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Scheduled Caste Sub-classification in India after *Davinder Singh*: Constitutionally Permitted, Doctrinally Incomplete

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Abstract

The Supreme Court's ruling in *State of Punjab v. Davinder Singh* has revived the debate on sub-classification within the Scheduled Caste category in India, overruling *E.V. Chinnaiah* and rejecting the premise that a constitutional commitment to equality is satisfied by the formally uniform treatment of groups that are, in fact, internally unequal. Using doctrinal constitutional analysis of the judicial trajectory from *M.R. Balaji* through *Indra Sawhney*, *E.V. Chinnaiah*, and *Davinder Singh*, this article argues that while sub-classification is constitutionally permissible, the judgment remains doctrinally incomplete in three respects. First, the distinction between identification under Article 341 and benefit distribution under Articles 15(4) and 16(4) is analytically thin. Second, the endorsement of creamy layer logic for Scheduled Castes sits in unresolved tension with *Indra Sawhney*. Third, the judgment offers no workable standard for judicial review of State-led sub-classification exercises. The article contends that these unresolved issues constitute the principal doctrinal challenge following *Davinder Singh* and argues that its constitutional promise can be fully realized only through a more coherent

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framework governing evidence-based, non-exclusionary, and judicially reviewable sub-classification.

KEYWORDS *Scheduled Castes; Sub-classification; Article 341; Substantive Equality; Distributive Justice; Creamy Layer; Judicial Review; Homogeneous Class*

Introduction

The Indian Constitution envisions a society grounded in justice, liberty, equality, and fraternity. Reservation is one of its most enduring tools for advancing that vision – a set of enabling provisions meant to address the entrenched historical disadvantage of Scheduled Castes (SCs), Scheduled Tribes (STs), and other backward classes.[1] This much is well known. The important point, however, is that reservation does not stand opposed to equality. It is one of the constitutional methods through which equality is pursued.[2] It is rooted in the idea of substantive equality which asks not only whether the same rules apply to everyone, but whether the law meaningfully responds to existing social and structural inequalities.[3]

Yet, the commitment to substantive equality does not fully address how reservation benefits ought to be shared within these groups. A concern has surfaced repeatedly in the SC context over the years. The concern is that a small number of relatively better-situated sub-castes may end up cornering a disproportionate share of public employment and educational seats, while communities placed even lower in the caste hierarchy remain invisible. The fear, stated bluntly, is one of elite capture within an already disadvantaged category.[4]

Sub-classification is the language that emerges from this concern. What does it mean? Simply put, it refers to differentiating internally within the SC category so that reservation benefits are distributed more equitably among communities that are all constitutionally recognized as Scheduled Castes. The idea does not question the reality of untouchability. It does not deny SC status

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1 B.K. Pavitra v. Union of India, AIR 2019 SC 2723, para 107 (Chandrachud j).

2 State of Kerala v. N.M. Thomas, AIR 1976 SC 490; Indra Sawhney v. Union of India, AIR 1993 SC 477.

3 Sandra Fredman, *Discrimination Law*, 2nd ed. (New York, United States: Oxford University Press, 2011), 25-33.

4 Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, (Delhi, India: Oxford University Press, 1984), 74, 270.

to any listed community.[5] Its claim is narrower: that a formally undivided quota may, in operation, reproduce internal hierarchies unless the State can respond to differences in relative deprivation.

Here lies the constitutional difficulty. The SC list is prepared by the President under Article 341 and only Parliament can alter it. In *E.V. Chinnaiah*, the Supreme Court read this to mean that SCs form a constitutionally frozen and homogeneous class – incapable of internal subdivision by States.[6] The court held that the differentiation within the list amounts to tampering with the list itself. This reasoning blocked the sub-classification for nearly two decades until the question arose again in the case of *State of Punjab v Davinder Singh*.[7]

The case of *State of Punjab v. Davinder Singh* marks a clear departure from this approach. The court, by a 6:1 majority, upheld the constitutional validity of sub-classification within Scheduled Castes. The Court recognised that a uniform approach to all listed groups may not promote equality if some communities remain significantly more disadvantaged than others.In such circumstances, substantive equality may require differential treatment to ensure that the benefits of reservation reach the most disadvantaged communities within the larger category.

Existing scholarship has largely concentrated on the constitutional permissibility of sub-classification, leaving many of the normative and institutional questions that follow insufficiently explored. The present study identifies a different and largely neglected research gap: even accepting that *Davinder Singh* permits sub-classification, the judgment leaves the doctrinal architecture of that permission incomplete. This article therefore moves beyond the validity debate to interrogate the doctrinal completeness of the decision.

Three research questions structure the analysis. First, how does Article 341 limit sub-classification, and where does permissible allocation end and impermissible re-identification begin? Second, can creamy-layer reasoning be applied to SC and ST reservation without undermining the historical basis of untouchability recognised in *Indra Sawhney*? Third, what standard of judicial review should courts apply when assessing State-led sub-classification?

This article adopts a doctrinal methodology, drawing on constitutional provisions, judicial decisions, and scholarly literature relating to reservation and sub-classification in India. It examines the Supreme Court's decision in

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[5] India Const. art. 341.

[6] E.V. Chinnaiah v. State of Andhra Pradesh, (2005) 1 SCC 394.

[7] State of Punjab v. Davinder Singh, 2024 INSC 562.

State of Punjab v. Davinder Singh to assess its implications for equality jurisprudence and distributive justice. The primary legal materials analyzed include the Constitution of India, particularly Articles 14, 15(4), 16(4) and 341 and the leading decisions of the Supreme Court, namely *M. R. Balaji v. State of Mysore*[8], *Indra Sawhney v. Union of India*[9], *E.V. Chinnaiah v. State of Andhra Pradesh*, *M. Nagaraj v. Union of India*[10], *Jarnail Singh v. Lachhmi Narain Gupta*[11] and *State of Punjab v. Davinder Singh*. The secondary sources comprise scholarly literature on affirmative action, substantive equality, reservation policy, and caste-based discrimination. Rather than serving as a case commentary, the paper analyses the judgment in light of constitutional principles, with particular attention to equality and proportionality.The paper unfolds the discussion around sub-classification in five parts. Sections A and B lay the conceptual and constitutional foundation. Section C traces the judicial trajectory from *M.R. Balaji* to *Davinder Singh* – the tension between *Chinnaiah's* homogeneity premise and the substantive equality framework that Davinder Singh affirms. Section D analyses the judgment itself: why sub-classification is constitutionally justified, and three respects in which the majority's reasoning remains incomplete: the Article 341 identity-allocation distinction, the *Indra Sawhney* tension on creamy layer, and the absent standard for judicial review). Last section concludes with principles for operationalizing sub-classification in a constitutionally sound way.

Understanding the Concept of Sub-classification

What is sub-classification? At its core, it is the internal differentiation of a constitutionally recognized beneficiary class to distribute affirmative-action benefits more equitably. The underlying observation is simple but consequential: constitutional recognition of a group does not erase stratification within it.[12] Communities on the SC list all share the historical burden of untouchability. But they do not occupy identical positions in terms of literacy, political mobilization, access to institutions, or representation in public employment.

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[8] M. R. Balaji v. State of Mysore, AIR 1963 SC 649.

[9] Indra Sawhney v. Union of India, AIR 1993 SC 477.

[10] M. Nagaraj v. Union of India, (2006) 8 SCC 212.

[11] Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396.

[12] Suman Damera, "SC Sub-Quota Verdict: Revisiting the Long-Drawn Struggle for Reservation Justice," *The Wire*, August 3, 2024, https://m.thewire.in/article/rights/sc-sub-quota-verdict-revisiting-the-long-drawn-struggle-for-reservation-justice/amp.

