



## A CLARION CALL FOR UPLIFTING THE BACKWARD AMONG THE BACKWARD FOR A FORWARD-LOOKING INDIA – CASE COMMENT ON *STATE OF PUNJAB v. DAVINDER SINGH*

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### ABSTRACT

The Supreme Court of India, through its judgment in *State of Punjab v. Davinder Singh* dated 01<sup>st</sup> August 2024, ruled that the sub-classification of Scheduled Castes (SC) and Scheduled Tribes (ST) is permitted, and that it is within the legislative competence of the state legislatures to create sub-classification within the SC and ST. This ruling marked an end to the 20-year-old *E V Chinnaiiah* judgment that restrained the sub-classification within the SC / ST. The apex court in *Davinder Singh* clarified that all castes within SC / ST are not homogeneous and that there exist internal differences among the SC / ST, making sub-classification within them an essential aspect of ensuring equality. The case comment aims to discuss the rationale and evolution of the concept of reservation in India and examine how the judiciary has employed it to uphold substantive equality in the country. The case comment discusses various attempts made by the State Legislatures to implement sub-classification within SC/ST and the judiciary's response against such legislative actions. The case comment analyses the legislative competence of the State Governments to carry carrying out sub-classification within SC / ST, and also the overlap between the power of State Governments to sub-classify and the provisions contained in Article 341 of the Constitution. The case comment also aims to analyze the observation made by the Apex Court in *Davinder Singh* about the application of creamy layer principle to the SC / ST, and its potential impact in the long run in Indian society.

**Keywords:** Davinder Singh, Reservation, Sub-classification, Scheduled Caste, Scheduled Tribe.

### I. Introduction

The policy of 'Reservation' is a subset of affirmative action followed in India with the objective of ensuring equal access to the resources of the country to the disadvantaged or downtrodden sections of society. Reservation, a policy expressly stated in the Indian Constitution, is also known as 'protective discrimination' or 'compensatory mechanism' which was advocated with the intention of eradicating certain discriminations imposed upon certain sections of people

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historically in the name of caste, gender or other disabilities<sup>1</sup>. While reservation, by itself, is constitutionally guaranteed, there arise several moot points when there is sub-classification within reservation, ultimately attempting to answer on who gets how much share of the pie. Historically, as part of policy, sub-classification within the reserved classes has been introduced, and the Courts have also stepped in to resolve interpretation issues and constitutional conundrums arising from such policy decisions. This case comment explores the case of *State of Punjab v. Davinder Singh*<sup>2</sup>, a relatively recent ruling of the Indian Apex Court that has altered the landscape in this arena.

## II. A Nonchalant History from Champakam Dorairajan to Chinnaiah

The Indian Constitution embodies the right to equality as a fundamental right available to every person in the country<sup>3</sup>. However, preferential treatment to certain sections of society was added in the Indian Constitution through the first amendment in 1951<sup>4</sup> to nullify the effect of *Champakam Dorairajan*<sup>5</sup> and to bring Schedule Castes (“SC”) and Schedule Tribes (“ST”) to mainstream society. Though reservation was viewed as an exception to the principle of equality in the primordial stages of the Indian Constitution, it was later interpreted by the Supreme Court as a means to ensure substantive equality in India.<sup>6</sup> Even though Article 14 eliminates discrimination by equal treatment, treating the downtrodden or disadvantaged section of society on par with the privileged class through formal equality, will not only hamper the development of the former but will also lead to their further degradation<sup>7</sup>. With the advent of Indian society, problems arose with respect to implementation of reservation across the downtrodden society. Though the state has conducted sub categorization among the Other Backward Caste (“OBC”) category through the creamy layer policy, such a concept has remained alien to the SC/ST in India in spite of demands

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<sup>1</sup> C. Basavaraju, “Reservation under the Constitution of India: Issues and Perspectives” *Journal of Indian Law Institute* 267 (2009).

<sup>2</sup> *Supra* note 1.

<sup>3</sup> The Constitution of India, art. 14.

