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# **SUB-CLASSIFICATION OF SCs AND STs IN RESERVATION POLICIES: AN ANALYSIS CONSIDERING SUPREME COURT JURISPRUDENCE**

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## **ABSTRACT**

The jurisprudence of reservation policies for the Scheduled Caste and Scheduled Tribes is experiencing a shift in paradigm from a homogenous monolith understanding to one of appreciating internal differentiation. Recent Supreme Court decisions have confirmed the constitutionality of subclassification striving towards substantive equality.<sup>1</sup> In this scenario, state governments have the authority to identify and give preference to the more backward within the backward classes. However, this also opens a Pandora's box constitutionally. This paper seeks to analyse the subclassification of SCs and STs and posits that, despite the numerous constitutional and political obstacles, subclasses remain a political necessity of the transforming character of the constitution.

Using the sub-classification of Punjab and Andhra Pradesh, this paper attempts to address the state of 'equality as opposed to group fragmentation'. This type of state sub-classification provides no empirical evidence to sever the relations of the most backward classes of society for the purpose of satisfying the political desires of a vote bank, all the while contravening the provisions of Article 14<sup>2</sup> and the federal limitation of Article 341.<sup>3</sup> Therefore, to prevent the abuse of distributive justice, this paper argues that political justification should be entirely excluded from the consideration of subclassification. It is argued that any government classification of castes in sub-groups must be based on current empirical data, which is collected by a non-partisan institutional body. Also, the paper seeks to reconcile the constitutional requirement to lift the very bottom rung of society with the also necessary task of protecting vulnerable groups from political division, which may be man-made.

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<sup>1</sup> State of Punjab v Davinder Singh [2024] INSC 586

<sup>2</sup> Constitution of India, art 14

<sup>3</sup> Constitution of India, art 341

## Introduction

The genesis of India's affirmative action jurisprudence cannot be divorced from the brutal historical reality of the caste system. For centuries, the communities now designated as Scheduled Castes (SCs) & Scheduled Tribes (STs) were subjected to systemic subjugation, stripped of socio-economic agency, and heavily instrumentalised as tools of agrarian and menial labour to serve the upper echelons of the caste hierarchy. Recognising this profound historical injustice, the Constitution framers sought to engineer a social revolution through the Constitution. Knowing of this socio-economic condition in the society, Dr B.R. Ambedkar warned the Constituent Assembly: *"We must begin by acknowledging the fact that there is a complete absence of two things in Indian society. One of these is equality... In politics, we will have equality and in social and economic life, we will have inequality. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy."*<sup>4</sup>

As a response to the contradiction and to promote social mobility, the Constitution incorporated rudimentary forms of distributive justice and placed the most underprivileged classes under the protective rubric of "Scheduled Castes" in Article 341. However, as these strata developed within the democratic processes, a layered socio-cultural reality came to the fore. When the Constitution's stratification of the SC for administrative convenience, what Boggs calls a 'legal fiction,' evolved, it addressed the SC as a homogeneous, undifferentiated, and monolithic group. It was obvious for many years that the socio-economic development of the SC community was grossly uneven. The 'affirmative action' benefits were captured almost entirely by the relatively advanced dominant sub-groups and left the 'poorest of the poor' trapped in social isolation and structural deprivation.

For many years, constitutional jurisprudence, strongly influenced by the Supreme Court's 2004 decision in *E.V. Chinnaiah v. State of Andhra Pradesh*, centred on formal equality. The Court argued that sub-classification was unconstitutional for 'tampering' with the Presidential List, thus creating a situation of treating unequal subgroups as equals. A genuine pressure for distributive justice was generated by the historic seven-judge bench decision in *State of Punjab v. Davinder Singh* (2024). Overruling *Chinnaiah*, the Court recognised the undeniable internal hierarchies of the SC and ST categories and confirmed that complete substantive equality under

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<sup>4</sup> *Constituent Assembly Debates 25 November 1949, 979 (Dr BR Ambedkar).*

Article 14 necessitates — and calls for — the subclassifying of the most ‘genuinely’ disadvantaged. The Judiciary, however, also delegates the greatest latitude to state legislatures, opening an intricate Pandora’s Box of constitutional problems. Although, in principle, the ‘sub-classification’ of disadvantaged groups is an essential component of any strategy aimed at substantive equality, in practice, state governments have been known to misuse it. Sub-classification, motivated by electoral calculations, opposed to equity, has, in the past, been used by states to exploit the severe vulnerabilities of these communities for vote-bank appeasement.