At the outset, it is useful to distinguish several ideas that are often conflated. Sub-classification refers to the internal division of a beneficiary category into sub-groups; a sub-quota is the earmarking of a fixed share of the reserved seats for such a sub-group; the preference model gives identified sub-groups a first claim to reserved seats without wholly excluding others; the exclusionary model, by contrast, reserves seats solely for particular sub-groups; and the creamy-layer device operates at a different level altogether, excluding individuals or families deemed too advanced from the benefit pool. This article is concerned with redistribution among sub-groups within the Scheduled Caste category, and not with the exclusion of individuals. It is a distinction that becomes decisive in the later critique of Justice Gavai, Justice Vikram Nath and Justice Mithal.

The creamy-layer analogy is useful here only at the level of principle, not mechanism. Indra Sawhney accepted that backward classes are not homogeneous and that reservation may fail distributively if relatively advanced sections within a listed group consistently capture benefits - an insight framed, in that case, around the exclusion of individuals and families. The article does not argue that the creamy layer doctrine should be applied to Scheduled Castes. Such an extension raises distinct constitutional questions that are beyond the present stage of the doctrine. Rather, it relies on the underlying principle recognised in *Indra Sawhney*: the effectiveness of a reservation policy cannot be evaluated solely by formal eligibility. It must be assessed by whether the benefit actually reaches those for whom it was designed. Applied to the SC category, this principle does not require excluding advanced individuals or families; it requires only recognizing that visible, group-level disparities in access can themselves defeat the representational purpose of the reservation, even where formal eligibility remains untouched.

The rationale, seen properly, is cumulative. First, it acknowledges inter se backwardness within the SC category refusing the convenient fiction that all listed communities are placed alike. Second, it responds to the idea of adequate representation: when a handful of sub-castes routinely secure the lion's share of reserved posts, the representational promise of reservation is frustrated.[13] The formal quota remains intact, but its purpose is defeated. Third, sub-classification works as an anti-capture device. And fourth, it aligns reservation more closely with substantive equality by linking benefit allocation to actual patterns of access rather than abstract labels.

[13] Galanter, *Competing Equalities*, 211.

The empirical basis for this concern is not merely anecdotal. The Commission to Examine Sub-classification of Other Backward Classes, chaired by Justice G. Rohini, reported that a very small cluster of dominant communities had cornered an overwhelming share of OBC reservation benefits over time, leaving a large majority of listed communities with negligible access.[14] An empirical study of SC/ST wealth trajectories between 1991 and 2002 finds rising within-group inequality across most sub-groups, occurring alongside a decline in the group's median wealth relative to the rest of the population, a pattern consistent with internal stratification rather than group-wide advancement out of disadvantage.[15] The Punjab experience that ultimately produced Davinder Singh reflected a related anxiety: the State repeatedly justified preference for Balmikis and Mazhabi Sikhs on the footing that they remained conspicuously under-represented in higher public services despite decades of reservation.[16] This ground reality — intra-category stratification producing differential outcomes — provides the empirical predicate for the constitutional argument that formal homogeneity within the SC list does not reflect substantive homogeneity in social reality.

Yet the empirical case for sub-classification also surfaces a deeper philosophical disagreement about the foundations of SC reservation. On one view—the rectificatory view—reservation is a constitutional response to the specific historical wrong of untouchability.[17] Because untouchability is group-based, durable, and socially reproduced, the justification for reservation survives the advancement of some members of the group; the wrong being addressed is collective, and so too is the remedy. On another view—the distributive view—reservation is a forward-looking instrument for improving access to public goods, and its internal allocation must therefore remain sensitive to which communities within the category continue to suffer the sharpest deprivation.[18]

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[14] Moushumi Das Gupta, "Rohini Commission report on OBC sub-classification in cold storage as SC gives nod to SC/ST sub-quota," *The Print*, August 1, 2024, https://theprint.in/india/governance/rohini-commission-report-on-obc-sub-classification-in-cold-storage-as-sc-gives-nod-to-sc-st-sub-quota/2202938/.

[15] Ajit Zacharias and Vamsi Vakulabharanam, "Caste and Wealth Inequality in India" (Working Paper no. 566, The Levy Economics Institute Working Paper Collection, 2009).

[16] Surinder S. Jodhka, and Avinash Kumar, "Internal Classification of Scheduled Castes: The Punjab Story," *Economic and Political Weekly* 42, no. 43 (2007): 20–23, http://www.jstor.org/stable/40276592.

[17] Ashwini Deshpande, *Oxford India Short Introductions: Affirmative Action in India*, (New Delhi, India: Oxford University Press, 2013), 40-42.

[18] Galanter, *Competing Equalities*, 270.

Sub-classification makes greater sense within a distributive framework of reservation, and the judgment in *Davinder Singh* reflects this shift quite clearly. At the same time, the older remedial logic of reservation cannot be ignored, since the constitutional protection granted to Scheduled Castes emerged from the shared historical experience of untouchability. The real dilemma, then, is not choosing between collective identity and internal redistribution. Rather, it is finding a way to recognize the shared historical experience of untouchability while ensuring that reservation benefits are not monopolized within the group. That dilemma should not be abandoned at the point of identification. It must further shape the constitutional limits of sub-classification: the measure must remain redistributive without becoming exclusionary, differentiating without denying the common constitutional status that attaches to the Presidential List.

Constitutional Framework

The constitutional architecture begins with Article 14[19], but it does not end with a thin idea of formal sameness. Contemporary equality jurisprudence increasingly recognizes that structurally unequal groups may require differentiated legal treatment if equal citizenship is to be made real. That is the foundation upon which Articles 15(4) and 16(4) stand.[20] They are not exceptions grudgingly carved out of equality; they are the Constitution's own instructions for how equality is to be pursued in a society marked by inherited and institutionalized disadvantage.[21]

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[19] India Const. art. 14. Article 14 forms the constitutional foundation of the right to equality under the Indian Constitution.

[20] Article 15(4) and 16(4) of Indian Constitution enable the State to make special provisions for the advancement of socially and educationally backward classes and for the reservation of appointments in favor of backward classes inadequately represented in public employment.

[21] State of Kerala v N.M. Thomas, (1976) 2 SCC 310; Lt. Col. Nitisha v. Union of India, 2021 SCC OnLine SC 26. The constitutional permissibility of sub-classifying Scheduled Castes raises a broader question concerning the relationship between formal equality and substantive justice. Although differentiated treatment may serve the legitimate objective of directing affirmative action toward the most disadvantaged groups within a constitutionally recognized category, its effectiveness depends on transparent criteria, reliable evidence of intra-group disadvantage, and safeguards against arbitrary exclusion. This concern resonates with broader scholarship on access to legal aid and fair trials (Chau, Clarke, and Sugiharto 2024), judicial intervention in protecting vulnerable groups (Fischer, Hakim, and Lestari 2024), and judicial responses to violations of minority rights (Putra et al. 2025). Comparative discussions of minority protection and legal recognition further demonstrate that constitutional equality requires attention not only to the formal recognition of disadvantaged groups but also to the institutional mechanisms through which their rights are realized (Arifin and Damayati 2025; Wiraatmaja, Nassif, and Syahir 2024). Nevertheless, constitutional authorization does not, by itself, resolve the doctrinal

