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The Role of Social Science Evidence in Adjudging the Constitutionality of Reservations

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ABSTRACT

Writ petitions that challenge the governments' decisions at dishing out reservation seats and their quantum has been a concern for constitutionality as early as 1963. In matters such as the quantum of reservations, the crucial implications are with regards to proportionality. This proportionality is important so as to judicially scrutinize whether reservations suffer from overbreadth resulting in reverse discrimination- this scrutiny is undoubtedly contingent on empirical data, that governments must conduct and review from time to time, on not only the population of the reserved classes but also their backwardness. It is such data which becomes incumbent to decide the constitutionality aiding from empirical statistics on backwardness. It is such empirical data which is termed here as "social science" evidence. This paper seeks at documenting the role of social science evidence in adjudging the quantum of reservations vis-a-vis their constitutionality in India. Incidentally, the paper sets out to identify the manner in which social science evidence has informed the judiciary in bridging gaps between the social realities of ordinary citizens and the Courts of this land, and its resultant role in transformative constitutionalism.

Keywords: *Social science evidence, admissibility of committee reports, quantum of reservations, constitutional law courts.*

I. INTRODUCTION

The use of social science evidence as 'Brandeis Briefs' in constitutional courts came to be acknowledged as early as 1907 in USA, in the celebrated case of *Muller v Oregon*[3], where the court relied on research reports pointing out how longer working hours impact women and men disproportionately, and thus, the impugned legislation extending working hours to 10 hours a day was ruled unconstitutional.

Writ petitions that challenge the governments' decisions at dishing out reservation seats and their quantum has been a concern for constitutionality as early as 1963.[4] In matters such as the

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[3] Muller v Oregon, 208 U.S. 412 (1908) (US).
[4] MR Balaji v Mysore, AIR 1963 SC 649.

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quantum of reservations, the crucial implications are with regards to proportionality. This proportionality is important so as to judicially scrutinize whether reservations suffer from overbreadth resulting in reverse discrimination- this scrutiny is undoubtedly contingent on empirical data, that governments must conduct and review from time to time, on not only the population of the reserved classes but also their backwardness. It is such data which becomes incumbent to decide the constitutionality aiding from empirical statistics on backwardness. It is such empirical data which is termed here as "social science" evidence.

Social science evidence belongs in the extra-legal realm. Constitutionality here is essentially codependent on such reliance of technical/scientific or social science evidence- and the issues that come up for consideration before the constitutional courts are mixed questions of fact and law.

Where a legislation is not ex facie unconstitutional but involves consequences that infringe fundamental rights, it may become imperative to prove the unconstitutionality citing evidence demonstrating the unconstitutional consequences hailing from such operation of the impugned legislation. Such evidences are often social science in nature.[5] As observed above with respect to reservations, judicial scrutiny can sail beyond traditional statutory interpretation into a "far wider assessment on the questions of fact and opinion, necessitating the use of social science facts"[6] where the extent or *proportionality* of a restriction on fundamental rights is contended.

In such view, it is noteworthy to iterate the Court's remarks in *Indra Sawhney v Union of India*[7]:

> *Reservation in public services either by legislative or executive action is neither a matter of policy nor a political issue. The higher courts in this country are constitutionally obliged to exercise the power of judicial review in every matter which is constitutional in nature or has potential constitutional repercussions.*

In *K Krishna Murthy v Union of India*[8], the court accepted the contention that the impugned articles were enabling provisions, and were up to the state legislature's discretion to design and confer reservation benefits in favour of backward classes.[9] State's discretion in configuring the

[5] TK Naveen, *Use Of "Social Science Evidence" In Constitutional Courts: Concerns For Judicial Process In India*, 48 JOURN. L. INDIA. INSTI., 78 (2006), https://www.jstor.org/stable/43952018.
[6] *Id.*
[7] Indra Sawhney v Union of India, 1992 Supp. (3) SCC 217.
[8] K Krishna Murthy v Union of India, (2010) 7 SCC 202.
[9] *Id.* "Admittedly, Articles 243-D(6) and 243-T(6) do not provide guidance on how to identify the backward classes and neither do they specify any principle for the quantum of such reservations. Instead, discretion has been conferred on State Legislatures to design and confer reservation benefits in favour of backward classes. It is but natural that questions will arise in respect of the exercise of a discretionary power."

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quantum of reservations is thus subject to litigation, and governments have tried to rely on committee reports and census reports to justify their configured quantum.

