall for the purposes of the Central Government be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Explanation.— For the purposes of clauses (1) and (2), the expression “Central List” means the list of socially and educationally backward classes prepared and maintained by and for the Central Government.

(3) Notwithstanding anything contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its



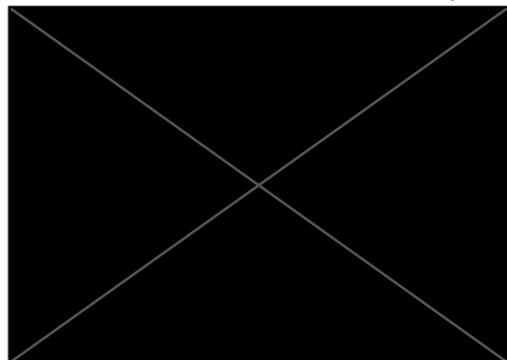
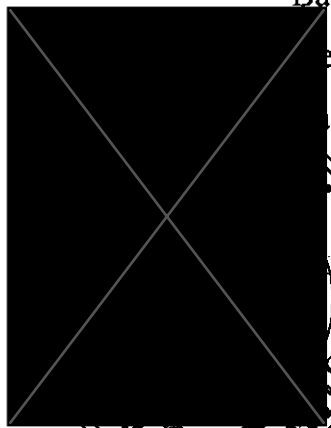
own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List.

Thus, first Central list of socially and Educationally Backward Classes in relation to a State or Union Territory is by a notified Order of the President, after consultation with the concerned State Government. Any amendment in the list of socially and Educationally Backward Classes, once notified by the President under clause (1) of Articles 342A can be made only by an Act of Parliament in view of clause (2) of Article 342A . Exclusion even of a part or a group of Class from the Central list of OBCs/SEBCs can be done only by the Parliament and it is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of OBCs/SEBCs. Further, under clause (3) of Article 342A, the States and UTs may, have their own list of socially and Educationally Backward Classes.

(ii) National Commission for Backward Classes (NCBC), which was set up under the provisions of the National Commission for Backward Classes Act, 1993 had adopted following criteria for identification of a community as Socially and Educationally Backward Class:-

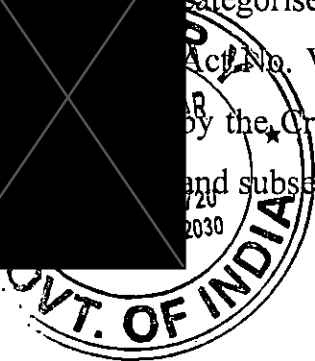
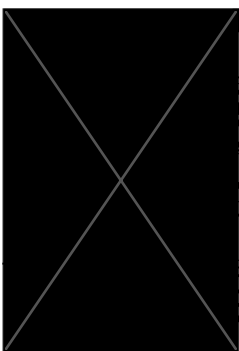
SOCIAL

Castes and communities, generally considered as socially backward.



2. (a) Castes and communities, which mainly depend on agricultural and/or other manual labour for their livelihood and are lacking any significant resource base.
- (b) Castes and communities, which, for their livelihood, mainly depend on agricultural and/or other manual labour for wage and are lacking any significant base.
- (c) Castes and communities, the women of which, as a general practice, are for their family's livelihood, engaged in agricultural and/or other manual labour, for wage.
- (d) Castes and communities, the children of which, as a general practice, are, for family's livelihood or for supplementing family's low income, mainly engaged in agricultural and/or manual labour.
- (e) Castes and communities, which in terms of caste system, are identified with traditional crafts or traditional or hereditary occupations considered to be lowly or undignified.
- (f) Castes and communities, which in terms of the caste system, are identified with traditional or hereditary occupations considered to be 'unclean' or stigmatised.
- (g) Nomadic and semi-nomadic castes and communities
- (h) Denotified or Vimukta Jati castes and communities

Explanation: The term refers to castes/communities which had been categorised as Criminal Tribes under the Criminal Tribes Act, 1924, Act No. VI of 1924, passed by the Indian Legislature and repealed by the Criminal Tribes (Repeal) Act, 1952, Act No. XXIV of 1952 and subsequently referred to as Denotified or Vimukta Jatis.



3. Castes and communities, having no representation or poor representation in the State Legislative Assembly and/or district-level Panchayati Raj institutions during the ten years preceding the date of the application

Explanation : This is only intended to measure, as indicator, the presence of a caste or community in these bodies.

The term "poor representation" may be taken to refer to a caste or community whose presence in the body is less 25% of its proportion in the population.