Article 15(4) authorizes special provisions for socially and educationally backward classes and for the Scheduled Castes and Scheduled Tribes. Article 16(4), in turn, permits reservation in public employment for backward classes that are inadequately represented in the services of the State. Both are enabling clauses which vest judgment in the State, but that judgment must be exercised to advance equality in substance. The textual emphasis on advancement and adequate representation is significant because it directs constitutional attention to outcomes, not merely to formal membership in a category.[22]

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questions surrounding the design and implementation of sub-classification. The legitimacy of such measures must be assessed against constitutional guarantees of equality, the evidentiary basis for identifying relative disadvantage, the allocation of remedial benefits, and the availability of judicial review. These questions also reflect wider debates concerning constitutional pluralism, the relationship between competing normative frameworks, and the reconciliation of domestic legal arrangements with universal human rights standards (Aditya 2026; Putri and Bakker 2025; Amrullah and Nuruddin 2025; Arifin, Munandar, and Putranto 2025; Nurhadi and Isnaini 2024; Putri 2024). Accordingly, the central challenge after *State of Punjab v. Davinder Singh* is not merely whether sub-classification is constitutionally permissible, but whether its doctrinal framework provides sufficiently clear standards to ensure that differentiated affirmative action advances substantive equality without undermining constitutional coherence, accountability, or the rights of the communities it is intended to benefit. *For broader context and dicscussion, please also refere to* Bao Chau, Benjamin Clarke, and Bambang Sugiharto. "Access to Legal Aid and Its Impact on Fair Trials in District Courts". *Indonesian Court and Justice Review* 1, no. 3 (2024); Clara Fischer, Syahrul Hakim, and Dewi Arum Lestari. "Judges As Agents of Change: The Role of the Judiciary in Protecting Vulnerable Groups". *Indonesian Court and Justice Review* 1, no. 2 (2024); Ridwan Arifin, and Fitria Damayati. "Religious Freedom and Minority Rights: A Comparative Analysis of Indonesian Laws and International Standards". *Indonesian Minority Justice Review* 2, no. 1 (2025); Mahendra Putra, Budiarto Syahputra, Nurulaini Hidayah, and Indriani Putri. "Judicial Responses to Minority Rights Violations in Indonesia: Case Studies of Religious and Ethnic Conflicts". *Indonesian Minority Justice Review* 2, no. 4 (2025); Zara Evelyne Wiraatmaja, Darren Kairo Nassif, and Leila Alishan Syahir. "The Struggle for Recognition: Legal Protections for Ethnic Minorities in Indonesia". *Indonesian Minority Justice Review* 1, no. 1 (2024); Kresna Putra Aditya, "Theology and Constitutional Pluralism in Indonesia: Reconciling Religious Norms With Universal Human Rights". *Indonesian Theological Justice Review* 3, no. 2 92026): 225-252; Wening Putri, and Theo Thijs Bakker. "Religious Law Vs. Secular Law: The Struggle for Justice in Indonesia's Legal System". *Indonesian Theological Justice Review* 2, no. 3 (2025); Moch Rizki Amrullah, and Ibrahim Nuruddin. "Between Faith and Freedom: Religious Intolerance and Minority Rights in Indonesia". *Contemporary Issues on Indonesian Human Rights Law and Policy* 2, no. 4 (2025); Ridwan Arifin, Tri Imam Munandar, and Muhammad Aditya Putranto. "Human Rights in the New Criminal Code: Progress or Regression?". *Contemporary Issues on Indonesian Human Rights Law and Policy* 2, no. 4 (2025); Wildan Ahmad Nurhadi, and Ajeng Nur Isnaini. "Human Rights Due Diligence in Indonesia: From Voluntary Standards to International Legal Obligation". *Indonesian Studies in International Law and Justice* 1, no. 4 (2024); Melati Putri, "Between Universalism and Sovereignty: Indonesia's Engagement With International Human Rights Norms". *Indonesian Studies in International Law and Justice* 1, no. 4 (2024).

[22] India Const. arts. 15(4) and 16(4).

The definitional framework for Scheduled Castes is supplied by Articles 366(24)[23] and 341. Article 341(1) empowers the President, after consultation with the Governor, to specify the castes, races, tribes, or parts of or groups within them that shall be deemed Scheduled Castes for a State or Union Territory.[24] Article 341(2) reserves to Parliament the power to include or exclude entries from that list.[25] This arrangement clearly centralizes the power of identification. What it does not say, however, is that every consequence flowing from that identification must remain constitutionally frozen. The text creates a list. It does not, by its own force, prescribe a single and immutable method of benefit distribution within the list.

None of this disturbs the core of Article 341. The President retains exclusive power to identify which communities are Scheduled Castes. Parliament alone can add or remove communities from the list. No State action in Sub-classification touches either of these functions. What Sub-classification does is operate at a different constitutional level entirely — not identification, but allocation among those already identified. And it is precisely at that level (the level of allocation) that the Constitution, read as a coherent whole, permits differentiation.

The constitutional framework therefore yields a limited but important conclusion. It does not authorize States to re-write the Presidential List. But neither does it compel the State to ignore documented internal inequality when acting under Articles 15(4) and 16(4). The better reading is that identification and allocation operate at distinct levels of constitutional design: the former determines who counts as Scheduled Caste; the latter determines how the benefits of affirmative action may be distributed so that the constitutional promise of advancement and representation is not emptied of content. It is possible to state the limiting parameters more concretely. An exercise of sub-classification remains within the allocation power, and does not trespass upon Article 341, only where it cumulatively satisfies five conditions: it does not remove or dilute the Scheduled Caste status of any listed community; it does not wholly exclude any other Scheduled Caste community from the reserved category; it rests on quantifiable data of relative under-representation; it remains open to judicial review; and it is not designed merely to secure electoral or political advantage. Where these conditions are

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[23] India Const. art. 366 (24). It defines "Scheduled Castes" as those communities recognized under Article 341 for constitutional purposes.

[24] India Const. art. 341 (1).

[25] India Const. art. 341 (2).

met, allocation does not become re-identification; where they are absent, the State strays into impermissible tampering with the Presidential List.

This is a threshold inquiry, and it should be kept distinct from the standard of review developed in Section D for scrutinizing the design of a particular sub-classification scheme. The present five conditions ask a prior and narrower question - whether the State has acted within its allocation power at all or has instead trespassed upon Article 341 by re-identifying the Scheduled Caste list. The later standard operates only once that threshold is cleared: it asks not whether the State had the power to sub-classify, but whether a given exercise of that power is proportionate, evidence-based, and periodically reviewed. The two inquiries share a concern with data and reviewability because both ultimately serve the same constitutional value that differentiation among Scheduled Castes remains tethered to demonstrated need rather than arbitrary or political preference. However, they operate at different stages of the analysis and should not be collapsed into one another.

Judicial Journey of Sub-classification in Reservations

The Court's jurisprudence on sub-classification reveals a gradual transition from treating equality formally to understanding it in more substantive terms. Over time, the Court moved from scepticism to limited acceptance, and eventually to recognising the constitutional validity of sub-classification in *Davinder Singh*. At the same time, several tensions within reservation jurisprudence remained unresolved, many of which continue to shape the debate even after the judgment.

