

# The Process of Social Exclusion and Inclusion A Legal Perspective

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**Abstract:** *The process of social exclusion and inclusion is a continuous process followed since past to the present condition of the society. It has been changing as per the changing needs of various groups of people in the different phases of the society depending on their social, political, economic, cultural, religious and other relevant conditions. It is essential to understand the relationship between the State and the civil society for defining social solidarity, equality and social justice. The adoption of reservation policy for certain classes of society leads to the situation of social exclusion and inclusion. The constitution of India provides special attention to the backward classes of people to uplift their condition in the society. The role of law is very crucial to maintain the equality and provide social justice to the weaker section of the people.*

**Keywords:** *social exclusion, reservation policy, social justice*

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## 1. INTRODUCTION

The current paper focuses on the process of social exclusion and inclusion and the role of law in providing welfare measures for the socially backward people in the society. It also aims to give special reference to the Constitution of India by focusing on the concept of social justice and welfare state. The process of social exclusion and inclusion is based on several factors such as social, economic, political, moral, cultural and ideological. It can be said that the process of social exclusion is a threat to social stability and integrity of the nation. From the primitive societies to the present time the human community has revealed various forms of class cleavages and conflicts regarding security of identity as well as protection of property and person. The law is a dynamic concept. It takes shape according to the changing needs of the society. Law has never been static as it has to develop for the betterment of the society as a whole. There are various reasons for social exclusion and inclusion. The most important factors are poverty, lack of education, unemployment, weak representation, geographical isolation, lack of information, cultural differences, status variation, gender based discrimination, territorial boundaries, religion,

cast and communal practices, etc. It is important to understand the relationship of state and civil society for defining social solidarity, equality and social justice.

There are various explanations regarding the origin of the state which commonly reveals that the violent conflict between stateless communities led to the subservience of one people by another. The relationship between state and civil society has been defined in several deviating manner throughout history. It is hard to draw a single line between state and society. The relationship between state and society is dynamic. The concept of civil society has different meaning at different stages of society in history. In the 17<sup>th</sup> Century, Thomas Hobbes and John Lock defined civil society in a divergent manner and gave the reasons for the creation of state through a social contract between individuals as it was necessary to safeguard the individual living in a state of nature which was stateless and uncertain. In 19<sup>th</sup> Century, Hegel and Marx theorized a clear division between state and society and demarcated their contradictory correlation.

The creation of the state needs of four elements namely, territory, population government and sovereignty. It is an association of individuals occupying a definite territory existing under an organized government and enjoying sovereignty both in internal as well as external matters. The

sovereignty embodies the supreme power of the State. The state is an unceasing public power which represents offices and role to carry the authority of the state. The distinctiveness of state and legal order is apparent from the fact that even sociologists depict the state as politically structured society because it is a community constituted by a coercive order, and this coercive order is the law.

## 2. CONSTITUTIONAL PERSPECTIVE

The Constitution of India can be significantly appreciated as a document on liberalism as well as a document of social revolution. It aims at completely removing the man made hierarchies based on caste, gender, culture, etc. It has been opined by some eminent writer on the Indian Constitution that it is the most suitable document that India could have adopted in the given situation. The preamble of our Constitution is framed with proper framework and deliberation which reflects the higher purpose and the noble objective of the Constitution makers. It sets out the main objectives which the legislature is intended to achieve. In *re Berubari* case, the Supreme Court has said that the Preamble to the Constitution is a key to open the mind of the makers which shows the general purpose for which they made several provisions in the Constitution.

The declaration of fundamental rights in Part III of the Constitution is considered to be a distinguished feature of an egalitarian state. These civil rights are prohibitions against the state. The state cannot frame the law which abbreviates the rights conferred in the Part III of the Constitution. If the state makes any such law it may be declared unconstitutional by the Court of law. Under the Constitution of India the Supreme Court is empowered to grant the remedies in the form of writs like *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo Warranto* and *Certiorari* whenever the fundamental rights are trespassed. However, it can be said that fundamental rights are not absolute rights. These rights are subject to certain limits. Therefore, our Constitution maintains a balance between the individual liberty and the social interest. The concept of Bill of Rights has been taken from the Constitution of United States. Regarding the guarantee of individual rights in the Constitution of India it has been carefully poised between the need for security of the state itself.