This paper seeks to explore the complicated relationship between substantive equality and state-initiated sub-classification. In this regard, it will be argued that while breaking the myth surrounding SC/ST homogeneity is constitutionally warranted, the sub-classifying of ‘genuinely disadvantaged’ people must be effectively safeguarded from petty state political opportunism. To prevent the malicious fragmentation of vulnerable groups and to fulfil the fundamental constitutional theory of true social democracy and equality, this paper posits that any state-led sub-classification must be strictly contingent upon authentic, contemporaneous empirical data gathered by an independent, non-partisan institutional framework, completely decoupled from the political executive.

### **Research Questions**

1. Does treating SCs and STs as homogenous monoliths violate the mandate of substantive equality under Article 14?
2. How does politically motivated, state-led sub-classification conflict with the federal framework and exclusive parliamentary powers under Article 341?
3. Can mandating independent institutional frameworks for gathering empirical data successfully reconcile the need for sub-classification while preventing political balkanization?

### **Research Methodology**

This research employs a doctrinal and analytical methodology. It relies on primary legal sources, including the Indian Constitution, Constituent Assembly Debates, and landmark Supreme Court judgments (specifically the shift from *E.V. Chinnaiah* to *Davinder Singh*). Secondary sources, such as legal treatises, News articles, media reports, and institutional

reports, are utilised to evaluate the socio-political realities and political weaponisation of sub-classification.

### Limitations of the Study

1. **Doctrinal Scope:** This study relies on existing jurisprudence and secondary literature rather than primary empirical fieldwork.
2. **Subject Limitation:** The analysis is strictly restricted to the sub-classification of SCs and STs, drawing only brief jurisprudential parallels to Other Backwards Classes (OBCs).
3. **Jurisdictional Focus:** This paper is directed at identifying major, established constitutional considerations and significant case studies of the various states (e.g., Punjab and Andhra Pradesh), and does not attempt to provide an exhaustive historical legislative overview by state of the various legislations establishing the exclusive jurisdiction of Parliament (Article 341).

### The Historical Genesis of the SC/ST Categories and the Fiction of Homogeneity

The Scheduled Castes and Scheduled Tribes categories in the Constitution first appeared in the Government of India Act of 1935.<sup>5</sup> The constitution's framers, in the case of SCs, incorporated them under Article 341, whereas in the case of STs, they incorporated them under Article 342.<sup>6</sup> Identifying the oppressed groups of the society would, in the first place, pinpoint the right groups for the affirmative action intended to achieve socio-economic equality — the provisions in the constitution's Articles 14, 15, and 16. For example, to prevent political clientelism, the constitution provides for a very rigid and centralised procedure for ascribing a caste or tribe the presidentially bestowed 'scheduled' status. A published list of 'scheduled' castes and tribes has, in the words of the Supreme Court, absolute sanctity. The first case where the Supreme Court addressed the issue, *State of Maharashtra v. Milind*<sup>7</sup>, and the older case of *Bhaiyalal v. Harikishan Singh*<sup>8</sup>, both established that state governments neither add, delete, nor modify the list. Parliament is the only competent authority to modify the list, and even that is subject to a

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<sup>5</sup> Government of India Act 1935

<sup>6</sup> Constitution of India, articles 341 and 342

<sup>7</sup> *State of Maharashtra v Milind* (2001) 1 SCC 4

<sup>8</sup> *Bhaiyalal v Harikishan Singh* (1965) 2 SCR 877

detailed and complicated process of determining the 'untouchable' or extremely backward classes.