B. EDUCATIONAL

1. Castes and communities, whose literacy rate is at least 8% less than the State or district average.
2. Castes and communities, of which the proportion of matriculates is at least 20% less than the State or district average.
3. Castes and communities, of which the proportion of graduates is at least 20% less than the State or district average.

C. ECONOMIC

1. Castes and communities, a significant proportion of whose members reside only in Kachha houses.

2. Castes and communities, the share of whose members in number of cases and in extent of agricultural lands surrendered under the Agricultural Land Ceiling Act of the State, is nil or significantly

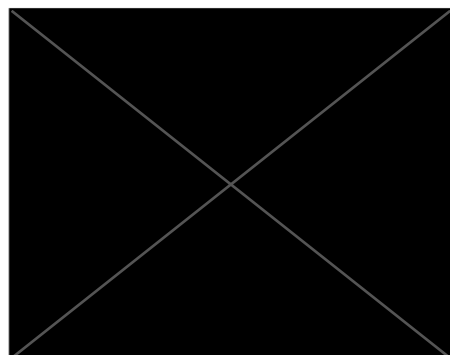


3. Castes and communities, the share of whose members in State Government posts and services of Groups A & B/Classes I & II, is not equal to the population-equivalent proportion of the caste/community.

D. Economically Weaker Sections

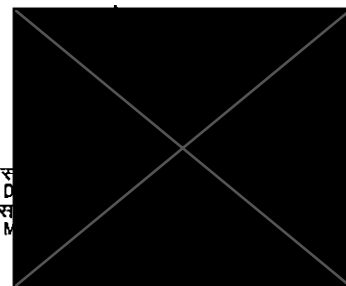
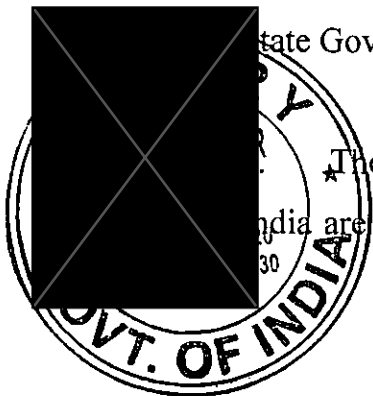
All persons other than the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes whose family has gross annual income below Rs. 8.00 lakh per annum are identified as EWSs. Family here includes the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years. Income includes income from all sources i.e. salary, agriculture, business, profession etc. and such income may be certified by an officer not below the rank of Tahsildar. To further ensure that the benefit of reservation reaches the needy people, persons whose family owns or possesses the following assets are excluded from being identified as EWSs:-

- (i) 5 acres of agricultural land and above;
- (ii) Residential flat of 1000 sq. ft. and above;
- (iii) Residential plot of 100 yards and above in notified municipalities;
- (iv) Residential plot of 200 yards and above in areas other than the notified municipalities.



6. The criteria for inclusion in the Scheduled Caste, Scheduled Tribe, and Socially and Educationally Backward Class lists are based on historical, social, and economic backwardness. Scheduled Castes face historical disadvantage from untouchability, while Scheduled Tribes exhibit distinct cultures, geographical isolation, and backwardness. Socially and Educationally Backward Classes are identified by social, educational, and economic disadvantages, along with a lack of representation in services. These criteria are not spelt out in the Constitution but have become well established. Thus, the identification of Scheduled Castes (SCs), Scheduled Tribes (STs), and Socially and Educationally Backward Classes (SEBCs)/Other Backward Classes (OBCs) is based on historical and social criteria like caste, tribe, and social backwardness, not solely on economic status. The criteria for Scheduled Castes and Scheduled Tribes subsumes the definition of these categories contained in 1931 Census, the report of First Backward Classes Commission (Kalelkar Commission), 1955, the Advisory Committee on the Revision of Scheduled Castes and Scheduled Tribes Lists (Lokur Committee), 1965 and the Joint Committee of Parliament on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967 (Chanda Committee), 1969. Similarly, the criteria for Socially and Educationally Backward Classes subsumes the criteria of Mandal Commission and the commissions set up in the past by different State Governments and other relevant materials.