This paper seeks at documenting the role of social science evidence in adjudging the quantum of reservations vis-a-vis their constitutionality in India. Incidentally, the paper sets out to identify the manner in which social science evidence has informed the judiciary in bridging gaps between the social realities of ordinary citizens and the Courts of this land, and its resultant role in transformative constitutionalism.

II. ROLE OF EVIDENCE IN ADJUDING VALIDITY OF THE QUANTUM OF RESERVATIONS

In Balaji[10], the Mysore Government's impugned order which reserved seats in educational institutions was based on the report of the Nagan Gowda Committee, the judgment considered that report, and other reports, dealing with backward classes and the reservations to be made for them in educational institutions. The Nagen Gowda Committee noted that the most practicable method to classify backward classes was on the basis of 'caste' and 'communities', and also recommended that Backward classes must be subdivided into backward and more backward categories. The same was incorporated into the impugned order. With respect to the second criteria 'communities', the report had recommended that every community whose average literacy rate was less than 7 per thousand would be treated as backward. The impugned order then fixed 48% as the total seats for reservation rejecting the Committee's recommended limit of 68% stating that such a large percentage of reservations was not in the state's interest. Under the impugned order, the backward classes are divided into two categories (*1*) Backward Classes and (*2*) More Backward Classes. The effect of this order was that it had fixed 50% as the quota for the reservation of seats for OBCs; 28% out of this was reserved for Backward Classes so-called and 22% for More Backward Classes. The reservation of 15% and 3% for the SCs and STs respectively remained the same. This resulted in 68% of reserved seats while only 32% was available for the merit pool. The court noted that, in determining the question as to whether a particular provision has been validly made under Article 15(4) or not, the first question which falls to be determined is whether the State has validly determined who should be included in these Backward Classes. The court observed in this regard, "*The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task;*

[10] *Supra* at note 3.

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it will need an elaborate investigation and collection of data and examining the said date in a rational and scientific way." On the basis of the Nagen Gowda Committee Report, the court concluded that a major consideration in classifying the backward classes had been solely on lines of 'caste' was not permissible classification and violated Article 15(4), the subclassification into backward and more backward was in essence a classification of the population into most advanced and the rest- the backwardness was being measured in relative terms. The court also shed doubt on the literacy test adopted in the Committee Report to classify backwardness i.e., just below 7 per thousand, while it should have been "well below 7 per thousand". The procedure adopted in categorizing backward classes and the state's justification for fixing such quantum all hailed from the above noted Committee Report which became contested, in this regard, the court came to refer to other letters and reports.

In December, 1965, Triloki Nath Tikoo and Shambu Nath[11] filed a writ petition alleging that promotions to the posts of headmasters had been made in contravention of Article 16 of the Constitution. The State admitted that 50% of the posts were filled by the Muslims of the State and 40% principally by the Hindus of Jammu. It was, however, claimed that this reservation was made on the ground that the Muslims of the State and Hindus of Jammu province constituted backward classes referred to in Rule 19 and such reservation was justified under Article 16(4). The court found that there was no sufficient material before it to decide if the claim made on behalf of the State was justified and so by an order, directed the High Court of Jammu and Kashmir to gather the necessary material and to report on it. After the material was collected the case again came before the Supreme Court for consideration[12] and the Court held that on the material before it was clear that there was no reservation as permitted by Article 16(4) but that the posts had been distributed on the basis of community or place of residence. The promotions were accordingly held to be invalid. The order affected 81 teachers who had been promoted contrary to the provisions of Article 16(1) and (4). Their promotions were declared void.

In 1967 the Jammu and Kashmir State government had appointed the Jammu and Kashmir Commission of Enquiry headed by Justice Gajendra-gadkar. In its 1968 Report, the commission recommended the appointment of a high powered committee to draw up a list of backward classes in the state. Accordingly the Backward Classes Committee was appointed in 1969 under the Chairmanship of the Retired Chief Justice of the State, J.N. Wazir. In Janaki

[11] Triloki Nath Tikko v. State of Jammu and Kashmir, AIR 1967 SC 1283 (India).
[12] Triloki Nath Tikko v. State of Jammu and Kashmir, AIR 1969 SC 1 (India).