The constitution's rigidity doesn't allow state-level tampering with the lists; however, it has also created the illusion of unity. Putting different castes as a single 'Schedule' was a constitutional ease for affirmative action. It was not meant to be a verdict that each group on the list suffered equally. Over the years, the sociological reality of 'graded inequality' has collapsed the social reality of the implementation of the enabling provisions of articles 15 (4) and 16 (4). The reservation policies have benefited relatively advanced, dominant sub-castes within the SC and ST lists, who have slightly higher social and educational status. The 'weakest of the weak' — sub-castes of the most stigmatised and menial occupations — are still left out of the policies made to free them.

Identifying these many sub-groups as legally equal has created a constitutional inconsistency. Imposing a legal equality within the SC/ST framework has maintained inequality. This unequal treatment has created differences, as state governments have made these lists unilaterally, leading to frustration from the centre. This sociological fact necessitated that access be obtained through the "narrative" and "transformative" character of the Constitution (Article 341) to create an urgent constitutional mandate: the need to substantiate the "narrative" and "transformative" character of the Constitution via "what the Constitution says about 341"

**The Jurisprudential Shift—From *E.V. Chinnaiah* to *Davinder Singh*:** The last twenty years of India's Supreme Court cases related to affirmative action and how the law balances formal and substantive equality are characterised by formal equality, where the Court has been unable to allow for State action to be taken to the most underprivileged sub-groups of the SCs. This Stagnation was defined by the Constitution bench in 2004 and was struck down by the Supreme Court in 2024, marking a significant shift to modern constitutional law.

**The Stagnation of *E.V. Chinnaiah* (2004):** The 2024 case that will overturn this sets the constitution on an entirely new force. *E.V. Chinnaiah v. State of Andhra Pradesh*<sup>9</sup>, where the five-judge bench evaluated the Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000, where 15% SC reservation has been divided into 4 categories and

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<sup>9</sup> EV Chinnaiah v State of Andhra Pradesh (2005) 1 SCC 394

sub-classified based on their relative backwardness. The Supreme Court struck down the legislation that had governed for the last twenty years.

The Court's reasoning in the Chinnaiiah case encompasses two elements. The plain meaning of Article 341 and the consolidated Presidential List, in the Court's view, means that they have to leave the Presidential List as is. The Court views any subclass or subclassification of state legislatures as 'tinkering' as opposed to restructuring. Second, the Court looks to Article 14 and claims that once castes are merged into the Presidential List, they become a single, internally homogeneous unit, a 'class in themselves.' Hence, any micro-classification creates a lack of intelligible differentia and therefore results in a constitutional violation by discriminating within the class.

Chinnaiiah's greatest achievement was preserving the Presidential List<sup>10</sup> from arbitrary state modification; its greatest shortcoming was sociological blindness. Allowing dominant SC sub-groups to reserve the most seats from the affirmative action allocations for themselves while the 'weakest of the weak' remain virtually excluded from the social justice provisions of Articles 15(4) and 16(4) leaves a dominant SC surplus immunised against the provisions of those Articles.

**The Paradigm Shift: *State of Punjab v. Davinder Singh (2024)*:** The Punjab Scheduled Castes and Backwards Classes (Reservation in Services) Act, 2006, which reserved 50% of the SC quota for affirmative action for Balmikis and Mazhabi Sikhs, was a legal challenge to the jurisdictional stalemate, which was invalidated by the High Court based on Chinnaiiah. On 22 September 2023, in the *State of Punjab v Davinder Singh*<sup>11</sup>, the Supreme Court allowed a reference to a seven-judge bench to review its earlier decision in E.V. Chinnaiiah. This was based on the recognition of the importance and urgency of reviewing this precedent.