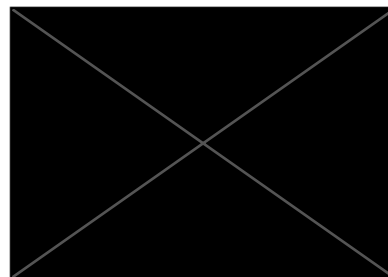
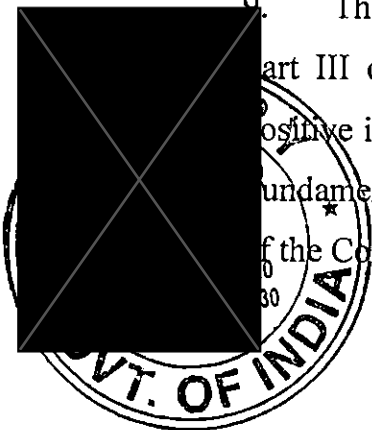
* The main objectives of SC/ST and OBC/SEBC reservations in India are to achieve social equality and justice, overcome historical



disadvantages and discrimination, ensure economic empowerment and upliftment for marginalized communities, and promote their inclusive participation in education, public services, and decision-making processes. This system aims to provide fair opportunities, reduce economic disparities, and foster diversity in governance and academia by addressing historical marginalization. Justice B.P. Jeevan Reddy, while delivering the majority judgement in the matter of Indra Sawhney & Ors vs. UOI & Ors, observed that public employment gives a certain status and power, besides the means of livelihood. The Constitution has, therefore, taken special care to declare equality of opportunity in the matter of public employment. Keeping the broader concept of equality in view, discrimination with SC, ST and OBC/SEBC communities does not happen on the basis of economic conditions.

8. That the present Writ Petition (Civil), neither raises any question of law pertaining to the Constitution of India which needs interpretation of this Hon'ble Court nor discloses the infringement of the Fundamental Rights enshrined under Part III of the Constitution of India and therefore, is not maintainable under Article 32 of the Constitution of India and hence deserves to be dismissed with exemplary cost.

9. That Fundamental Rights guaranteed to the subject/s under Part III of the Constitution of India is negative in character and positive in sanction. In other words, the subject/s cannot enforce his Fundamental Right by way of filing a Writ Petition under Article 32 of the Constitution, unless and until it is infringed by the state.

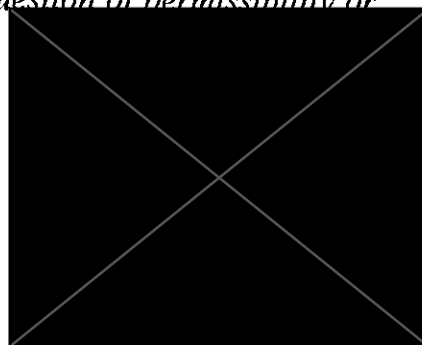


10. The present petition has been filed in ignorance of the law laid down by this Hon'ble Court in a catena of Judgment/s wherein, this Hon'ble Court has elaborately dealt with the scope and ambit of Article 341 and 342 of the Constitution. This Court has held that a notification issued under Clause (1) of Articles 341 and 342, specifying SCs and STs, can be amended only by law to be made by the Parliament. In other words, any caste tribe or part of or group within any caste/tribe can be included or excluded from the list of SCs or STs issued under Clause (1) of Articles 341 and 342 only by the Parliament by law and by no other authority and it is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of SCs or STs specified in the notification issued under Clause (1) of Article 341 or 342. Therefore, the present application is a misconceived one. Now similar provisions have been made for Socially and Educationally Backward Classes vide the Constitution (One Hundred and Second Amendment) Act, 2018.

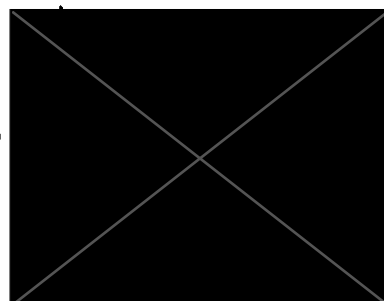
11. That it is submitted that the nine Judge Constitution Bench of this Court in Indra Sawhney and Ors. Vs. Union of India (1992 supp. (3) SCC 217) observed as under:-

"..... d) 'Means' test and 'creamy layer'

..... 'Means test' in this discussion signifies imposition of an income limit, for the purpose of excluding persons (from the backward class) whose income is above the said limit. This submission is very often referred to as "the creamy layer" argument.... In our opinion, it is not a question of permissibility or



desirability of such test but one of proper and more appropriate identification of a class - a backward class. The very concept of a class denotes a number of persons having certain common traits which distinguish them from the others. In a backward class under Clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward. Difficulty, however, really lies in drawing the line - how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by the other. The basis of exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement..... It is pointed out that Clause (4) or Article 16 aims at group backwardness and not individual backwardness. While we agree that Clause (4) aims at group backwardness, we feel that exclusion of such socially advanced members will make the 'class' a truly backward class and would more appropriately serve the purpose and object of Clause (4). (This discussion is confined to Other Backward Classes only and has no relevance in the case of Scheduled Tribes and Scheduled Castes)"