1. Early Suspicion: *M.R. Balaji v State of Mysore*

The history of sub-classification traces back to the case of *M. R. Balaji v. state of Mysore* wherein the question of subdivision of "backward classes" arose for the first time. The State of Mysore tried to classify backward classes into 'Backward' and 'more Backward' categories for the purpose of allocating reservation percentages differently to each sub-category. Consequently the matter reached the Supreme Court. The court viewed this sub-classification with deep suspicion and held that backward classes cannot be divided into categories of "backward" and "more backward" as this violates Article 15(4) of the Constitution. The Court read Article 15(4) as a narrowly framed exception to the general guarantee of non-discrimination under Article

15(1).[26] From this perspective, sub-classification appeared to extend that exception beyond what the Constitution originally intended. At the heart of this reasoning was a concern that creating further divisions within reserved categories might reinforce caste identities in public life instead of weakening them. Reservation had a defined and finite purpose that is the upliftment of backward classes as a collective, and sub-division within that collective was not merely unnecessary but constitutionally impermissible. The Case of *Balaji* thus established formal category-level thinking as the baseline: the reserved category is a unit, and the State must treat it as such. *Balaji* should not, however, be read as a permanent constitutional prohibition on every form of sub-classification. It is better understood as representing an early, formalist conception of equality that prevailed before the doctrinal shift effected by *N.M. Thomas*[27], *K.C. Vasanth Kumar*[28] and *Indra Sawhney*[29], each of which recognised that differentiation within a disadvantaged class may be a means of realising equality rather than a departure from it.

2. The Conceptual Shift: *K.C. Vasanth Kumar* and *N.M. Thomas*

Later decisions began to unsettle this baseline, though neither did so directly in the SC context.

In *K.C. Vasanth Kumar v. State of Karnataka*, the Supreme Court considered the constitutional validity of Karnataka's reservation policy for Other Backward Classes.[30] The case produced no majority opinion, but Justice O. Chinnappa Reddy's concurring opinion made a contribution that would prove foundational. Justice Reddy reasoned that backwardness is not a uniform or static condition. Even within a class collectively identified as backward, there will be communities that are more deprived than others. Where such disparities can be clearly shown, treating every group within the category in the same manner may undermine the purpose of reservation itself. If the relatively advanced sections continue to secure most of the benefits, the most disadvantaged groups remain excluded despite being formally included within the reservation framework. From this perspective, internal differentiation is not contrary to reservation policy but may be necessary for making it effective. Though the case of *Vasanth Kumar* was concerned with OBCs and left the SC question entirely open, its significance is considerable as it was the first clear judicial recognition that formal uniformity within a

[26] M. R. Balaji v. state of Mysore, AIR 1963 SC 649.
[27] State of Kerala v. N.M. Thomas (1976) 2 SCC 310.
[28] K.C. Vasanth Kumar v. State of Karnataka, AIR 1985 SC 1495.
[29] Indra Sawhney v. Union of India, AIR 1993 SC 477.
[30] K.C. Vasanth Kumar v. State of Karnataka, AIR 1985 SC 1495.

beneficiary class can, paradoxically, undermine the substantive equality that reservation exists to achieve. In this respect, the court in *Vasanth Kumar* directly confronted and rejected the foundational premise of *Balaji*, not by overruling it, but by demonstrating that the constitutional purpose of Article 15(4) points in the opposite direction from formal categorical uniformity.

State of Kerala v. N.M. Thomas did not directly concern sub-classification. It dealt with concessions granted to SC and ST employees in departmental examinations.[31] Even so, the judgment significantly influenced the conceptual foundations of reservation jurisprudence. Justice Krishna Iyer, in a celebrated opinion, rejected the premise that Articles 16(1) and 16(4) are in tension with each other. He reasoned that Article 16(4) is not an exception to equality of opportunity; rather, it is an expression of it. Where opportunities are shaped by historical disadvantage, formal equality alone is insufficient. Reservation and differential treatment seek to address those deeper inequalities.[32] The influence of *N.M. Thomas* on later reservation jurisprudence was substantial. Once the Court accepted that differential treatment within a disadvantaged group could further the goal of equality, the idea of directing reservation benefits to the most deprived sections through sub-classification became much easier to justify. The decision therefore shifted the focus of the debate. Instead of asking whether differentiation was permissible at all, the more important question became whether a particular form of differentiation could be justified on constitutional grounds. Together, *Vasanth Kumar* and N.M. *Thomas* altered the conceptual terrain on which the sub-classification argument would later be fought. The former established that intra-group disparity is a constitutionally relevant fact that reservation policy must address. The latter established that addressing it through differential treatment is a fulfilment of equality rather than a departure from it. Between them, they supplied the two foundational premises on which *Indra Sawhney* would build and on which *Davinder Singh* would ultimately rest.

3. Consolidation and Complication: *Indra Sawhney v. Union of India*

The decisive development came in *Indra Sawhney v. Union of India*. The nine-judge Bench upheld sub-classification within OBCs and approved the exclusion of the creamy layer, thereby decisively rejecting the assumption carried forward from *Balaji* that backward classes must always be treated as

[31] State of Kerala v. N.M. Thomas (1976) 2 SCC 310.

[32] Fredman, *Discrimination Law*, 25-33. She articulates the same principle in comparative perspective.

internally homogeneous.[33] Justice Jeevan Reddy clarified that there is no constitutional bar on classifying backward classes into "backward" and "more backward" categories under Article 16(4), provided both sub-categories remain substantially backward compared to forward classes and there is a demonstrable difference in the degree of backwardness between them.[34] The court laid down two conditions for valid sub-classification. First, the sub-groups identified had to remain substantially backward in comparison to the general population. Second, the distinctions drawn between them had to reflect real and identifiable differences rather than artificial classification. *Indra Sawhney* thus gave sub-classification a firm doctrinal foundation for OBCs and articulated a representational logic that would later become central to the SC debate: reservation law is not blind to differential access within a constitutionally relevant class, and the State may and in some circumstances must respond to that differential through targeted allocation.

At the same time, *Indra Sawhney* introduced a complication that would cast a long shadow over subsequent jurisprudence. The Bench treated SCs and STs differently from OBCs in relation to the creamy layer. The court reasoned that the social stigma associated with untouchability does not disappear with economic advancement. A Scheduled Caste member who attains professional or financial success remains subject to caste-based discrimination in a way that a prosperous OBC typically does not.[35] SCs and STs were therefore excluded from the creamy layer principle. This exclusion was not incidental — it reflected a specific philosophical premise about the nature of SC disadvantage: that it is collective, structural, and not reducible to individual socio-economic status. That premise would later come under pressure from within the Court's own jurisprudence.

4. A Divergent Path: *E.V. Chinnaiah v. State of Andhra Pradesh*

E.V. Chinnaiah v. State of Andhra Pradesh charted a different course from the trajectory established by *Vasanth Kumar*, *Thomas*, and *Indra Sawhney*. The five-judge Bench held that Scheduled Castes constitute a homogeneous group because of their inclusion in the Presidential List under Article 341 and sub-classifying the group amounts to tinkering with that list.[36] Since the power to

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[33] Indra Sawhney v. Union of India, AIR 1993 SC 477.

[34] Indra Sawhney v. Union of India, AIR 1993 SC 477, para 92A.

[35] Satish Deshpande and Yogendra Yadav, "Redesigning Affirmative Action: Castes and Benefits in Higher Education," *Economic and Political Weekly* 41, no. 24 (2006): 2419–24, http://www.jstor.org/stable/4418341.

[36] E.V. Chinnaiah v. State of Andhra Pradesh, (2005) 1 SCC 394.

identify Scheduled Castes lies with the President and Parliament, the States could not create sub-groups within that category for distributing reservation benefits differently. The judgment therefore treated inclusion in the Presidential List as creating a unified class for the purposes of reservation.[37]

The judgment ignited a scholarly debate. One of the criticisms of *Chinnaiah* was that it created an inconsistency within reservation jurisprudence. While the Court in the case of *Indra Sawhney* accepted sub-classification among OBCs to address unequal access to reservation benefits, *Chinnaiah* denied the same possibility for Scheduled Castes, even though similar forms of internal inequality existed within both groups. Critics argued that the judgment treated Scheduled Castes as a homogeneous class not because of social reality, but because of their inclusion in the Presidential List under Article 341. The Court did not adequately explain why the constitutional process of identifying Scheduled Castes should automatically prevent differential distribution of benefits within that category.[38] In effect, *Chinnaiah* converted Article 341, which primarily deals with identification, into a rule requiring uniform treatment of all Scheduled Castes for reservation purposes, even though the text of the provision does not clearly mandate such an interpretation.

