



## Analytical study of the judgment of the Supreme Court pronounced in State of Punjab v. Davinder Singh, 2024 INSC 562

Dr. Umesh Shrikishnarao Aswar

Associate Professor of Law, Government of Maharashtra's Government Law College, 'A' Road, Churchgate, Mumbai, India

### Abstract

The Indian higher judiciary, particularly the Supreme Court of India, has played a constructive role in the implementation of the affirmative actions undertaken by the state to impart the concept of social justice. The Supreme Court in *E.V. Chinnaiah v State of A.P. (2004)* laid down the ratio that sub classification of the scheduled castes and scheduled tribes category (hereinafter to be called as SCs & STs) is not permissible under Article 14 and 15 of the Constitution, however in *State of Punjab v. Davinder Singh, 2024 INSC 562* Supreme Court now has reversed the ratio and declared that such kind of a sub classification of the SCs & STs could be done by the state under said Articles of the constitution. In this background, it is necessary to make a detailed analysis of this judgment of the Supreme Court.

**Keywords:** Article 14 & 15 of the constitution- doctrine of reasonable classification- social justice in favor of SCs & STs - *E.V. chinnaiah v State of A.P. (2004)*: sub classification of SCs & STs is not permissible- sub classification of SCs & STs is constitutional

### Introduction

Over the years, SCs & STs have always been looked at as homogeneous groups within themselves. The primary reason for the same was that they were untouchables and were out of the stream of the Hindu society in comparison to other castes in the Hindu religion. Therefore, it was reasonable to view them so to address their common issue of social, educational, financial, and political backwardness. Thus, certain disparities among different castes placed in the SCs & STs, including the various degrees of discrimination which had been faced by them, was conveniently ignored. Perhaps it may be called a positive approach in order to address the common problem of social and other backwardness within SCs & STs.

**Statement of Problem:** The creation of the category, namely other backward category, by the state under Article 16(4) of the Indian Constitution and extending the benefits of reservation to it in admissions to the educational institutions and government services was validated by the Supreme Court in *Indra Sawhney vs Union of India, AIR 1993 SC 477*. However, while validating the said state action, the Supreme Court prescribed the criteria of the creamy layer and non-creamy layer group within the OBC category and declared that only the non-creamy layer group within the OBC category is entitled to reservation under Article 16(4). In *E.V. Chinnaiah v State of A.P. (2004)* five judge bench of the supreme Court held that sub classification within SCs & STs is violative of the constitution but now in *State of Punjab v. Davinder Singh, 2024 INSC 562* Supreme Court has come up with the new ratio that such sub classification in the prescribed manner will not be resulting into breach of Article 14 & 15 of the constitution thus it is imperative to analyze the change in perceptions of the Supreme Court pertaining this issue.

**E.V. Chinnaiah v State of A.P. (2004):** In this case, the main question before the Court was whether sub-

classification or micro classification of SCs & STs for reservation by the state of Andhra Pradesh was violative of Article 14 of the Constitution or not. The Supreme Court held that such a classification violated Article 14 of the Constitution and struck down the same. The constitution (Article 341) provided for only one list of scheduled castes to be prepared by the President with the limited power of inclusion and exclusion by Parliament. SC & ST classes cannot be subdivided to give more preference to a minuscule proportion of the SCs & STs in preference to their members of the same class. Mini classification based on micro-distinctions is false to our egalitarian faith, and only substantial or straightforward classification plainly promoting relevant good can have constitutional validity. Since the pronouncement of the judgment by the Supreme Court in *E.V. Chinnaiah* case till 2024, certain changes within the SCs & STs were advent which ultimately resulted in a change of the perception of the Supreme Court regarding the issue of the sub classification of the SCs & STs.

**State of Punjab v. Davinder Singh, 2024 INSC 562:** In this case, the issue of the validity of sub-classification within the SCs & STs was sub-judice before the Supreme Court. It was considered by a seven-judge constitutional bench headed by Hon'ble the Chief Justice D.Y. Chandrachud, where the Supreme Court upheld the constitutional validity of sub-classification within the SCs & STs. However, as stated above previously, the Supreme Court in *E.V. Chinnaiah v State of A.P. (2004)* had held exactly the contrary view.

On 1 August 2024, the Supreme Court, with a 6:1 majority, also noted that the Scheduled Castes notified under the Presidential List of 1950 under Article 341 were not a homogeneous group as they faced varying degrees of discrimination. This decision overruled the five-judge bench decision of the Court in *E.V. Chinnaiah v State of A.P. (2004)*. Hon'ble Chief Justice D.Y. Chandrachud,

Justice Manoj Misra, Justices B.R. Gavai, Justice Pankaj Mithal, Justice Vikram Nath, and Justice S.C. Sharma laid down the above-mentioned ratios specified hereinafter, while Justice Ms. Bela Trivedi authored the dissenting opinion on the issues mentioned below.

**1. Whether Article 14 of the Indian Constitution permits sub-classification: Majority view:** Article 14 endorses parity of treatment under parity of conditions and not sameness. Sub-classification is a facet of equality and is permissible.