In a landmark decision (6:1) in Davinder Singh, the Supreme Court has overruled Chinnaiiah, confirming that states have the constitutional authority to create sub-classifications within the Scheduled Castes and Scheduled Tribes categories established by the Constitution. The Court's reasoning has effectively removed the "homogenous monolith" fiction from the constitutional

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<sup>10</sup> Chinnaiiah (n 9)

<sup>11</sup> State of Punjab v Davinder Singh [2024] INSC 586

law framework and brought constitutional law into compliance with the socio-economic realities faced by people who have been affected by the Devinder Singh decision.

The rationale of the Davinder Singh decision dismantled the Chinnaiah rationale on three distinct levels:

1. **Dismantling Homogeneity:** The majority recognised that the SCs do not constitute a homogenous group. Historical discrimination, occupational stigma, and contemporary empirical data prove that deep-seated hierarchies exist within the schedule.
2. **Upholding Substantive Equality:** Relying on the doctrine of substantive equality (echoing the spirit of *State of Kerala v. N.M. Thomas*), the Court held that Article 14 commands the State not only to treat equals equally<sup>12</sup>, but to treat unequals unequally. Providing identical preference to both the relatively advanced and the acutely backward sub-castes within the SC category defeats the very essence of distributive justice.
3. **Reinterpreting Article 341:** Crucially, the Court drew a sharp distinction between *altering* the Presidential List and *apportioning* benefits among those already on it. Sub-classification does not exclude any caste from the Presidential List, nor does it grant SC status to an unlisted group. It merely reorganises the distribution of the existing quota. Therefore, the State's legislative competence under Articles 15(4) and 16(4) to provide reservations naturally includes the ancillary power to sub-classify to ensure equitable distribution, without violating Article 341.

While *Davinder Singh* liberated the State's power to sub-classify, it did not grant a blank cheque. The Supreme Court unequivocally put forth that arbitrary or politically influenced micro-classifications are impermissible. Any subclassifications must satisfy the strict standard outlined in Article 14 by establishing an "intelligible differentia" and the presence of a "rational nexus" with respect to adequate representation.

The State must provide quantitative, empirical proof of the backwardness of the relevant subgroup as well as a lack of sufficient representation, to justify its use of a subclassification.<sup>13</sup> This critical qualification connects to the fundamental issue at hand. The Supreme Court has

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<sup>12</sup> State of Kerala v NM Thomas (1976) 2 SCC 310

<sup>13</sup> M Nagaraj v Union of India (2006) 8 SCC 212

established an objectively rational basis for achieving substantive equality, but the nature of the political landscape in the states causes abuse of this process through politicisation of the stated legislative purpose and lack of adequate institutional oversight and safeguards.

### **The Pan-Indian Political Calculus and the Empirical Void**

The tension that exists between substantive equality and state-led sub-classification is not a singular, localised issue; following the Supreme Court's approval in *Davinder Singh*, it has been an example of an unprecedented borderless phenomenon. States are beginning to use their newly recognised power to distribute quotas. However, the varying approaches of these states demonstrate a fundamental constitutional weakness: an absence of any empirical method to provide consistency.

The initial response to the Supreme Court ruling was a dash to the bottom among state governments implementing sub-classification in an obvious attempt to win elections. Haryana was the first state to officially announce sub-classification in November 2024. By cabinet decision, it split its Dalit population into two — 'Deprived SCs' and 'Other SCs' — and assigned 50% of the SC quota to each. Contrary to expectations, this rapid implementation was the subject of an immediate court challenge. The Haryana policy is being contested in the Punjab and Haryana High Court, where critics claim the state has no "quantifiable data" to support this extremely arbitrary 50-50 division. Critics charge that the state's Commission for SCs conducted a "mere eyewash" of an exercise, rushing the policy to secure electoral dividends.