<sup>4</sup> The Constitution (Amendment) Act, 1951 (Act No. XXXVII OF 1951), s.2.

<sup>5</sup> *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

<sup>6</sup> *State of Kerala v. N M Thomas*, AIR 1976 SC 490.

<sup>7</sup> Sasheej Hegde, “The Many 'Truths' of Reservation Quotas in India: Extending the Engagement”, 61 *Social Scientist* (2015).

from various corners<sup>8</sup>. The Supreme Court of India, starting from *N M Thomas*<sup>9</sup>, highlighted the need to introduce the creamy layer concept for the reservation of SC / ST and has reiterated its stand in several subsequent cases<sup>10</sup>, which has remained unimplemented ever since.

Though the Constituent Assembly was unanimous in incorporating the reservation policy into the Constitution, there was no consensus regarding the quantum of reservation, the castes to be included and the spheres where reservation must be applied to<sup>11</sup>. Such decisions, often left to the discretion of the legislatures, have led to social friction, multiplicity of litigation and tactics of pressure politics on legislature<sup>12</sup> thereby creating a sense of bemusement within the state machinery. It was at this juncture that certain state governments began the act of sub-classification by finding the ‘more backwards’ among the SC / ST and giving them preference over the rest of SC / ST as part of the reservation policy. The sub classification of the SC / ST and giving preference to the more backward among the SC / ST was incorporated into express and specific legislations by states such as Punjab<sup>13</sup>, Andhra Pradesh<sup>14</sup>, Tamil Nadu<sup>15</sup> etc. Such legislations faced social and legal hurdles, including hurdles from the judiciary which raised the issue of legislative competence, citing that such legislations introducing sub-classification were contrary to Article 341 of the Indian Constitution. Sub-classification by the states was thwarted out completely by the Apex Court in *Chinnaiah*<sup>16</sup>, where the court found that the Scheduled Castes is, by itself, a homogenous class, due to which sub-classification among them would be impermissible. Further, it held that the act of the state governments to grant reservation based on sub classification was ultra vires<sup>17</sup> to the Constitution. Relying on this judgment, other High Courts struck down those laws that allowed state governments to sub-classify the SC / ST.

<sup>8</sup> Himabindu M, “Policy and politics of sub-categorization of scheduled caste reservations in India: A Social Justice Perspective” *The Indian Journal of Political Science* 644 (2014).

<sup>9</sup> *Supra* note 6

<sup>10</sup> *Singh v. Lachhmi Narain Gupta*, (2022) 10 SCC 595.

<sup>11</sup> *Supra* note 9 at 644.

<sup>12</sup> *Ibid.*

<sup>13</sup> Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (Act 22 of 2006).

<sup>14</sup> Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 (Act 20 of 2000).

<sup>15</sup> The Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of Appointments or Posts in the Services under the State within the Reservation for the Scheduled Castes) Act 2009 (Act 4 of 2009).

<sup>16</sup> *E V Chinnaiah v. State of Andhra Pradesh*, AIR 2005 SC 162.

<sup>17</sup> *Ibid.*

### III. The Inception of Davinder Singh

The legislature of Punjab passed the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (“PSCBC Act”). The PSCBC Act was passed with the object of ensuring preferential treatment to some subcastes within the Scheduled Castes for direct recruitment in public services. The PSCBC Act provided for a 25% reservation for the SC and a 12% reservation for the backward castes in recruitment to public service<sup>18</sup>. Further, the PSCBC Act provided that 50% of the quota reserved for SC in direct recruitment should be offered to Balmikis and Mazhabi Sikhs, subject to their availability, as first preference among the SC<sup>19</sup>. The provisions granting a preference to the Balmikis and Mazhabi Sikhs were challenged before the Punjab and Haryana High Court, where it was held as unconstitutional by placing reliance on *Chinnaiah*. The order of the Punjab and Haryana High Court challenged by the Government of Punjab before a 3-judge bench of the Apex Court was referred to a 5-judge bench of this court<sup>20</sup>. The 5-judge bench opined that the decision the Apex Court in *Chinnaiah* (also a 5-judge constitutional bench decision) required revisiting, and hence the matter came up for consideration before a 7-judge bench of the Supreme Court of India.