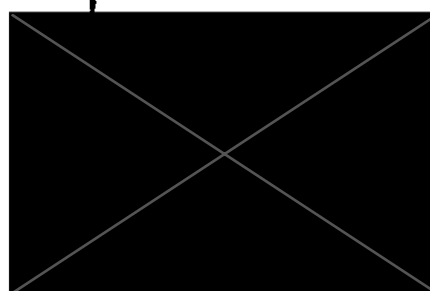
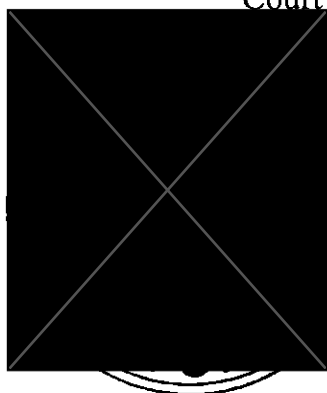


12. That a five judge Bench of this Hon'ble Court in the case of E.V. Chinnaiah Vs. State of Andhra Pradesh & Ors. [(2005) 1 SCC 394], has held that whenever, a situation arises for exclusion of creamy layer from SCs, it will be the Parliament alone to take the necessary legislative steps in terms of clause (2) of Article 341 of the Constitution.

13. That this Hon'ble Court in M. Nagaraj case in para 121 inter-alia observed as under:-

"...the State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer".

It has nowhere specifically been held that the principle of creamy layer is applicable to SCs and STs. The reference made to the concept of creamy layer in para 121 appears to be the general observation with regard to reservation in respect of OBCs/SEBCs. This has been clarified by a Constitution Bench of this Hon'ble Court in the case of Ashoka Kumar Thakur vs. Union of India and W.P. No. 265 of 2006 decided on 10.04.2008 that for the



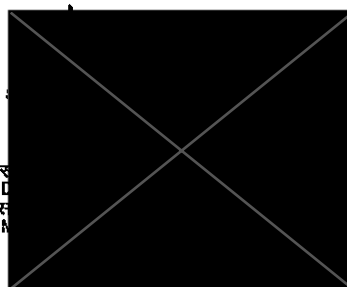
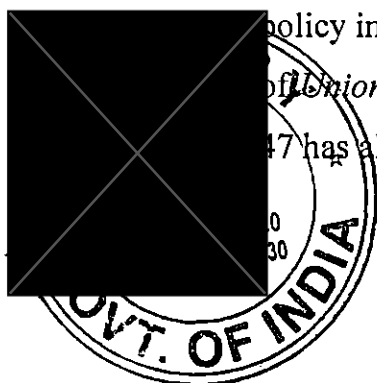
purpose of reservation the principles of creamy layer are not applicable to SCs and STs.

14. That in majority of schemes of welfare and development of Scheduled Castes, Scheduled Tribes, and Socially and Educationally Backward Classes excepting reservation in educational institutions and reservation in services under the State, there is means test which ensures that benefits of schemes percolate to those who actually deserves them. The petitioners have not approached this Hon'ble Court with clean hands and indulged in misstatement of facts solely with the intention of misleading this Hon'ble Court.

15. The present writ petition is not maintainable in law as it essentially prays for issuance of a mandamus to the executive to frame policy in a particular manner, which is beyond the judicial domain.

16. That modification of reservation policy, particularly to introduce income-based preferences within reserved categories, should be preceded by a holistic review and thorough empirical study, including socio-economic data of reserved category beneficiaries.

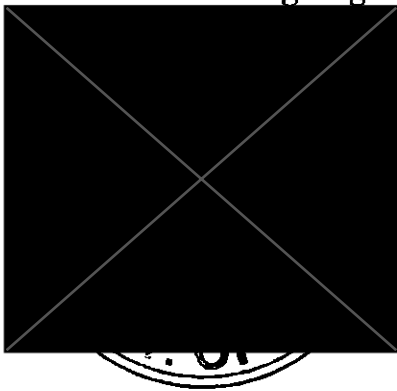
17. That it is stated that no mandamus can be issued to frame a policy in a particular manner and the Hon'ble Supreme Court in case of *Union of India versus M. Selvakumar* (2017) 3 SCC 504 in para-47 has also held as under :-



“It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution.”