In the case of *A.K. Gopalan v. State of Madras*, it was held that the aim of having a declaration of fundamental rights is that assured elementary rights, such as, right to life,

liberty, freedom of speech, freedom of faith etc., should be regarded as sacrosanct under all conditions and that the kaleidoscopic majority in Legislature of the country should not have a free hand in interfering with these fundamental rights. In *West Virginia State Board of Education v. Barnet*, Jackson, J. opined that “the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and official and to establish them as legal principles to be applied by the Courts. One’s right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote, they depend on the outcome of no elections”.

The fundamental rights are essential for the protection of rights and the liberties of the people against the encroachment of the power delegated by them to the Government. These rights are the limitations on the exercise of power by the legislature and executive of the Government. It is important for the preservation and protection of public as well as private rights of the individuals. The necessity and importance of fundamental rights was observed by Bhagwati, J. in *Maneka Gandhi v. Union of India*, as: “These Fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a ‘pattern of guarantee’ on the basic structure of human rights and impose negative obligations on the state not to invade on individual liberty in its numerous scopes”.

The Directive principles of State policy enshrined under Part IV of our Constitution deals with the aims and the objectives of to be taken up by the states. These principles are intended to be the imperative basis of state policy. It can be said that these principles are the instructions issued to future legislature and executives for their guidance. The Chairman of the Drafting Committee expressed his view as:

“The directive principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act....The only

<sup>1</sup> AIR 1960 SC 845

<sup>2</sup> AIR 1950 SC 27

<sup>3</sup> 319 US 624: 87 Led 1928

<sup>4</sup> AIR 1978 SC 597

difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed, wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise”.

The rights conferred in part IV of the Constitution differs in one vital respect from the fundamental rights. The directive principles of state policy are not justiciable or enforceable at the court of law but on the other hand the fundamental rights are enforceable rights. The directive principles have expressly been excluded from the purview of the courts. It means no action can be brought against the state if the state is not able to implement any of the provisions mentioned under this Part IV. The idea of welfare state can be well achieved if the states endeavour to implement the provisions of Directive principles of State policy with a high sense of moral duty.

The law plays a vital role in providing equal standing to the weaker section of the society by providing reservation policy. The socially excluded people were provided with the legal right to progress and come to the main stream of society. Part III of the Constitution of India provides for equality before law and equal protection of law for all, prohibition of discrimination on ground of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment, abolition of untouchability, protection of life and personal liberty, protection of interests of minorities. Under part IV the main objective of Directive principles of state policy is to embody the concept of a welfare state. It is stated in this part that the state shall strive to promote the welfare of the people by securing social order in which the justice, social, economic and political, shall inform all the institutions of the national life. It also says that the state shall strive to minimise the inequalities in income and endeavour to eradicate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39 A provides for equal justice and free legal aid. This article says that the state shall secure that the operation of legal system promotes justice on the basis of equal opportunity and provide free legal aid by appropriate legislation or schemes to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 42 says about the provisions for just and humane conditions and maternity relief. Part XVI of our Constitution deals with special provisions relating to certain classes.

Democracy will be meaningless if it fails to generate the spirit of brotherhood among different sections of the people. Article 1 of the Universal Declaration of Human Rights says that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. This concept of brotherhood is included in the preamble of our Constitution and a real shape has been given by abolishing untouchability under article 17 and title under article 18 as well as various social evil. The Constitution of India seeks to ensure to its people the liberty, equality, and fraternity to serve the primary objective of providing social, economic and political justice. Justice is a harmonious blending of need of people and good of the society. The attainment of the collective good is the main aim of rendering justice. Taking together the ideals of political, social, economic and democracy with that of equality as well as fraternity in the preamble, Mahatma Gandhi opined as “India of My Dream”, namely-“an India, in which the poorest shall feel that it is their country in whose making they have an effective voice: an India in which all communities shall live in perfect harmony”.

The Constitution of India provides for ‘reasonable’ restriction which can be imposed on individual’s liberties depending on the interest of the society. Regarding this subject matter a quotation by Mukherjee, J. in the case of *A K Gopalan v. State of Madras* is important to state as:

“There cannot be any such thing as absolute and uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interest of society, on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individual rights and liberties. Ordinarily, every man has the liberty to render his life as he pleases, to say what he will, to go where he will, to follow any trade and occupation or calling at his pleasure and to do any other thing which he can lawfully do without any hindrance by any other person. On the other hand, for the very protection of these liberties the society must arm itself with certain powers. What the Constitution, therefore, attempts to do by declaring the rights of the people is to strike a balance between individual liberty and social control”.