### IV. Issues Considered in Davinder Singh

The issues considered by the 7-judge bench in the instant case<sup>21</sup> were:

1. Whether the sub-classification of SC and backward castes as stipulated under Section 4(5) of the PSCBC Act is permissible under Articles 14,15 and 16 of the Constitution of India?
2. Whether the PSCBC Act is violative of Article 341(2) owing to the want of legislative competence?
3. Whether the SC / ST in India constitute a homogeneous class and whether Article 341 of the Indian Constitution classifies them as a homogeneous class for the purpose of reservation?
4. Whether creamy layer criteria can be applied to SC / ST?

### V. A Brief Summary of the Judgment in Davinder Singh

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<sup>18</sup> Punjab Scheduled Castes and Backwards Classes (Reservation in Services) Act, 2006 (Act 22 of 2006), s. 4(2).

<sup>19</sup> Punjab Scheduled Castes and Backwards Classes (Reservation in Services) Act, 2006 (Act 22 of 2006), s. 4(5).

<sup>20</sup> *State of Punjab v. Davinder Singh*, 2020 8 SCC 1.

<sup>21</sup> *Supra* note 1.

The Supreme Court, by a 6:1 ratio, held that sub-classification of SC and ST is permitted and that it is within the legislative competence of the state legislatures to create sub-classification within SC and ST.

- a. The Chief Justice of India, Justice D. Y. Chandrachud, and Justice Manoj Mishra upheld the power of states to create sub-classifications within SC / ST to promote substantive equality. They ruled that such sub-classifications are permissible if they ensure that benefits are targeted toward SC / ST that are empirically found to be inadequately represented in state services. It was also ruled that sub-classification does not violate Article 341(2), and that Article 341(1) only creates a constitutional identity, and it does not classify the SC as a homogeneous class.
- b. Justice B R Gavai upheld the sub-classification of the inadequately represented sub-castes among SC / ST, subject to the fact that such inadequate representation should be supported by empirical data and that the reservation should be extended to such sub-castes and the remaining castes among SC / ST. Further, he emphasized on the extension of creamy layer principle to the SC, though the fundamental criteria may be different from OBCs.
- c. Justice Pankaj Mithal, while agreeing with the opinion of the above judges, emphasized the need to limit reservation to the first generation of any of the beneficiaries.
- d. Justice Vikram Nath and Justice Sathish Chandra Sharma agreed that *E V Chinnaiah* laid down bad law and pointed out the requirement of extension of creamy layer criteria to SC / ST.
- e. Justice Bela M Trivedi, marking her dissent, upheld the correctness of *E V Chinnaiah* and questioned the reference made by the 3-judge bench to a higher bench without assigning any cogent reasons or settled precedents. Finding that the castes in the lists under Article 341 are homogenous, she observed that the same cannot be tinkered by the state legislatures and that the exclusive power for the same lies with the parliament only.

## VI. The Jurisprudence of Reservation in India

The reservation policy in India has been incorporated into the Constitution with the object of uplifting the downtrodden section of society. Article 14 offers equality before the law and equal protection of the law. However, a literal adaptation of it would lead to 'formal equality', where everyone would be treated alike irrespective of their circumstances. This may not directly translate

into ‘factual equality’<sup>22</sup>. The reservation policy is restrained by the fact that the Constitution mandates appointment of SC/ST to service, subject to the maintenance of efficiency in administration<sup>23</sup>. The Apex Court has also opined that reservation in promotion, per se, is detrimental to the efficiency of service<sup>24</sup>. However, the Supreme Court later clarified that equality is applicable only to individuals who are in similar or comparable situations and that the concept of merit cannot be viewed as antithetical to merit or distributive justice<sup>25</sup>. The concept of merit cannot be ascertained from the performance of candidates in a seemingly neutral selection process (which is factually not neutral), since the process may not provide equal opportunity to some classes that may be alienated from accessing the facilities required to clear such a selection process<sup>26</sup>. Hence, the reservation policy has been introduced to give a bare minimum footing to those strata of society caught in inescapable quagmires.