18. Furthermore, the Hon'ble Supreme Court has explained the above principle in case of *Rachna versus Union of India*, (2021) 5 SCC 638 in Para 45 and the relevant extracts are as follows:-

“Judicial reviews of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, a certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right”



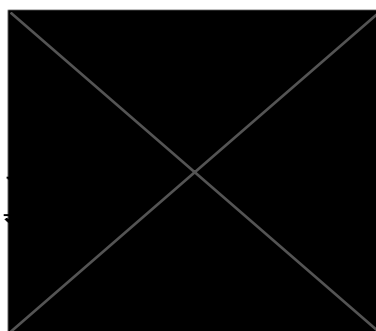
19. That it is humbly submitted that the Hon'ble Supreme Court has categorically observed in case of Asif Hameed v. State of J & K, 1989 Supp (2) SCC 364:

"The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers"

20. That a Division Bench of this Hon'ble Court in its order dated 22.02.2024 in the matter of Anun Dhawan and Ors. vs. Union of India and Ors (W.P (C) No.1103 of 2019) inter alia observed as under:-

"8. It is well settled that the scope of judicial review in examining the policy matters is very limited. The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy which the executive is entitled to formulate. The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available."

21. That in this writ petition, the petitioner has not made out any infringement of the fundamental rights of any individual and prays only to issue mandamus to frame a policy in a particular manner, which is not legally tenable as per law. In view of the same, the present writ petition is totally devoid of merit and liable to be dismissed on the ground of maintainability.



22. That the reliefs sought are vague, generalized, and lack any material or documentary proof. The petitioners have failed to specify which government schemes should be extended or how these would benefit the below poverty line persons of all communities.

23. In views of the above submissions, the writ petition lacks legal merit and is liable to be dismissed on the grounds of maintainability and non-justiciability. The Court should refrain from directing the executive to frame policies on reservation or income-based preferences without empirical data or a legislative mandate, keeping in view the separation of powers and judicial precedents.

I Identify the deponent who has
Signed / Put T.I. In my presence

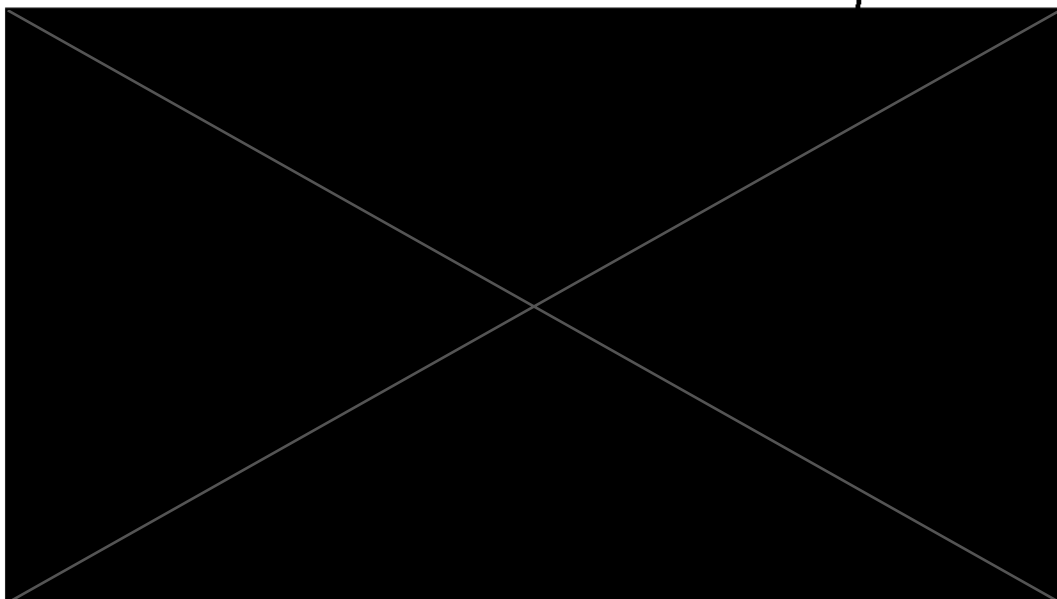


VERIFICATION

15 JUN 2026

Verified at New Delhi on this day of June 2026 that the

contents of the aforesaid affidavit are true to my knowledge and belief. No part of it is false and nothing essential has been concealed there from.



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