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<sup>5</sup> AIR 1950 SC 27

The purpose behind the inclusion of fundamental rights under Part III of our Constitution is to establish the Rule of Law in the Country. The aim is not merely to provide the security and equality of citizenship of the people but also to guarantee certain standard of conduct, citizenship, justice and fair play.

It was held by the Supreme Court in *Nagraj v. Union of India* that the fundamental rights are not the gift from the State to citizens. Part III does not confer fundamental rights but confirm their presence and give them protection. Every individual possesses basic human rights by virtue of being human being. These rights are inalienable rights and indispensable for their existence in a society with basic human dignity.

In a modern state no individual rights are absolute and unlimited as it may jeopardize the rights of others. If the individuals are allowed with unlimited and absolute power then a disordered situation will arise which will lead to anarchism. On the other hand, if the state is provided with unrestricted absolute power then it will eventually result in oppressiveness in the society. Therefore, keeping a proper balance between individual rights in the areas of conflicting interest and the exercise of power by the state is significant in a welfare state.

### 3. CITIZENSHIP

In a liberal state the citizenship can be said to be both inclusive and exclusive which clearly distinguishes between those who belong to the state and those who do not. Citizenship means a legitimate membership of a specific state. After the French revolution in 1789, the citizenship started to connect with nationalism. This idea originated before the development of the modern state and expressed in a greater way in the modern era. A citizen enjoys protection against any highhandedness from his state and acquires a sense of common identity to all those who possess it. Like political culture, the citizenship plays a vital role to specify the relationship between civil society and the state. The state and society is a multidimensional concept where there are three kinds of relationship exist *i. e.* the individual and society, the state and individual, society and the state. In a liberal democracy, the dominance of democratic elitist models of participation and the inequalities of market-led society, many citizens have been effectively excluded from making their full contribution to the institutions of the state and society. Effective citizenship demands equal political participation to the best of their capacity. There is a necessity

of successful mechanism to facilitate equal participation in a liberal democracy.

In a state there are two classes of people one who possess citizenship and those who are aliens. By possessing citizenship a person is entitled to enjoy full civil and political rights but the aliens are not entitled to enjoy all these rights in a state. The citizenship allows certain advantages as conferred by the Constitution. Those advantages are not available for the aliens. The fundamental rights are available to the citizens are as follows:

1. No discrimination will be done against any citizen on the ground of religion ,race, caste, sex or place of birth(article 15)
2. Right to equality of opportunity in matters of public employment(article 16)
3. Right to freedom of speech & expression, assembly, association, movement, residence, profession(article 19)
4. Cultural & educational rights (articles 29 and 30)
5. Certain offices to occupied by the citizens only for example office of the President, Vice president, Judges of the Supreme Court or of a High Court, Attorney General, Governor of a State, Advocate General of the State.
6. Right to vote in the election to the House of people and the Legislative Assemblies of States. Only the citizens are entitled to become the members of the Union and the State Legislature.

The rights conferred in article 14 and 21 are available in case of aliens also.

Under the Constitution of India Part II contains the classes of people who shall be regarded as the citizen of India at the commencement of the Constitution on 26<sup>th</sup> January 1950. Article 11 of our Constitution confers the power on the Parliament to frame laws related to citizenship in India. The Indian Citizenship Act, 1955 has been enacted by the Parliament which provides for the acquisition and the termination of the citizenship subsequent to the commencement of the Constitution. Thus the articles dealing with the citizenship in Part II of the Constitution can be regulated and adversely affected by the statute made by the Parliament in exercise of its Legislative powers.

<sup>6</sup> AIR 2007 SC 71

#### 4. MIGRATION

There are various forms of social exclusion and migration is one of them. Migration means movement of people from one country to another where those people are not the citizens which indicate a long term stay by the people of another country. The people who are tourist and visitors for a short period are not considered as the immigrants. There are a number of causes why people migrate. There may be varied reasons for migration like economic, political, social, religious and personal. Migration has a long history in India. It takes place from various borders including open borders to the country due to diverse socio economic reasons. The term social exclusion was first used in France in early 1970s on the issue of immigrants and as a response to the cotemporary social disintegration. And finally it became a main policy thrust for the European Commission from 1989 as a means to foster social integration in the European countries. In India most of the States are expanding because of migration process. There is a question of National security with this kind of issues in the country.

The factors which are responsible for the social exclusion are many like social, political, economic structures and the extent of cultural differences in a country. Peace (2001:26) expressed his view that how social exclusion relates to income poverty in the paid labour market. Silver (1995) in his writing described exclusion as multidimensional and as more than poverty and denial of social rights. It is a dynamic process resulting to the multiple deprivations starting from breaking of family ties and social disintegration in a civil society.