## VII. Concept of Equality, Reservation and Article 341 – An Inherent Conflict?

The sub-classification within the SC was seen as a way to promote substantive equality by preventing certain sub-castes within the SC/ST category from engrossing the benefits of reservation, thereby ensuring that the more disadvantaged groups among the SC/ST received protection and support. Such sub-classification in the form of finding the ‘more backward among the backward’ is not an alien concept and has received judicial nod even before<sup>27</sup>. The Apex Court, while upholding this policy, used the aid of Articles 14, 15 and 16 to find that internal classification within the SC/ST category is justified. However, this is subject to the condition that the state legislature, while formulating such reservation policies based on sub-classification, should prove inadequate representation of the less privileged sub-caste in the state services and that such policies shall not deprive other sections of the SC from reservation<sup>28</sup>.

Article 341 of the Indian Constitution does not create a legal fiction for the Scheduled Castes, thereby assigning them any constitutional identity. In fact, the provision creates a legal fiction for ‘identification’ of Scheduled Castes by distinguishing them from other groups (*emphasis*

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<sup>22</sup> *Ibid.*

<sup>23</sup> The Constitution of India, art. 335.

<sup>24</sup> *General Manager, Southern Railway v. Rangachari*, (1962) 2 SCR 586.

<sup>25</sup> *B K Pavithra v. State of Karnataka*, 16 SCC 129.

<sup>26</sup> *Neil Aurelio Nunes v. Union of India*, (2022) 4 SCC 1.

<sup>27</sup> *Indira Sawhney & Others v. Union of India*, AIR 1994 SC 477.

<sup>28</sup> *Supra* note 1.

*supplied*). Thus, the list of scheduled castes under Article 341(1) and the power of Parliament to make exclusion and inclusion in that list<sup>29</sup> were found completely inconsequential to the concept of reservation.<sup>30</sup>

### VIII. Homogeneity of SC/ST and the Creamy Layer Principle

The misinterpretation of *N M Thomas* in *E. V. Chinnaiah* established the principle that the SC are considered a homogeneous group, thereby prohibiting any sub-classification within this class. *E. V. Chinnaiah* affirmed that no form of classification, including the application of the creamy layer principle, which is applied to OBCs, could be extended to the SC. The overruling of *E. V. Chinnaiah* in *Davinder Singh* has had severe implications, such as establishing the SC as a heterogeneous group that can be further sub-classified. The dissenting opinion of Justice Bela Trivedi in the present case upheld the view taken in *E. V. Chinnaiah* that the SC itself forms a uniform caste. To promote the underprivileged among the backward section, additional training must be imparted to them to ensure substantive equality rather than classifying them again.<sup>31</sup>

By upholding the sub-classification among the SC/STs, the judiciary has addressed that mere inclusion of a caste/tribe in the list in Articles 341 and 342 of the Constitution does not lead to an inference about the existence of any internal difference among them<sup>32</sup>. It has also sparked discussions about extending the concept of the creamy layer to the SC which has been encouraged by the Apex Court in many of its previous judgments<sup>33</sup>. Despite the previous pronouncements of Apex Court suggesting the executive to consider extension of creamy layer concept to SC/ST, there has never been any meaningful initiative on the part of the executive in implementing the same. The legalization of sub-classification among the SC and the reaffirmation of applying the creamy layer concept to SC/ST communities by the Supreme Court is undoubtedly sending a strong message to the executive for the due implementation of the latter.

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<sup>29</sup> The Constitution of India, art. 341(2).

<sup>30</sup> *Supra* note 1.