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Prasad Parimoo[13], the state government, incorporating the recommendations of the commission, purveyed the 1970 Rules and Orders for reservation of posts and promotions for scheduled castes and backward classes of the state residents. Accordingly, 8% posts were reserved for the SCs and 42% for the backward classes. The committee's recommendations on the basis of which the Rules were formulated became the cynosure for judicial scrutiny upon a petition filed by the Teachers who alleged that they were unfairly overhauled in getting promoted in spite of their seniority, and the petitioners also cast angst against the state's efforts to rope in as many persons from the majority communities as possible so that in the selections made thereafter a disproportionate share in the appointments and promotions would go to the majority communities in Kashmir and Jammu. The court came to rely exclusively on the commission's report in ascertaining the intent of the impugned Rules and Orders of the state government, while upholding the validity of some rules, it struck down some others.

In Soshit Sangh[14], in deciding whether the carry forward rule was disproportionate the limitations implied in Article 16(1) and (4), the court distinguishes from the approach adopted in Devdasan and Balaji insofar as these judgments conceive a 50% limit on reservations on grounds of reverse discrimination. Upholding the impugned 62% reservation, the Court proposed to examine the reasonableness of reservations by looking at the statistical evidence[15] that had been adduced by the state which showed menial percentages of SC/ST representation in Class I and Class II positions and concluded that the rule which provided for reservations in promotions and carried forward to successive years was justified, even if a reserved seat vacancy was carried forward for an unspecified number of years, in order to hold the same invalid, it must be proved that there is a prospect for all SC/STs in a single year to fill up more than 50% vacancies. Krishna Iyer J. opined the following, "*in view of microscopic representation of SCs and STs at all levels of services it will only be a statistical jugglery to say that the carry forward rule would create a monopoly of harijans/girijans in services*."

In the Krishnamurthy case[16], one of the major contention was in relation to the reservations of seats and chairperson posts in favour of backward classes, without any guidance on how to identify these beneficiaries and the quantum of reservations. The question which arose was how was the quantum of reservation configured and on the basis of what social science evidence or data or research was the reservation decided upon. It was contended by the petitioner that an aggregate of nearly 84% of the seats in panchayat was provided for in the

[13] Janki Prasad Parimoo v. State of J&K, (1973) 1 SCC 420 (India).
[14] Akhil Bharatiya Shoshit Karamchari Sangh (Railway) v. Union of India, (1981) 1 SCC 246 (India).
[15] *Id.* at para 66.
[16] *Supra*, n. 7.

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Karnataka Panchayati Raj Act, 1993[17]. This is well in violation of the fifty percent limit set in the Indra Sawnhey case and was also violative of the equality clause. There was evidence proving that there were many classes already being well represented in the political sphere. The same was corroborated by providing the findings of the Chinnappa Reddy Commission Report (1990). The reports found that the majority of the MPs and MLAs from Karnataka belonged to the OBC category. It was asserted that there was no intelligible criterion as Article 16(4) backwardness as well as inadequate representation. What the petitioner essentially wanted to prove is that while the MPs and MLAs belonged to the OBC category, they were adequately represented in the political sphere. While the respondents contended that mere empirical evidence is not sufficient in order to understand the implications of the reservation system. The respondent also stated that Art. 243-D(6) and Art. 243-T(6) in relation to reservations in panchayat and municipal bodies are mere enabling provisions and that cannot be struck down as clauses violating the equality clause. It was further stated that- "*It was reasoned that even though these provisions did not contain any guidance as to the quantum of reservations, it was eventually up to the State Governments to investigate the existence of backwardness and to confer reservation benefits accordingly*."[18] The respondent relied on evidence such as the recommendations of the Balwantrai Mehta Committee Report (1957)[19] and the Ashok Mehta Committee Report (1978)[20] which supported democratic decentralisation and reservation in local self-government. The court firstly concluded that Chinnappa Reddy Commission Report reflected the position of OBC 20 years ago (20 years before 2010) and without producing an updated empirical data, the court cannot resolve whether reservation in favour of OBC is proportionate or not. Similarly, the argument raised in relation to the reservation in Uttar Pradesh was also answered in negative as the evidence relied upon was the census of UP belonging to the year 1991. However, the court also held without relying upon any empirical evidence that the 50% limit should not be breached while examining the quantum of reservation in favour of the backward category for the purpose of local bodies. Though the final conclusion drawn was, "*The reservation of chairperson posts in the manner contemplated by Article 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment*." The court in this matter relied upon precedents, constitutional provisions and the objective of reservation rather than any form of

[17] Karnataka Panchayati Raj Act, 1993, Act of Karnataka State Legislature, 1993 (India).
[18] *Supra* at note 10.
[19] Balwant Rai, *Panchayati Raj System in India*, Govt, of India, 1957 (India).
[20] Ashok Mehta, *Committee on Panchayati Raj Institutions*, Govt. of India, 1978 (India).