At the same time, defenders of *Chinnaiah* argued that the Presidential List carries constitutional significance beyond mere administrative classification. From this perspective, allowing States to create internal divisions within a constitutionally recognized category could undermine the uniformity and constitutional protection from political arbitrariness and state-level manipulation that Article 341 was intended to secure.[39] In this context, the rigidity of *Chinnaiah* was a feature rather than a flaw — a safeguard against the fragmentation of SC solidarity along politically convenient lines.

Whether *Chinnaiah* was correct or not, its practical consequence was to create a doctrinal divergence that persisted for nearly two decades: sub-classification was permissible within the OBC category but prohibited within SCs, leaving States without a constitutional instrument to address the

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[37] "Validity of Sub-Classification Within Reserved Categories," *Supreme Court Observer*, last accessed May 10, 2026, https://www.scobserver.in/cases/punjab-davinder-singh-validity-of-sub-classification-within-reserved-categories-case-background/.

[38] Anuna Tiwari, "Sub-Classification in Reservations," *Constitutional Law and Philosophy Issues in Contemporary Constitutional Law, with a Special Focus on India and Kenya* (blog), September 3, 2020, https://indconlawphil.wordpress.com/2020/09/03/guest-post-sub-classification-in-reservations/.

[39] *See* the arguments made in the case of *State of Punjab v. Davinder Singh* 2024 INSC 562, summarizing the contentions of counsel defending *Chinnaiah*.

empirically documented problem of intra-SC inequality in access to reservation. It is that divergence, and the questions it left open, that *Davinder Singh* was ultimately called upon to resolve.

The erosion of *Chinnaiah*'s foundations began not through a direct challenge but through a development in a related area. In *M. Nagaraj v. Union of India*, the Supreme Court considered the constitutional validity of reservations in promotions for SCs and STs and introduced creamy-layer reasoning into that context.[40] This move was constitutionally significant and not without controversy. *Indra Sawhney* had deliberately excluded SCs and STs from the creamy layer principle on the specific philosophical ground that untouchability-based stigma is not neutralised by individual economic advancement.[41] *Nagaraj*'s extension of creamy-layer logic to SC/ST promotions appeared to sit uneasily with that deliberate exclusion.[42] In *Jarnail Singh v. Lachhmi Narain Gupta*, the Supreme Court affirmed this move, holding that excluding the creamy layer from SC/ST reservation in promotions does not violate Articles 341 and 342 because it does not alter the Presidential List. It merely identifies individuals within the list who no longer require the benefit of reservation.[43]

Scholars read *Nagaraj* and *Jarnail Singh* as exposing a latent philosophical instability at the heart of reservation jurisprudence.[44] If individual advancement within the SC category is relevant to entitlement, as *Nagaraj* and *Jarnail Singh* implied, then the collective philosophical premise of *Indra Sawhney*'s SC exclusion from the creamy layer begins to look fragile. Two competing understandings of SC reservation are in tension: the rectificatory view, which holds that reservation compensates for the collective and indelible wrong of untouchability and must continue at the group level regardless of individual advancement; and the distributive view, which treats reservation as a forward-looking instrument of equality of opportunity, sensitive to relative advancement within the group. *Nagaraj* and *Jarnail Singh* nudged the jurisprudence towards the distributive view without openly acknowledging the departure. *Davinder Singh* inherits that unresolved question rather than escaping it and the paper's critical argument in Section D

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[40] M. Nagaraj v. Union of India, (2006) 8 SCC 212.

[41] Indra Sawhney v. Union of India, AIR 1993 SC 477, para 88-88A.

[42] Gautam Bhatia, "The Nagaraj/Creamy Layer Judgment and its Discontents," *Constitutional Law and Philosophy Issues in Contemporary Constitutional Law, with a Special Focus on India and Kenya* (blog), September 30, 2018, https://indconlawphil.wordpress.com/2018/09/30/the-nagaraj-creamy-layer-judgment-and-its-discontents/.

[43] Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396.

[44] Bhatia, "The Nagaraj/Creamy Layer Judgment and its Discontents".

engages directly with why the judgment's failure to resolve it constitutes one of its most significant doctrinal gaps.

The Turning Point: Unpacking the Davinder Singh Judgment

1. Background of the Case and Judgement

The constitutional challenge in *Davinder Singh* had its origins in Punjab's attempt to redistribute reservation benefits within Scheduled Castes. In 1975, the State split the Scheduled Caste quota in direct recruitment and reserved half of that quota for Balmikis and Mazhabi Sikhs. The arrangement rested on the claim that these communities remained especially under-represented despite belonging to the broader SC category. The policy remained in force for several decades until the Supreme Court's decision in *E.V. Chinnaiah* raised doubts about the constitutional validity of such internal preferences.[45]

The Punjab and Haryana High Court struck down Punjab's 1975 notification following the ruling of *Chinnaiah* judgment. The State responded by enacting the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006, whose section 4(5) effectively restored a preferential arrangement by granting first preference within the SC quota to Balmikis and Mazhabi Sikhs.[46] That provision was also invalidated by the High Court on the ground of *Chinnaiah* ruling setting the stage for a renewed constitutional confrontation. It was this second invalidation that led to the reference and, ultimately, to the seven-judge Bench in *Davinder Singh*.

The argument of State of Punjab before the Supreme Court was straightforward yet powerful: If *Indra Sawhney* permits sub-classification among OBCs to ensure a fairer distribution of reservation benefits, then denying a similar measure for Scheduled Castes where clear internal disparities exist cannot be justified coherently. A five-judge Bench in 2020 in its reference order accepted this inconsistency and concluded that *Chinnaiah* required reconsideration, but because both decisions were by benches of the same strength, the issue ultimately was placed before a seven-judge Bench.[47]

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[45] "Indra Sawhney did not limit sub-classification to OBCs; Sub-classification of SC/STs permissible': A point wise breakdown of Majority Ruling in SC's 6:1 Verdict," *SCC Times*, August 2, 2024, https://www.scconline.com/blog/post/2024/08/02/supreme-court-61-verdict-holding-permissibility-of-sub-classification-of-sc-st/.

[46] Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006, sec. 4 (5).

[47] "Indra Sawhney did not limit sub-classification," *SCC Times*.

The seven-judge Bench delivered its judgment on August 1, 2024 and by a 6:1 majority, it held that sub-classification within the Scheduled Caste category is constitutionally permissible. The majority reasoned that Article 341 governs the identification of SCs but does not bar States from allocating reservation benefits within the category based on objective evidence of unequal representation.[48] By overruling *Chinnaiah*, the Court moved away from a rigid understanding of caste identity towards a more responsive conception of equality.

2. Judicial Reassessment of Equality

More than a ruling on legislative competence, *Davinder Singh* rethinks the meaning of equality within the reservation framework for Scheduled Castes. The majority rejects the easy inference that once a group is constitutionally listed, it must also be treated as uniform for the purpose distribution of reservation benefits. At the same time, the judgment reveals the continuing difficulty of balancing internal redistribution with the constitutional structure of Article 341. That is why the opinions in the case are best read together. The majority opens the door to sub-classification, the concurrences try to push the doctrine further than the reference required, and the dissent identifies the constitutional costs of doing so.