<sup>31</sup> *Ibid.*

<sup>32</sup> Anurag Tiwary, *Sub-Classification Within The SC & ST Categories Should Not Eventually Lead To De-Reservation* LiveLaw, available at: <https://www.livelaw.in/articles/sub-classification-within-the-sc-st-categories-should-not-eventually-lead-to-de-reservation-269214?infinitemscroll> (last accessed on Sept. 13, 2024).

<sup>33</sup> *Supra* notes 6 and 10.

## IX. Legislative Competence of State Governments

The question of the state governments' legislative authority to create sub-classifications within the SC/ST category, which had long been a daunting issue, appears to have been resolved in *Davinder Singh*<sup>34</sup>. While it was already established that state governments have the authority to create quotas within OBCs, the Supreme Court's assertion that states have the same power within SC/ST communities has introduced a completely new area of jurisprudence. The Presidential list under Article 341 and the conditions that it can be modified only by the parliament under Article 341(2) served as hindrance on the power of the state governments on making sub-classifications among the SC. This hindrance was removed by *Davinder Singh*. The sub-classification, unlike creamy layer, does not exclude any people from benefits of reservation; rather, the sub-classification only identifies a group to which preferential treatment has to be accorded.

The state governments' power to sub-classify is based on the idea that they, being more familiar with the ground realities within its territory, are best equipped to identify and address the needs of the most disadvantaged groups (*emphasis supplied*). A one-size-fits-all Central list will indeed be far from the ground realities of each state in India. Though the dissent in *Davinder Singh* rejects the idea of the state governments sub-classifying SC/ST, it is the assistance rendered by Articles 14, 15, and 16 to ensure substantive equality that empowered the Apex Court in upholding the power of state governments to find the more underprivileged among the socially backward castes and grant preferential treatment to them. This harmonious construction and purposive interpretation of Articles 14-16 with Article 341 have been a shift towards transformative constitutionalism. However, this must not be the foundation of excessive politicization and promotion of arbitrariness by state governments, as feared by Justice Bela Trivedi. The Central and State governments should work in tandem and should periodically, say once every 5 years, conduct empirical reviews of the impact of sub-classification, and should be open to overhauling and rewriting the sub-classification system periodically, say once in 20 years. This review should ideally be undertaken by an independent, preferably constitutional, council with representatives from the Central and relevant State governments, akin to the GST council.

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<sup>34</sup> *Supra* note 1.

## X. The potential socio-economic impact of Davinder Singh in the long run

While it appears that the Supreme Court judges have supported sub-classification in a 6:1 ratio. A deep dive into Davinder Singh reveals that even the assenting Judges have expressed the need for safeguards regarding the concept of sub-classification. For instance, Justice B. R. Gavai has insisted that the sub-classification should be backed by quantifiable and demonstrable data<sup>35</sup> Justice Pankaj Mithal has laid down that the reservation should be for the first generation of the beneficiaries<sup>36</sup>.

This aspect of empirical backing, periodic review and prompt sunseting of benefits disbursed through reservation is critical to ensure substantive equality. Otherwise, the socio-economic impact of Davinder Singh in the long run may turn out to be adverse, as it may promote caste hardening and more rigid boundaries among caste sub-groups than moving towards caste transcendence. It may also impose heavy strain on the entire reservation system, as every sub-group may start demanding their own 'quota within quota' eventually leading to quota inflation. There is a possibility that resentment among groups that do not receive sub-classification benefits may be politically exploited to trigger social flare-ups. It is quite logical that caste groups with sub-classification benefits will eventually be better off than those without sub-classification benefits, and it may also result in monopolization of benefits. Caste-based political coalitions and consequent policy fragmentation may also substantially increase if sub-classification is left unchecked. More so in a society that has continuously debated about the impact of reservation on merit.<sup>37</sup> The idea of sub-classification deserves to be data-driven, periodically reviewed and promptly unsettled.

Justice Bela Trivedi has expressed a more minimalistic attitude by deferring to the Parliament and choosing non-interference with the Presidential lists by the State Governments. While her interpretation and reading of Article 341 is not something the authors currently identify themselves with, her view that affirmative action and legal frameworks must ensure fairness and constitutionality is something the authors are strictly aligned with. Any unfairness or unconstitutionality that may arise out of the sub-classification of SCs deserves to be promptly

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<sup>35</sup> *Supra* note 1 at para 190.