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social science evidence. While the empirical data stated by the petitioner were outdated, the court simply held the limit of 50% as the quantum to be adhered to.

In the case of *Mukesh Kumar v The State of Uttarakhand*[21], the Supreme Court while reiterating the point that reservation is not a fundamental right, did not consider the evidence available in the form of a committee report. On the order of the Uttarakhand High Court, the state had formed a committee in order to collect quantifiable data on the adequacy or inadequacy of SC/ST the representation in public services. The findings of the committee report showed that there was an inadequacy in their representation and the same was approved by the cabinet of the state. Despite the report, the government passed an order barring reservation in promotion. While the same report was not disclosed to the Supreme Court, having knowledge of the existence of the report still did not act as an admissible evidence for the court to decide on. Although the order passed by the state was unconstitutional keeping in line with the *M. Nagaraj*[22] decision, where the court held that, *"…'exercise of the power' by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy…"*, the same was not struck down in the current decision.

This also raises questions in relation to the admissibility of a committee report as evidence and whether non-administering it is unconstitutional.

III. EVIDENCE RELIED ON IN RESERVATION CASES: LEGAL REFLECTIONS

The evidences adduced before the courts in adjudging the quantum of reservations relies on two crucial legislative facts:

(i) methodology/ rationale guiding the criteria in fixing parameters of backwardness;

(ii) quantifiable data to show inadequate representation of the SC/ST or OBCs, as the case may be.

Social science evidence of the nature in Commission Reports (mostly appointed by the state) is loosely covered under the ambit of section 56 of the Indian Evidence Act[23], or alternatively put, the court's approach in admitting them has been that of 'taking judicial notice' as envisaged under section 56. Judicial notice is tied with achieving expediency by heuristically collating adduced evidence with common knowledge, and thus, there is no need to prove the truthfulness of the facts thus adduced. The judge only concerns himself with upholding the existence or non existence of the facts and where the judge's own knowledge is not forthcoming, then the judge

[21] Mukesh Kumar v The State of Uttarakhand, Civil Appeal No. 1227 of 2020 (India).
[22] M. Nagaraj v UOI, (2006) 8 SCC 212 (India).
[23] Indian Evidence Act, 1872, § 57 (India); [hereinafter "IEA"].

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is "emancipated entirely from all the rules of evidence" in making his own inquiry. Although commission reports are not explicitly covered within clauses of section 57, the approach of 'taking judicial notice' bears likeness with the principle set out in section 56 of the IEA. It is argued here that these commission reports should be considered as "legislative facts" as distinct from "adjudicative facts" as maintained by K C Davis in an article published by him in 1942.[24] Adjudicative facts relate to the subjective facts of each case, while legislative facts were facts involved in deciding questions of law or policy. However, this characterization was criticized for failing to demonstrate how the courts should obtain social science data, and the means by which the court should evaluate such information.[25]

The authors of "Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law"[26], have sought to resolve this dilemma by arguing that there are conceptual similarities between social science research and fact, as well as social science research and law, from this, it follows that social science data may be classified as a 'fact' as well as 'law'. Finally, they propose that the basis to classify social science research be decided in terms of which classification is most useful for the legal process. The following paragraphs from the above noted article have been produced hereunder,

"*The principal similarity between social science research and fact is that both are positive- both concern the way the world is, with no necessary implications for the way the world ought to be. Both refer to the empirical reality that we infer from our senses, rather than to the value we impute to that reality. Law, in contrast, is normative. It does not describe how people do behave, but rather prescribes how they should behave...The principal similarity between social science research and law is that both are general- both produce principles applicable beyond particular instances. Facts, in contrast, are specific to particular in- stances. Social science research, though derived from specific empirical data, typically addresses persons, situations, and time periods beyond those present in a particular investigation.*"[27]

The authors have gone a step further upon claiming that social science research should be presented before the court in the same fashion as precedents are, and thus, in the nature of written briefs.[28] Corollaries from two aspects of a legal precedent are drawn with social science