2.1 From Homogeneity to Heterogeneity: Reconceptualizing Article 341

At the center of *Davinder* Singh lies a conceptual reversal. *Chinnaiah* treated the Presidential List as creating a single homogeneous constitutional category. The majority in *Davinder Singh*, however, rejected the idea that a uniform method of identification necessarily requires uniform distribution of reservation benefits. The Court recognized that Scheduled Castes are socially heterogeneous and that inequalities continue to exist within the category itself. On that basis, it held that the State may introduce sub-classification under Articles 15(4) and 16(4), so long as the differentiation rests on a rational basis and is connected to the objective sought to be achieved.[49] The Chief Justice's analysis in particular treats Article 341 as an identification clause, while Articles 15(4) and 16(4) remain the operative provisions for advancement and adequate representation.[50] On that account, the fact that all listed

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[48] State of Punjab v. Davinder Singh, 2024 INSC 562.

[49] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 145-146 (Chandrachud CJ),

[50] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 122 and 174 - 178 (Chandrachud CJ).

communities share Scheduled Caste status does not mean that they are identically placed in access to public employment, education, or state power.

But the constitutional tension does not disappear simply because heterogeneity is socially true. Article 341 still treats all notified communities as one constitutionally recognized class for the purposes of status. That means the homogeneity rejected by *Davinder Singh* cannot be rejected in every sense. The better reading is dual: Scheduled Castes are homogeneous as to constitutional recognition and historical injury, but heterogeneous as to relative deprivation and access. Once that distinction is accepted, sub-classification becomes easier to justify; at the same time, it becomes essential to ensure that internal differentiation does not mutate into a denial of equal constitutional membership within the Presidential List. The governing principle may be stated compactly: Article 341 creates a common constitutional identity, while Articles 15(4) and 16(4) permit evidence-based distributive differentiation within that identity. This formulation is the central doctrinal thesis of the present analysis, and it is what allows sub-classification to be reconciled with the integrity of the Presidential List.

This is why the majority's preference-based approach becomes important. The Chief Justice emphasized that measures intended to assist the most disadvantaged groups should not result in the exclusion of others within the Scheduled Caste category.[51] In doing so, the judgment attempted to preserve the distinction between targeted allocation and re-identification, and Article 341 remains intact. Justice Trivedi's (dissenting opinion) objection gains strength if internal preferences operate in a way that effectively sidelines some communities, because the State would then be reshaping the practical significance of inclusion in the Scheduled Caste list. Singh and Pushpam are therefore right to read the judgment as both enabling and cautionary: it corrects the fiction of sameness, but it also opens the risk of politically attractive and constitutionally unstable quota fragmentation.[52]

2.2 Creamy Layer, Sub-classification, and the Category Error

The judgment's most controversial doctrinal extension is not the holding on sub-classification itself, but Justice Gavai's insistence that the State should identify and exclude creamy layer even within the Scheduled Castes and

[51] State of Punjab v. Davinder Singh, 2024 INSC 562, para 187 (Chandrachud CJ).

[52] Rajeev Kumar Singh and Akshat Pushpam, "'Fragmenting the Margins? A Critical Analysis of Sub-Categorization Within SC/ST Reservation Policy," *Contemporary Voice of Dalit* (2025): 6, doi: 10.1177/2455328X251355818.

Scheduled Tribes.[53] Justice Vikram Nath[54], justice Mithal[55] and Justice Sharma[56] agreed with him on that point. This means that a majority of the seven-judge Bench ultimately endorsed a proposition that was never actually before it. The issue referred to the Court was whether States may internally prioritize among listed communities; Justice Gavai's opinion moved beyond that question to recommend an exclusionary principle for the future, a departure he himself signals when he notes that the correctness of creamy layer's application was "not questioned" in the reference but that he finds it "appropriate to consider" nonetheless.[57]

It is therefore essential to distinguish ratio from obiter. The binding ratio of *Davinder Singh* is confined to the permissibility of data-based sub-classification within the Scheduled Castes;[58] Justice Gavai's observations on creamy layer, not being necessary to decide the question referred, are in the nature of a concurring obiter dictum. That four judges chose to align themselves with it does not, without more, convert it into the ratio of the Court. The CJI's own operative conclusion, which alone answers the reference, is silent on the point. It should be treated as a considered suggestion that still awaits deeper doctrinal justification, not as settled law binding on future benches.

That move is problematic for two reasons. First, *Indra Sawhney*[59] and *Ashok Kumar Thakur*[60] deliberately kept SCs and STs outside the creamy-layer inquiry, and the reason given was not incidental. SC/ST status is conferred through a fixed Presidential notification under Articles 341 and 342, making Scheduled Castes and Scheduled Tribes "separate classes by themselves" rather than a backwardness-assessment category of the kind Article 16(4) contemplates for OBCs. Creamy layer, on this reasoning, was a tool for identifying a backward class in the first place, and SC/ST status is not identified that way. Arguably, something deeper sits beneath this formal distinction: OBC backwardness was treated as susceptible to attenuation through social and economic advancement, while untouchability-based stigma was not assumed to work the same way. But that deeper premise is closer to an

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[53] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 295-296 (B.R. Gavai J).
[54] State of Punjab v. Davinder Singh, 2024 INSC 562, para 2 (Vikram Nath J).
[55] State of Punjab v. Davinder Singh, 2024 INSC 562, para 83 (Pankaj Mithal J).
[56] State of Punjab v. Davinder Singh, 2024 INSC 562, para 2 (Satish Chandra Sharma J).
[57] State of Punjab v. Davinder Singh, 2024 INSC 562, para 283 (BR Gavai J).
[58] State of Punjab v Davinder Singh, 2024 INSC 562, para 205 (DY Chandrachud CJ).
[59] Indra Sawhney v. Union of India, AIR 1993 SC 477, para 792 (Jeevan Reddy J),
[60] Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1, paras 184 and 186.

inference from the Court's reasoning than something the majority itself articulated, and it deserves to be argued rather than asserted.

Second, the creamy layer doctrine and sub-classification address different constitutional concerns. The creamy layer doctrine excludes relatively advanced individuals from receiving reservation benefits. Sub-classification, by contrast, does not exclude anyone from the Scheduled Caste category or deny them reservation altogether. Instead, it concerns the distribution of reservation benefits within the class. It redistributes reservation benefits within an already recognised class so that communities which continue to experience greater disadvantage are not left behind. Equating this with the creamy layer doctrine overlooks the fundamentally different role that sub-classification is intended to perform.That is doctrinally dangerous in the SC/ST context, where the persistence of stigma cannot be read off from salary or occupation alone. The point of redesigning affirmative action is to distribute benefits more fairly, not to deny that caste-based disadvantage survives upward mobility.[61]

For that reason, Justice Gavai's suggestion should be treated with caution rather than absorbed as an unproblematic corollary of the majority holding. Unless and until the Court squarely revisits *Indra Sawhney* and explains why untouchability-based disadvantage can now be treated as exhaustible, the better position is to preserve a sharp distinction between internal prioritization and exclusion from the class. *Davinder Singh* constitutionally permits the former. It does not, at least not yet, coherently justify the latter.

2.3 Justice Mithal's First-Generation Proposal

Justice Mithal's concurrence presses the distributive impulse even further. He suggests that reservation ought ordinarily to be confined to the first generation in a family and that once one generation has obtained the benefit and achieved higher status, the next generation should no longer claim it.[62] He also calls for periodic exercises to exclude those who have come to march shoulder to shoulder with the general category.[63] The proposal is striking because it reframes reservation not merely as a community remedy but as a benefit capable of exhaustion at the family level.