Migration is a common social and economic phenomenon in many countries which provides the context for the more recent migration at the internal and international level. It is an emerging trend which determines the social and economic development of the country. Migration is a source of remittance which contributes to increased household income. In India in the early stage, internal migration was heavily directed towards the east Tarai especially from mountain and hills. Internal migration from mountain and hills to Tarai was due to availability of agricultural land at the destination. Migration plays a key role in the growth of population in a country. There are certain basic factors which can be called as push and pull factors responsible for migration of people from one nation state to another. The push factors may be natural disaster, poverty and war etc. and the pull factors can be the fat salary or higher income, political stability, family matters etc.

The immigration laws exclusively govern the immigration in a country. Immigration law deals with the law of nationality in the nation relating to the matters of citizenship. In India the law relating to citizenship is dealt with the provisions given under the Constitution which provides for a single citizenship for the whole country. The relevant provisions for citizenship are provided in Part II under articles 5 to 11 of the Constitution of India. The relevant provisions relating to migration are enshrined in article 6 of our Constitution which deals with the rights of citizenship of certain persons who have migrated to India from Pakistan. Article 7 provides for the rights of citizenship of certain migrants to Pakistan and article 8 of our Constitution deals with the rights of citizenship of certain persons of Indian origin residing outside India. An Act has been enacted for the purpose of providing the expulsion of certain immigrants from the State of Assam which is known as The Immigrants (Expulsion from Assam) Act, 1950. As per the provisions of this Act the Central Government is empowered to order for the expulsion of certain immigrants on the ground that the stay of certain person or a class of persons in Assam is detrimental to the interests of general public of India or any Scheduled Tribe in Assam.

#### 5. RESERVATION POLICY IN INDIA

The reservation in India is an affirmative action framed to improve the overall condition of the socially backward classes of people of India. The law of the land provides certain percentage of available opportunities separately reserved in the matters related to employments and education for socially backward and underrepresented communities. The primary beneficiaries of reservation policy are namely, Scheduled Castes (SC), Scheduled Tribes (ST), other backward classes (OBC) , in some state Most backward classes (MBC). There are also reservation policy for women. The Women Reservation Bill which is known as the Constitution (108<sup>th</sup> Amendment) Bill is a pending bill in India which seeks to provide 33% of reservation for women in all seats in the lower house of the Parliament i.e in Lok Sabha and the State Legislative Assemblies. This bill was passed by Rajya Sabha on 9<sup>th</sup> march 2010. This can be implemented if it is duly passed by the Lok Sabha. According to this policy the women get 33% reservation in gram panchayat and municipal election. The progressive political opinion in India is strongly in favour of providing

preferential treatment to women in order to create an equal participation for all of its citizens.

Since the time of British occupied India the system of reservation has been a matter of debate and remains a point of conflict. The citizens belonging to the upper classes find this policy of the government biased and oppose it, since they feel it takes away their rights to equality. Whereas there are certain people from underprivileged sections of society who think that this reservation makes them feel underprivileged. Therefore, the reservation in India remains a matter of controversy. Article 14 of our Constitution guarantees to every person the right not to be denied equality before the law and the equal protection of the law for all. Article 15 prohibits discrimination by state on the ground of religion, race caste and etc. with regard to access to public places. Nothing in this article shall prevent from making any special provisions for the advancement of socially and educationally backward classes of citizens or for the scheduled and scheduled tribes. Article 16 provides for equality of opportunity in matters of public employment. It says about the prohibition of discrimination in respect of public employment on the grounds of religion, race, caste, etc. The Constitution says that the state can make reservations of appointments or posts in favour of any backward class of citizens who are not adequately represented in the service under the state. Article 17 provides for the abolition of the evil practice of untouchability from the society. Article 19 (5) empowers the state to impose reasonable restrictions on the fundamental rights guaranteed by clauses (d) and (e) for the protection of interest of any scheduled tribes. Articles 25 to 30 provides for the protection of religion and culture of minorities. Article 164 has the provision for Minister in charge of tribal welfare in the state of Bihar, Madhya Pradesh and Orissa who may be additional in charge of the scheduled tribes and backward classes or any other work. Article 275 makes provision for grants in aid to the states for promoting the welfare of scheduled tribes. As per the provision under article 325 no person shall be ineligible for inclusion in electoral roll on the grounds of religion, race, caste or sex. The Constitution of India provides for special provisions relating to certain classes which are mentioned under part XVI. Articles 330 to 342 of the Constitution provides for safeguarding the interest of scheduled castes, scheduled tribes, Anglo-Indians and backward classes. Articles 347,350-A, 350-B provides for protection of the interests of the people belonging to linguistic minorities. Regarding scheduled castes and scheduled tribes the Constitution does not define any specific persons. However, articles 341 and 342 empower the President to draw up the list about the said