[24] John Manohan, et. al., *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 UNIVERSITY OF PENN. L. REV. 477, (1986), https://www.jstor.org/stable/3312111.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id*, "If the research is more analogous to law than to fact, the parties should present the research to the court in the same manner that they would offer legal precedents, that is, in written briefs rather than by oral testimony. Parties wishing to argue that a prior legal decision should be taken as precedent for the present case do not do so by introducing as a witness the judge who wrote the prior opinion. Similarly, the oral testimony of the authors of

research that resonates more with law, the 'authority' aspect (how precedents stem from specific facts of a case, akin to specific empirical events, and yet make observations that apply broadly); the 'generality coupled with a futuristic function' (a precedent acquires the authority of law when it embodies a resolution to the subsequent dispute, similarly, social science research findings are evaluated in a praxis that introduce new phenomena which subsequently become applicable). Further, at the time the research is conducted or the decision is rendered, the ultimate implications can be only dimly foreseen, if foreseen at all. Research or studies possess the same generality as that of legal precedents. An example of this would be, a study of death penalty being a deterrence or study of impact of technology on a growing child while applies to only a specific area or dispute, but the same may also apply to other areas or disputes. In the same manner, case precedents while applying to area specific issues, also apply to other such related areas of disputes.

In a similar fashion, judges have carried out their own independent understanding of the evidence- the courts have taken liberty in pointing out loopholes in the methodologies that respective committees have adopted, especially when it has concerned itself with the parameters the states have incorporated in evaluating 'backwardness'. The committee reports have also served as interpretative tools in discerning legislative intent and examining the actual *effects* of the impugned legislations of executive orders. In some cases, it is also seen that the emphasis on social science data in reservation had created new precedents, also overruling old ones. For instance, *Balaji* and *Devadasan* had generally held that the reservations quantum cannot exceed 50% but in *Thomas* and *Soshit Sangh*, the court maintained the 50% limit for the quantum of reservations while also holding that a reservation over the 50% limit would not be unconstitutional unless it can be shown statistically that there are in fact more than 50% SC/ST candidates filling up carried forward vacancies. Another instance would be where *Nagaraj* emphasized the need to present quantifiable data in ascertaining constitutionality, overruling *Indra Sawhney* which observed that the quantum to be fixed was the state's subjective satisfaction and all that has to be shown is the existence of some material in state's possession in making such judgment.

social sci- ence research should not be the vehicle by which the research is introduced in court...due to several factors. The source of the communication, the social science researcher has less time to frame a precise answer and less opportunity to refer to the primary data when responding verbally than when writing a book or an article...there are two more additional benefits. First, it may cost less to prepare a brief than it does to present an expert witness. Indigent parties, therefore, may find the written brief their only option in presenting social science information. Second, since the appeal process often takes years, the testimony of an expert witness may be out-of-date by the time the court of last review decides the case. It is much more expeditious for the parties to submit updated briefs than it is to remand a case for additional expert testimony regarding research that has come to light since the case originally was decided."

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It might be relevant to consider the importance of parliamentary committee reports as admissible evidence in the court of law, the Supreme Court wrote down a long verdict in the case of Kalpana Mehta v. Union of India[29]. The court held that such reports can be relied upon while interpreting provisions of any statutes and the findings of which cannot be questioned in the court. The five-judge Constitution bench also held that the parliamentary reports are admissible under the Evidence Act and stated that, "Parliamentary Standing Committee report can be taken aid of for the purpose of interpretation of a statutory provision wherever it is so necessary and also it can be taken note of as existence of a historical fact. Judicial notice can be taken of the Parliamentary Standing Committee report under Section 57(4) of the Evidence Act and it is admissible under Section 74 of the said Act."

Although the findings cannot be challenged in the court of law, the bench maintained that while the report was admissible as evidence, it does not mean that facts stated in the Report stand proved. Therefore, *"When issues, facts come before a Court of law for adjudication, the Court is to decide the issues on the basis of evidence and materials brought before it and in which adjudication Parliamentary Committee Report may only be one of the materials, what weight has to be given to one or other evidence is the adjudicatory function of the Court which may differ from case to case.*[30]*"*

On a similar tangent (although committee reports are not designated under section 57), such reports become important while deciding on the quantum of reservation and the same has also become admissible as of late.