The danger posed to the Constitution becomes clear when the data collection mandate is seen as an administrative box to tick rather than a full sociological investigation. On the other hand, via a different legislative approach, Telangana created a Commission and a law to subdivide the SC quota into three. With the latter (particularly the MRPS), the last of many socio-political struggles is being awarded, having claimed for decades that SC reservation benefits have been disproportionately 'captured' by the dominant Mala community in the Telugu states. Though the community grievance in this case is covered, the approach was more about avoiding allegations of 'phantom' quotas. Singh's approach left many glaring issues, as in the case of hasty litigation in the context of Haryana. The absence of a clear definition of the metric set by the SC for determining "contemporaneous empirical data" is a glaring issue.

To avoid courts becoming a 'fourth estate' of the quota regime, the division of quota should

standardise a Composite Vulnerability Index. For sub-classification to pass the rigorous test of Article 14, it must standardise empirically demonstrable disparity across the three pillars of the CVI:

1. **Public Employment Representation:** Monitoring the vertical distribution of dominant sub-castes within Groups A & B to prevent them from monopolising administrative positions while keeping the marginalised sub-group members in Group D.
2. **Educational Attainment:** Measurement of secondary and tertiary dropouts within each of the internal subcastes.
3. **Socio-Economic Capital:** Study of the intergenerational wealth, as historically subjected to extremely high levels of occupational stigma.

**The Weaponisation of Quotas and Group Fragmentation:** With political calculations taking precedence over empirical measures, states become prone to weaponising affirmative action. The greatest risk of index-less sub-classification is the fragmentation of already marginalised communities. State governments aggressively pursuing electoral majorities tend to create micro-quotas to appease organised, vocal sub-caste groups right before elections.

Rather than breaking the caste system, such arbitrary state action reinforces the system by encouraging competing vulnerable sub-castes to fight each other over public goods. State-authored sub-classification, in the absence of a legally mandatory objective index that protects the process, is no longer a mechanism of distributive justice. It becomes a mechanism of political subdivisions.

### **The Antidote to Arbitrariness—Institutional Safeguards and Empirical Mandates**

Davinder Singh over the substantive equality doctrine concerning Singh's case and Article 341's construction. However, by determining sub-classification as a power belonging to the state legislatures without any specific, clear, and detailed methodology, the Court left the possibility open to the legislature to exercise discretion and go for political opportunism. If subclassification is intended to incorporate elements of distributive justice instead of being used as a vote-bank balkanization mechanism, the jurisprudential prescription for contemporaneous empirical data (strict) must be converted from a mere requirement to a more

robust institutional mechanism. The requirement of empirical rigour for positive discrimination action is not a new phenomenon.

In *M. Nagaraj v. Union of India* (2006), and after that in *Jarnail Singh v. Lachhmi Narain Gupta* (2018), the Supreme Court set the bar very high for the State to be able to exercise the enabling provisions of Article 16(4A) and 16(4B). The Court has been very clear that, for the State to act, there must be ample (i.e., class) backwardness and underrepresentation in public service of the class.

An example closer to home must be invoked here. In the same way that the State demands concrete evidence before making reservations in promotions or invoking the 'creamy layer' clause (where the State takes benefit away from the socio-economically advanced), the State must, for other reasons, similarly justify with concrete evidence sub-classification. The reasoning is the same: the State has, outside of political rhetoric, to justify, for the sake of example, that a particular sub-class is not acutely, disproportionately, relatively better off in deprivation vis-a-vis other sub-classes in the Schedule. The most visible breach of the Constitution in the present scenario is in the collection of data. When the political executive appoints commissions to collect data in a way that addresses the immediate political needs of the executive, as we have seen with the haste in collecting data in Haryana and the politically motivated data collection in Andhra Pradesh and Telangana, it creates an acute conflict of interest.

The political executive being the sole decision maker as to what data is collected, how it is collected, and the results of the data collected to serve a particular political purpose is a violation of the principle of *nemo iudex in causa sua* (no one should be a judge in their own cause). The commissions established by the State often do not have any independence, and the results of their work can be heavily influenced to conform to the needs of the ruling party. When data is manufactured rather than discovered, the resulting sub-classification fails the test of Article 14, as the "intelligible differentia" becomes an arbitrary political construct rather than a sociological reality.