castes and tribes. In *Comptroller v. Jagannathan*<sup>1</sup> it was held that article 335 is to be read with article 46 enshrined under the Directive Principles of state policy, states that the state shall promote with special care the educational as well as economic interests of the weaker section of people. Article 341 says that the President after consultation with the Governor with respect to the state, by public notification, specify the castes, races or tribes or the groups within the caste, races or tribes for the purpose of this Constitution. It is further stated in this article that the Parliament may by law include or exclude any caste, race or tribe or part of a group within caste, race or tribe from the list of scheduled castes. As per article 342 the Parliament is empowered to include or exclude any tribe or tribal community or part of or group within tribe or tribal community which is specified by the President after consultation with the Governor of the state.

In article 334 the word fifty has been substituted with the word "sixty" by the Constitution(79<sup>th</sup> Amendment) Act,1999 extending the reservation of seats for SCs/STs and the Anglo Indians in Lok Sabha as well as in the Legislative Assemblies of the states upto sixty years from the commencement of the Constitution. This word sixty has been further substituted by the word "seventy" by the Constitution (95<sup>th</sup> Amendment) Act, 2009 in article 334 which further extended the seat of reservation for the SCs/STs and Anglo Indians up to seventy years from the date of commencement of the Constitution. It is important to note that article 338 has been amended by the Constitution (89<sup>th</sup> Amendment) Act, 2003 and a new article 338-A has been added which provides for the establishment of National Commission for Scheduled Tribes. Before this amendment there was a provision of a single Commission for both SCs and STs.

The Institutions of Higher education funded by the central government has the provision of 22.5% reservation of seats for students belonging to scheduled castes (SC) and scheduled tribes (ST) and out of these total seats 15% for SCs 7.5% for STs is reserved. Further these percentages have been increased to 49.5% by the inclusion of an additional 27% reserved seats for other backward classes (OBCs).

Under the Directive principles of state policy article 46 says that the state shall take special care regarding the promotion, educational as well as economic interests of the weaker section of the people particularly of the scheduled castes and scheduled tribes and shall give them protection from social injustice and all forms of exploitation.

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<sup>1</sup> AIR1987 SC 537

It was held in the case of *Lingappa Pochanna Appealwar v. State of Maharashtra*<sup>8</sup> that the law prohibiting the transfer of a land belonging to a member of scheduled tribes to a non-scheduled tribe is valid.

It has been ordinarily accepted in the society that those who belong to Scheduled Castes and Scheduled Tribes are the weaker section. Many attempts have been made to make a test of economic means which has often been tried but no guideline has been evolved. Practically speaking apart from the members of the Scheduled Castes and Scheduled Tribes there would be millions of other citizens who would also belong to the weaker sections. The Constitution maker intended that all citizens of India belonging to the weaker sections to be benefited so this Article 46 was incorporated in the Constitution. In the case of *Shantistar Builders v. Narayan Khimala ITotame*<sup>9</sup> the Supreme Court directed that the Central Government should come forward with an appropriate guideline to specify who would be included within weaker sections of the society.

The concept of equality is a basic feature of our Constitution. Under Article 15(2), it is mentioned that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex and place of birth or any of them. It is equally true that ours is a caste-ridden society. Still, it is a constitutional mandate not to discriminate on the basis of caste alone. Provisions can be made for the betterment as well as the upliftment of socially and educationally backward classes, Scheduled Castes or Scheduled Tribes or for women and children. Article 16(4) empowers the States for making any provision for reservation in 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. Reservation is permissible in favour of any backward class of citizens and if it is not adequately represented in services under the State.

It can be argued in the present context that the caste only cannot be the basis for reservation. Reservation can be made for a backward class citizen of a particular caste. Therefore, from that caste, the creamy layer and the non-backward class of citizens are to be excluded. If the caste is to be taken into consideration then for finding out the socially and economically backward class, the creamy layer of the caste is to be excluded for granting benefit of reservation, because that creamy layer cannot be termed as socially and economically backward. In *Indra Sawhney v. Union of India* it has been specially held that only caste cannot be the basis for reservation.