IV. CONCLUSION

While reservation is essential in order to maintain social justice and equality, the social science evidence in the form of statistics throw a different light in regards to its success. As per the Rajya Sabha data, of the 457 types of secretaries, a mere 12% belong to the SC, ST and OBC[31]. While the quantum, method and class of reservation is continuing, the evidence to prove the benefits gained out of it is trifling. The need of the Supreme Court to examine the Indra Sawhney judgement is not astounding given the agitation of various groups and classes of people in different states. The demand by the current government to sub-categorise the OBCs is due to the evidence and reports which prove that bulk of quotas are being taken over by a

[29] Kalpana Mehta v. Union of India, (2017) 7 SCC 302 (India).
[30] *Supra.*
[31] Prerna Sindwani, *Social justice: Data shows Indian government doesn't walk the talk on reservations*, BUSINESS INSIDER (FEB 20, 2020, 15:29 IST), https://www.businessinsider.in/india/news/social-justice-data-shows-indian-government-doesnt-walk-the-talk-on-reservations/articleshow/74223976.cms.

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few dominant castes. According to the data, benefits of half the quota being utilised by just 40 castes which is less than 1% groupings. As per few panel members of the Justice Rohini Commission, around one-fifth of the entire OBC groups were not able to avail single quota benefit from the year 2014 to 2018. When the Supreme Court decides to visit the judgement, the court needs to consider the hard facts available.

In the year 2019, the Supreme Court upheld Karnataka's law to allow reservation in promotion of SC/ST but it also went on to state that, "a 'meritorious' candidate is not merely one who is 'talented' or 'successful' but also one whose appointment fulfils the constitutional goals of uplifting members of the SCs and STs and ensuring a diverse and representative administration[32]". While the court was right in assuming the nature of upliftment, the data proves that the quantum and nature of reservation do not actually go hand-in-hand. While the NSS surveys do not capture data on the income levels of the SC, ST and OBC, other research firms do. This social science evidence is necessary in understanding whether the reservations act as a boon or bane. For instance, the data of the year 2016 shows that there is no systematic backwardness for the broad group of SC, ST and OBC. Around 18% of SC households, for instance, had one person who had passed Class 12; given this is 19% for ST, 23% for OBCs and 25% for upper castes (UC), this does not suggest any systematic backwardness for all SCs.Similarly, 8% of all SC households earned more than Rs 10 lakh that year, and it was the same for OBCs; once again, that is hardly a sign of systematic backwardness[33].

To provide an ever clearer picture, as per the data, while the average SC household earns Rs. 1.8 lakhs, an average OBC household earned Rs. 2 lakhs. As a matter of fact, there were OBC households earning less than the SC/ST households. An upper caste household with every member being illiterate, the data shows that they earned around Rs. 95,756 per annum whereas a SC household with primary school education earns Rs. 1,38,152. On the other hand, an upper caste household with primary education qualification earns Rs. 1,48,018 in comparison to a household of SC with matriculation earning Rs. 1,86,592 and the ST matriculation household earning Rs. 1,84,130[34]. Instead of taking into consideration the age-old backwardness, other criterias need to be considered in order to prove the reservations to be constitutional in its essence. The 'creamy layer' criteria needs to be made applicable to all the groups in order to filter out groups.As per the National Sample Survey Office, 44% of the Indian population fall

[32] B K Pavitra v Union of India, (2019) 16 SCC 129 (India).
[33] Sunil Jain, *Rational Expectations: SC needs to look at data on reservation*, FINANCIAL EXPRESS (March 10, 2021 4:45 AM), https://www.financialexpress.com/opinion/rationalexpectations-sc-needs-to-look-at-data-on-reservation/2209474/.
[34] *Supra*.

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into the category of OBC with 9% belonging to the ST and 20% to the SC[35]. Despite the available data, only a few groups belonging to these classes are actually able to reap the benefits out of the reservation system.

The decisions in *M. Nagaraj* and *Pavitra*[36] reflect the growing importance of social science data/evidence in court. Quantifiable data is a justifiable ground for allowing or refusing reservation and the usage of such data while deciding on the constitutionality of reservation exhibits fair law and procedure. The admission of social science evidence will also help curb the arbitrary action of the states and the same was also held in the *Nagaraj* judgement as follows- *"It (equality) is violated by arbitrary exercise by those on whom it is conferred. This is the theory of 'guided power'. This theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred would be corrected by the Courts. This is the basic principle behind the enabling provisions which are incorporated in Articles 16(4A) and 16(4B).*[37]*"*

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[35] *Supra.*
[36] This case also relied on the expert committee report to adjudge whether overall administrative efficiency was being compromised, in upholding the validity of the reservations.
[37] *Supra* at 21.