To cure this defect, the power to gather and validate demographic data must be completely decoupled from the political executive. This paper proposes that state-led sub-classification must be strictly contingent upon the approval of an independent, non-partisan institutional framework.

Constitutionally, this can be achieved by significantly expanding the mandate of the **National Commission for Scheduled Castes (NCSC)** and the **National Commission for Scheduled Tribes (NCST)** under Articles 338 and 338A, respectively. These commissions are already vested with the powers of a civil court to investigate and monitor all matters relating to the constitutional safeguards for SCs and STs.

Before any state legislature passes a bill apportioning the SC or ST quota, it should be constitutionally mandated to submit its proposed sub-classification, along with its internal demographic findings, to the NCSC/NCST (or a dedicated, independent statutory tribunal created for this specific purpose). This independent body would then rigorously audit the state's data against the **Composite Vulnerability Index (CVI)**.

Only if this independent, quasi-judicial body verifies that the targeted sub-castes genuinely suffer from extreme relative backwardness—based on multi-dimensional metrics of employment, education, and historical stigma—should the state be permitted to enact the sub-classification.

Sub-classification is a double-edged sword. In the hands of a benevolent, objective State, it pierces the veil of monolithic privilege to uplift the most marginalised. In the hands of a politically motivated executive, it slices vulnerable communities into warring factions. Securing "contemporaneous empirical data" to be gathered and verified by an independent constitutional authority seems to be the only possible cure for the high level of arbitrariness. It guarantees the significant prospect of achieving substantive equality while honouring the federal character of the Presidential List in Article 341.

## **Conclusion**

The Supreme Court's evolution of thought from the rigid homogeneity of *E.V. Chinnaiah* to the sociological pragmatism of *State of Punjab v. Davinder Singh* brought about a significant turn in the Indian constitution. The Court has recognised, beyond any doubt, that the constitutional constructs of the Scheduled Castes and the Scheduled Tribes are not a homogeneous community. Understanding the paramount internal divisions and 'graded hierarchy' of these groups is a manifestation of substantive equality and not a breach of Article 14. While substantive equality is a constitutional precept, it is profoundly complex to achieve. In that sense, those at the very bottom of the social hierarchy, the so-called 'weakest of the

weak,' must be the recipients of the promise of affirmative action, and for that reason, sub-classification is a critical legal instrument. That is, in conclusion to this research paper, there are many legal dangers related to implementing this noble requirement from the law in real life, and this is highlighted by the analysis of how easy it is for state legislatures to abuse the power to allocate quotas based on an established set of criteria. States tend to make arbitrary creations of sub-categories of people who are underrepresented as a result of political calculations based on which groups will yield electoral gains, and as such, incentivise established groups of people to try and garner votes. Furthermore, this arbitrary division of marginalised communities into competing groups creates an environment of competition among historically disadvantaged populations based on shared characteristics (e.g., SC and ST) against each other as a zero-sum game for resources. This also undermines the authority under Article 341 for categorisation by the Governor.

To mitigate against the unlawful fragmentation, SC and ST classifications made as per SC requirements of contemporaneous empirical data must be made an integral part of the process of making allocations. Any allocations made by states through sub-classification must have some pre-determined objective measures established at the national level (Composite Vulnerability Index) that assess the extent of disparate impacts across the entire underrepresented population in terms of public jobs, qualifications for education, and overall wealth. In addition, the use of and analysis of empirical data on such measures must be done independently from political executives and through a constitutionally mandated body such as the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

The Constitution's framers envisioned a society without layers of hierarchy, micro- or otherwise, and believed divisions created for political gain should be abolished. Laws should allow for the sub-classification of the most economically and socially vulnerable communities, but laws should also protect vulnerable groups from being pawns in the state-level vote-bank political games. The Indian Republic can, for the first time, achieve a balance between the pursuit of true equality and the promise of the Constitution, if the Government of India focuses on sub-classification and considers legitimate, independent, and verifiable empirical data on a priority basis.

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