The process of inclusion of castes in the list of backward classes cannot be mechanical and cannot be realised without adequate relevant data. It cannot be done for extraneous reasons. Proper care should be taken so that the forward castes do not get included in the list of backward class of people which may ultimately lead to injustice for actually underrepresented backward people of the country. In *Indra Sawhney v. Union of India*<sup>1</sup> Pandian, J. observed that before drawing a conclusion that a caste is backward or is inadequately represented in the services, "the existence of circumstances relevant to the formation of opinions is a *sine qua non*. If the opinion suffers from the vice of non-application of mind or formulation of collateral grounds or beyond the scope of statute, or irrelevant and extraneous material, then that opinion is challengeable".

#### Exclusion of certain categories from reservation

There are some categories of people who are excluded from the benefit of reservation. The excluded categories are as follows:

1. **Constitutional Positions-** The sons and daughters of the President of India, the Vice-President of India, Judges of the Supreme Court, the High Court's Chairman, the members of Union Public Service Commission, members of the State Public Service Commission, Chief Election Commissioner, Comptroller, Auditor-General of India or any person holding positions of a constitutional nature.
2. **Service class:** persons considered Group 'A'/Class I officers of the All India Central and State Services (Direct Recruits) or persons considered Group 'B'/ Class II officers of The Central and State Services (Direct Recruitment) or the employees in the [Public Sector](#)- persons who have parent(s) that are Class I or Class II officers, or both parents are Class I or Class II officers but one of them dies or suffers permanent incapacitation. The criteria are used for sons and daughters of Group A and B are the same for the employees of the Public sector.
3. **Armed forces including Paramilitary Forces.-** The sons and daughters of parents either or both of whom is or are in the rank of colonel and above in the army or in equivalent posts in the Navy, the Air Force, and the Paramilitary Force. But that will hold true provided that-

<sup>8</sup> AIR 1985 SC 389

<sup>9</sup> AIR 1990 SC 630

- a. "The wife of an armed forces officer is herself in the armed forces (i.e., the category under consideration) the rule of exclusion will apply only when she herself has reached the rank of Colonel."
  - b. "the service ranks below Colonel of husband and wife shall not be clubbed together"
  - c. "if the wife of an officer in the armed forces is in civil employment, this will not be taken into account for applying the rule of exclusion unless she falls in the service category under item No.II in which case the criteria and conditions"
4. **Professional class and those engaged in Trade and Industry-** persons having higher income jobs such as physician, lawyer, chartered accountant, income tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artist or other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status. If the husband holds one of the above jobs and the wife doesn't then the husband's income will be taken into consideration and if the wife holds one of the above jobs then the wife's income will be taken into consideration. The income of the family as a whole will be taken into account because the whole point of the reservation system is to raise the social status of the people that belong to the SC's, ST's and OBC's and if a family's income is high already it is considered that it raises their social status as well.
5. **Property owners-** Agricultural, Plantations (Coffee,tea,rubber,etc), Vacant land and/or buildings in urban areas-Sons and daughters of those who have irrigated land area which is equal to or more than 85% of the statutory ceiling area will be excluded from reservation. They would only be under reservation if the land is exclusively unirrigated. Those with vacant buildings can use them for residential, industrial or commercial purposes; hence they are not covered under reservations.
6. **Creamy layer-**Son(s)/daughter(s) of those who earn 1 lakh Rs. or more annually for three consecutive years are excluded from the benefit of reservation.

The creamy layer is applicable in the case of Other Backward Castes and not applicable on other group like SC or ST. In

certain states the reservation within reservation has been made but creamy layer as such is applicable in OBCs only.

### **Provision for equal justice and free legal aid to economically backward people**

Article 39A provides direction that the state shall ensure the operation of a legal system for the purpose of elevation of justice, on a basis of equal opportunity and mainly provide free legal aid by making appropriate legislations or schemes or in any other way to guarantee that opportunities for safeguarding justice are not denied to any citizen by reason of economic or other incapacities. The object of securing a welfare state is defined in this article.

## **6. Conclusion**

Thus the process of social exclusion and inclusion was never a static process. It has been changed as per the changing needs of various groups of people in the different phases of the society depending on the social, political, economic, cultural, religious and other relevant conditions. The law of the land provides reservation for the betterment of certain backward classes which is necessary for the development of the society as a whole. The equal participation by all groups, classes, gender, race, religion and underrepresented people is a *sine qua non* for a society based on rule of law and better realisation of a welfare state.

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