The objection to that proposal is both sociological and constitutional. Caste discrimination does not stop with socio-economic mobility or occupational advancement; it remains deeply embedded in social relations and persists significantly across social, cultural, and religious spheres regardless of

[61] Deshpande and Yogendra Yadav, "Redesigning Affirmative Action".
[62] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 80 and 84(iii) (Pankaj Mithal J).
[63] State of Punjab v. Davinder Singh, 2024 INSC 562, para 84 (iv) (Pankaj Mithal J).

individual advancement.[64] The discrimination is not confined to social interaction either, it extends into economic life. In rural markets, erstwhile untouchables continue to face exclusion from certain occupations altogether, are hired for fewer days, and are paid lower wages than higher-caste counterparts performing comparable work, while also bearing a disproportionate burden of forced labour. In urban private employment, persons from Scheduled Castes receive interview calls at markedly lower rates than higher-caste applicants with equal or lower qualifications.[65] A separate National Sample Survey-based study of the regular salaried urban labour market similarly finds that discrimination accounts for a 15% wage gap between SC/ST workers and equally qualified counterparts, that this effect is considerably larger in the private sector than the public sector, and, notably, that unequal access to jobs in the first place is a more significant driver of the overall earnings gap than unequal pay within the same job.[66] The Thorat Committee's findings on the extent of discrimination faced by SC/ST students in elite higher education reinforce the point that entry into prestigious institutions does not dissolve caste marking.[67] The stigma survives episodic mobility.[68]

The proposal also sits uneasily with the language and purpose of Articles 15(4) and 16(4), which focus on the advancement and representation of classes rather than a model based on one-time family mobility. Given the continuing underrepresentation of Scheduled Castes in elite services,[69] a first-generation cap may end up weakening the long-term process of representation instead of strengthening it. It would individualize a group remedy and mistake reservation for a private windfall. Put in constitutional terms, a first-generation cap would transform affirmative action from a class-based

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[64] Ghanshyam Shah et al, *Untouchability in Rural India*, (New Delhi: Sage, 2006).

[65] Sukhadeo Thorat and Katherine S. Newman, eds., Blocked by Caste: Economic Discrimination in Modern India (New Delhi: Oxford University Press, 2010);

[66] Paul Attewell and S. Madheswaran, "Caste Discrimination in the Indian Urban Labour Market: Evidence from the National Sample Survey," *Economic and Political Weekly* 42, no. 41 (October 2007), https://www.epw.in/journal/2007/41/caste-and-economic-discrimination-special-issues-specials/caste-discrimination

[67] Sukhdeo Thorat, K.M. Shyamprasad, and R.K. Srivastava, "Report of the Committee to Enquire into the Allegation of Differential Treatment of SC/ST Students in All India Institute of Medical Science, Delhi," last accessed May 11, 2026, https://www.nlhmb.in/Reports%20AIIMS.pdf.

[68] Rajeev Kumar Singh and Akshat Pushpam, "Fragmenting the Margins?", 4-5.

[69] "Creamy layer snatching job pie? Data shows a chunk of SC/ST jobs remain unfilled each year," *The Economic Times,* August 4, 2024, https://economictimes.indiatimes.com/news/india/creamy-layer-snatching-job-pie-data-shows-a-chunk-of-sc/st-jobs-remain-unfilled-each-year/articleshow/112258001.cms?from=mdr.

constitutional remedy under Articles 15(4) and 16(4) which speak of the advancement and adequate representation of classes, into a one-time welfare benefit for individual families. That transformation does not fit the constitutional structure of reservation in India, which is addressed to the standing under-representation of classes rather than to the mobility of particular households.

Periodic review of reservation design may well be constitutionally legitimate. But a generational sunset tied to family advancement is another matter. It lacks textual support, sits uneasily with the continuing reality of caste stigma, and risks reducing a constitutional programme of representation to an administratively convenient but normatively thin theory of individual uplift. For that reason, Justice Mithal's observation is perhaps better understood as a provocative suggestion than as a workable constitutional principle.

2.4 Justice Bela M. Trivedi's Dissent and the Constitutional Warning

Justice Trivedi's dissent cannot be dismissed as a minor disagreement; it raises important constitutional concerns. She begins by defending the constitutional value of dissent itself[70] and then frames the case through three precise questions, thereby signaling that method and institutional discipline matter as much as outcome.[71] Her first objection is procedural. According to Justice Trivedi, the referral itself was procedurally problematic because the three-judge Bench did not provide sufficiently strong reasons for doubting a coordinate Bench judgment that had previously settled the law. For her, this raised concerns about judicial discipline and the stability of precedent.[72]

Her substantive objection is equally significant. In her view, Article 341 does more than create a list for administrative purposes. It identifies a constitutionally recognised class whose composition cannot be altered by the States. Once the President has notified the Scheduled Castes for a State, and only Parliament has the power to include or exclude communities from that list, any attempt by a State to create internal classifications raises questions about the constitutional meaning of that recognition. This is why she regards the distinction between identification and allocation as analytically thin in practice: to re-order access among listed castes is, in effect, to alter the practical value of being in the list.[73]

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[70] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 1-3 (Bela M. Trivedi J).
[71] State of Punjab v. Davinder Singh, 2024 INSC 562, para 5 (Bela M. Trivedi J).
[72] State of Punjab v. Davinder Singh, 2024 INSC 562, para 79 (i) (Bela M. Trivedi J).
[73] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 36, 79 (ii)-(viii) (Bela M. Trivedi J).

Her concern also has a federal dimension. Justice Trivedi cautions that, without clear constitutional limits, States may use sub-classification for political considerations rather than to address genuine disparities within the Scheduled Caste category. Once the Court permits differential allocation of reservation benefits within the Presidential List, there is a risk that internal social and political differences may increasingly be translated into competing claims for separate quotas.[74] Singh and Pushpam capture the danger well: what begins as justice for the most backward can slide into a Pandora's-box demand for caste-wise proportionate quotas and a state-managed fragmentation of Dalit solidarity.[75]

Although the dissent did not prevail, it makes an important constitutional contribution. It draws attention to several unresolved issues in the majority's reasoning, including the difficulty of distinguishing identification from allocation, the implications of sub-classification for the collective identity of Scheduled Castes, and the absence of clear safeguards against arbitrary exercise of State power. Even readers who accept the overruling of *Chinnaiah* should resist treating Trivedi J's concerns as merely formalist. The dissent identifies important limits and concerns that any stable doctrine of sub-classification cannot ignore.

3. What Davinder Singh Leaves Unresolved: Three Doctrinal Gaps

Davinder Singh is an important decision on equality, but it does not settle every constitutional question surrounding sub-classification. The judgment marks a clear departure from *Chinnaiah* by recognising that identical treatment within the Scheduled Caste category can, at times, reinforce existing inequalities. However, it does not fully address three important doctrinal questions. Those questions are not marginal. They will determine whether sub-classification operates as a constitutionally disciplined remedy or degenerates into a politically managed and analytically unstable system of internal reservation.

3.1 Identity-Allocation Instability Under Article 341

The first doctrinal question arises from the distinction drawn by the majority between identification and allocation. While *Davinder Singh* treats Article 341 as governing the identification of Scheduled Castes, it regards Articles 15(4) and 16(4) as governing the allocation of reservation benefits. That distinction is necessary if *Chinnaiah* is to be overruled. But the judgment

[74] State of Punjab v. Davinder Singh, 2024 INSC 562, para 36 (Bela M. Trivedi J).