**Minority view:** Justice Bela Trivedi Sub-classification deprives other castes in the Presidential list of the benefit of reservation, therefore, it is violative of Article 14 of the Indian Constitution.

**2. Whether the scheduled castes are of a homogeneous group: Majority view:** The Scheduled castes are not a homogeneous group; their inclusion in the presidential list is not an indication of homogeneity. There is historical evidence to suggest that they vary. Scheduled caste is a heterogeneous group because the hardship and backwardness that each caste of these categories has historically suffered differ from each other.

**Minority view:** Scheduled caste is an amalgam of castes, races, groups, tribes, communities, or parts and is a homogeneous group as notified in the presidential list of 1950.

**3. Whether sub-classification amounts to tinkering with the presidential list: Majority view:** Sub-classification doesn't amount to tinkering with the presidential list. Supreme Court in *E.V. Chinnaiah vs State of AP (2004)* incorrectly held that sub-classification amounts to tinkering with the presidential list, sub-classification does not entail inclusion or exclusion of the castes from the presidential list, and is therefore not tinkering.

**Minority view:** Even though the classification would not per se amount to inclusion or exclusion from the presidential list, it would amount to tinkering with it.

**4. Whether Indra Sawhney vs Union of India AIR 1993 SC 477 restrict sub-classification to OBCs? Majority view: Unanimous view:** It did not expressly restrict sub-classification to OBCs. The factual matrix of *Indra Sawhney* pertained to OBCs. So the judgment only commented on OBCs and not SCs & STs. On this issue, Justice Ms. Bela Trivedi agreed with the other judges and opined that *Indra Sawhney* did not deal with the issue of scheduled caste and scheduled tribe categories in the light of Article 341. The court categorically kept SC/ST groups outside the purview of consideration in *Indra Swahney*.

**5. Whether states have the power to create sub-classification? Majority view:** States do have the power to create sub-classifications within SC/ST lists under Articles 14, 15 and 16.

**Minority view:** None of the entries in list II or list III of the 7th schedule confer any legislative competence to rationalise reservations and create sub-classifications.

**6. What is the criterion for sub-classification? Unanimous view:** Sub-classification must ensure 'substantive equality' to uplift a socially backward class. It must be based on empirical data that proves 'social backwardness' and must have a rational nexus to the legislation in question.

**7. What are the limits of sub-classification? Unanimous view:** States cannot create a sub-classification in which certain castes within the Presidential List are excluded completely from the benefits of reservation.

**8. Are sub-classifications subject to judicial review? Unanimous view:** States cannot act according to their whims and political interests. Any state legislation creating sub-classifications must be based on data and is subject to judicial review.

**9. Can the 'creamy layer' of Scheduled Castes be excluded from reservation? Majority view:** Certain castes have been reaping the benefits of reservation more than others. Therefore, states must evolve a policy to exclude the creamy layer of the SC/ST groups from the benefit of reservation.

**Minority view:** The SC/ST groups already fall under the 'backward class of citizens' and are a separate, homogenous class in themselves. Therefore, the 'creamy layer' exclusion cannot be applied to them.

## Conclusion

Thus, based on the above-mentioned analysis, the following conclusions are drawn.

The mandate to undertake affirmative action, inclusive of the reservation policy in favour of the SC and ST, is a special Constitutional provision and the same is not compatible with the reservation in favour of any other backward classes. The ratio laid down in the judgment of the Supreme Court in *State of Punjab v. Davinder Singh, 2024 INSC 562* has not hampered this well-settled norm.

The Supreme Court has taken cognizance of the disparity among the castes in SCs & STs from the point of view of the degree of discrimination inflicted against them and the degree of their social, economic, educational, financial, and political backwardness. The Supreme Court has directed that, in order to ascertain the disparity, the state should rely on the empirical data collected with scientific methods. Accordingly, it has been held that sub-classification among the SCs & STs is constitutionally valid.

The judgment of the Supreme Court in *State of Punjab v. Davinder Singh, 2024 INSC 562* has strengthened the jurisprudence of the reservation fairly developed by Supreme Court of India over the years which has been laid down in the landmark judgments pronounced in the cases namely *Madras vs Champakam Doraierajan AIR 1951 149*, *Balaji vs State of Mysore AIR 1963 SC 649*, *Periakaruppan vs. State of TamilNadu AIR 1971SC 2303*, *K.S. Jayasree vs. State of Kerala AIR 1976 SC 2381*, *State of UP vs. Pradeep Tandon AIR 1975 SC 563*, *Indra Sawhney vs Union of India AIR 1993 SC 477*. In these cases, the Supreme Court has laid down that classification should be introduced by the state based on caste (degree of social backwardness), occupation, poverty, place of inhabitation, representation in the educational institutions & government services.

The Government of India does not want to apply the criteria of the creamy layer and non-creamy layer to the SCs & STs. Accordingly, it has taken the convenient view that as the issue of the applicability of non-creamy layer criteria to the SCs & STs was not sub judice and under consideration of the Supreme Court, therefore the opinion expressed by the Supreme Court on it being obiter dictum does not have binding force and further declared that it will not apply non-creamy layer criteria to SCs & STs.

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