<sup>36</sup> *Supra* note 1 at para 84(iii).

<sup>37</sup> J.Laxminarasima Rao, "Reservation Policy and the Principle of Merit: A study of Indian bureaucracy" 4 *The Indian Journal of Political Science* 53 (1992).

examined. However, not giving the sub-classification of SCs a try, will amount to missing the bus when globally human rights and affirmative action have adequate recognition.

## XI. Conclusion

The judiciary's evolution from striking down a rule that provided reservations to backward classes on the ground of caste discrimination to allowing sub-classification to allocate reservations to the most disadvantaged groups in order to promote substantive equality demonstrates its progression over time and its commitment to transformative constitutionalism. With several states like Haryana<sup>38</sup>, Andhra Pradesh<sup>39</sup> and Telangana<sup>40</sup> taking legislative action in consonance with the judgment, the sub-categorization within the SC/ST has become a formal policy within reservation. However, even when the judgment seems to have set a historic precedent, it cannot be construed without concern. The Davinder Singh ruling, though, has laid down several constitutionally acceptable methods for carrying out subclassification, but has failed to lay down a uniform or acceptable yardstick. The Apex Court chose to leave the methods to be adopted for sub-classification open-ended, thereby making it a matter for the legislature. It must be said that the Apex Court has missed a golden opportunity to lay down clear and rational guidelines in this sphere, and by leaving it to the discretion of the legislature, which is further amendable to judicial review, has resulted in unnecessary wastage of time and resources. The Apex Court also seems to have heavily relied upon the introduction of the creamy layer principle among the SC/ST category in this judgment, even though it was not an issue for consideration before this court. The judiciary's reiteration of the creamy layer principle as an obiter, reflects its displeasure with the executive's continued failure to implement it, despite the repeated judicial directions. The judiciary, during the initial phases, viewed the concept of reservation and the provisions of Articles 15(4) and 16(4) as an exception to the facet of equality<sup>41</sup>, though at a later stage, judicial precedents perceived reservation as a facet of equality and as an enabling provision to Article 14,<sup>42</sup> thereby promoting substantive equality over formal equality. The repeated judicial approval of the creamy layer

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<sup>38</sup> Varinder Bhatia, "Haryana introduces new SC reservation categories for govt jobs" *Indian Express*, Nov. 14, 2024.

<sup>39</sup> M. Raja, "Telangana becomes first State to notify categorization of Scheduled Castes after Supreme Court verdict" *The Hindu*, Apr. 14, 2025.

<sup>40</sup> PTI, "Andhra Pradesh issues ordinance on SC sub-categorization classifying into three groups", *New Indian Express*, Apr. 17, 2025.

<sup>41</sup> *M. R. Balaji v. State of Mysore*, AIR 1963 SC 649; *B Venkataramana v. State of Madras*, AIR 1951 SC 229.

<sup>42</sup> *Supra* notes 7 and 28.

principle in the SC/ST category has been seen by many as a departure from its stand of promoting substantive equality over formal equality<sup>43</sup>. Though the intention of the sub-classification is claimed to ensure a fair share for the marginalized within the backward, it carries the risk of being misused for the furtherance of vote bank politics. The identification of the sub-castes among SC/ST and sub-classifying them for the purpose of reservation poses a mammoth challenge before the legislature, and if not carried out in consonance with the spirit of it, will lead to the derailment of affirmative action and prolongation of judicial battles against inclusion of SC/ST into mainstream society. Setting aside all these concerns, this judgment is a reality check for modern society on the status of rights available to the SC/STs, and on how the stratification of underprivileged communities poses varied challenges. The Apex Court's upholding of the power of the state governments is clearly a progressive sign of preferring practicality over technicalities in matters relating to the interpretation of the law.

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<sup>43</sup> *Supra* notes 6 and 11.