[75] Rajeev Kumar Singh and Akshat Pushpam, "Fragmenting the Margins?", 6.

never specifies the point at which a distributional rule ceases to be allocation and becomes impermissible re-ranking of the Presidential List. The Chief Justice emphasises that any sub-classification must be based on evidence showing that the identified group is more disadvantaged and expresses a preference for approaches that do not exclude any community from reservation. While these observations provide useful guidance, they do not amount to a clear constitutional test. A future doctrine will have to say more clearly that Scheduled Caste status under Article 341 is common and indivisible, even though distributive access under Articles 15(4) and 16(4) may be internally prioritized. Without that clarification, the majority remains vulnerable to the very criticism advanced by Justice Trivedi: that allocation can silently become re-identification. If the architecture of identification is not to swallow the architecture of allocation, the Court must specify the constitutional threshold beyond which internal preference becomes unconstitutional re-ordering. A more workable approach would be to ask whether the measure leaves the Scheduled Caste status of every listed community unchanged, preserves each community's access to reservation, and is supported by evidence showing that the identified community continues to be inadequately represented. If these conditions are satisfied, the measure is more appropriately understood as regulating the distribution of reservation benefits under Articles 15(4) and 16(4), rather than altering the constitutionally recognised class under Article 341. Where these conditions are absent, the distinction between allocation and re-identification becomes much harder to sustain.

3.2 Unresolved Tension with *Indra Sawhney* on Creamy Layer

The second gap is the judgment's unresolved relation with *Indra Sawhney*. As long as that decision continues to exclude SCs and STs from the creamy-layer doctrine, Justice Gavai's observations in paras 295 and 296 regarding creamy layer generate uncertainty rather than closure. Governments and lower courts may now cite *Davinder Singh* as support for excluding supposedly advanced SC/ST families even though the seven-judge Bench did not decisively confront that question. The result is a doctrinal overlap without an explicit ratio: sub-classification has been approved, creamy-layer exclusion has been suggested, but the conceptual boundary between the two remains blurred.[76]

A more convincing way to reconcile these concerns is to keep the two inquiries distinct. Sub-classification should be understood as a means of

[76] State of Punjab v. Davinder Singh, 2024 INSC 562, paras 295-296 (B.R. Gavai J).

prioritising reservation benefits within an existing class, justified by evidence that particular listed communities continue to be inadequately represented. Creamy-layer exclusion, by contrast, asks whether some individuals have ceased to belong within the beneficiary pool at all. Such a proposition cannot become part of SC/ST reservation jurisprudence solely through judicial dicta. Its acceptance would require the Court to reconsider the premise in *Indra Sawhney* that the effects of untouchability endure despite economic advancement and cannot be assumed to disappear with family mobility or income. Unless that issue is addressed directly, the doctrinal tension is likely to persist.[77]

3.3 Absence of a Judicial Review Standard

The third gap is institutional. The majority repeatedly insists on objective material, quantifiable data, and proof that the beneficiaries of sub-classification are in fact more disadvantaged. Yet it does not say who must collect that material, how current and disaggregated it must be, whether representation should be measured cadre-wise or service-wise, or how often a sub-classification exercise must be revisited. In a field acutely vulnerable to electoral bargaining, the absence of a review framework is not a minor omission. It is an invitation to under-justified policy making masquerading as social justice.[78]

What is needed is not hostility to sub-classification but structured review. Courts should ask at least four questions: whether the State relied on independent and reasonably current evidence; whether the chosen preference is suitable to remedy the identified under-representation; whether a less exclusionary design could achieve the same objective; and whether the burden imposed on other listed communities is proportionate to the gain secured for the more disadvantaged. That approach would better reflect contemporary equality theory and would make the constitutional permission recognized in Davinder Singh meaningfully reviewable rather than merely assertable. These inquiries are best consolidated into a structured five-stage test. A sub-classification measure should be sustained only where: first, it pursues a legitimate constitutional aim, namely the advancement and adequate representation of the most under-represented communities; second, it rests on

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[77] Indra Sawhney v. Union of India, AIR 1993 SC 477,, paras 781 and 792-793 (Jeevan Reddy J), expressly keeping SCs and STs outside the creamy-layer inquiry; see also M. Nagaraj v. Union of India (2006) 8 SCC 212 and Jarnail Singh v. Lachhmi Narain Gupta (2018) 10 SCC 396.

[78] Rajeev Kumar Singh and Akshat Pushpam, "Fragmenting the Margins?", 6.

reliable, current and disaggregated empirical data; third, there is a rational connection between that data and the particular sub-classification design adopted; fourth, the design chosen is necessary in the sense of being the least exclusionary means of achieving the aim; and fifth, the measure is subject to periodic review or a built-in reconsideration mechanism. Framed in this way, *Davinder Singh* becomes not merely a license to sub-classify but the foundation for a disciplined and reviewable doctrine of internal prioritisation.

Conclusion

State of Punjab v. Davinder Singh is therefore best understood as a judgment that is constitutionally permissive but doctrinally incomplete. It was right to overrule *Chinnaiah's* absolute homogeneity thesis and to recognize that a unitary Presidential List cannot by itself answer the distributive question of who within that list remains least represented. In that sense, the decision restores reservation law to the logic of substantive equality[79]: equal concern sometimes requires differentiated distribution within a commonly recognized class.

At the same time, the judgment should not be read as supporting every form of differentiation within the Scheduled Caste category. Acknowledging internal disparities does not justify fragmenting the Article 341 class for political purposes. Likewise, Justice Gavai's observations on the creamy layer require a more direct engagement with *Indra Sawhney* before they can be regarded as part of settled doctrine. Justice Mithal's first-generation proposal raises similar concerns, as its acceptance would require a reconsideration of the constitutional commitment to class-wide advancement and adequate representation. And Justice Trivedi's dissent remains a reminder that the Court must justify, not merely announce, the line between permissible redistribution and unconstitutional tampering with the meaning of Scheduled Caste status.

The challenge, going forward, is to strike the right balance. The collective constitutional identity of Scheduled Castes must remain intact, while States should be permitted to adopt evidence-based and non-exclusionary forms of sub-classification to address persistent inequalities within the class. At the same time, the creamy layer doctrine and first-generation exclusion should not be extended to the SC/ST context without clear constitutional justification. Finally, any policy of sub-classification must

[79] Sandra Fredman, "Substantive equality revisited," *International Journal of Constitutional Law* 14, no. 3 (July 2016): 712–738, https://doi.org/10.1093/icon/mow043.

remain subject to rigorous judicial scrutiny to ensure that it serves genuine constitutional objectives rather than political expediency. That framework would take both equality and fraternity seriously. It would direct constitutional attention to the most under-represented without denying the shared injury of untouchability that makes the Presidential List matter in the first place. If future legislatures and courts supply that discipline, *Davinder Singh* may yet become not the fragmentation of the Scheduled Caste category, but the beginning of a more candid and more defensible doctrine of substantive equality. Reduced to a single formula, *Davinder Singh* is correct in principle but incomplete in doctrine: its legitimacy depends on sub-classification that is evidence-based, non-exclusionary and periodically reviewed. Without a clear standard of review, the same judgment may become either an instrument of substantive equality or a vehicle for the electoral fragmentation of the Scheduled Caste category; which of these it becomes will depend on the doctrinal discipline that legislatures and courts are prepared to supply.

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"Caste is not merely a division of labour. It is also a division of labourers."

—

Dr. B. R. Ambedkar

Annihilation of Caste (1936)

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