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NCBC AND THE SUB-CATEGORISATION OF OBCs: BETWEEN JUSTICE AND POLITICS

~ Ashish Kumar Swain

THE PROBLEM WITHIN THE RESERVATION PROBLEM

India's reservation framework for Other Backward Classes rests on a foundational assumption that has become harder to defend with each passing decade: that the OBC category is internally homogeneous enough to be treated as a single unit for the purposes of affirmative action. It is not. The OBC list, shaped by the Mandal Commission report of 1980 and subsequently expanded, covers thousands of castes across the country. Some of these communities have made considerable social and economic progress in the post-Mandal period. Others remain almost entirely absent from government employment, higher education, and elected representation.

This internal stratification is the sub-categorisation problem. It is not new. The demand by less dominant OBC communities for a protected share within the OBC quota has been a persistent feature of backward class politics since the 1990s. What is new is the constitutional and institutional framework within which the question is now being addressed. The National Commission for Backward Classes, elevated to a constitutional body by the 102nd Amendment in 2018,[1] has an advisory role in determining which communities are included in or excluded from the Central OBC list. And the Supreme Court, in its 2024 judgment in *Punjab v. Davinder Singh,*[2] has now cleared the constitutional path for States to sub-categorise within the OBC quota. The question that follows is whether the institutional machinery to do this fairly actually exists.

WHAT DAVINDER SINGH SETTLES AND WHAT IT DOES NOT

[1]National Commission for Backward Classes Act, 1993, s 9.

[2]*Punjab v. Davinder Singh*, (2024) SCC On Line SC 1906 (seven-judge bench overruling *E.V. Chinnaiah v. State of Andhra Pradesh*, AIR 2005 SC 162).

For nearly two decades, the Supreme Court's 2004 ruling in *E.V. Chinnaiah v. State of Andhra Pradesh*[3] stood as a constitutional bar to sub-categorisation. The Court held in that case that OBCs form a homogeneous class for the purposes of Article 16(4) and that States could not create sub-classes within the quota without effectively tampering with the Presidential list under Article 341. Several State governments attempted sub-categorisation anyway, and the resulting litigation accumulated until a seven-judge bench was constituted to resolve it.

The 2024 ruling in *Davinder Singh* overrules *Chinnaiah* and holds that States may sub-categorise within the OBC quota, provided the exercise is based on empirical data demonstrating that certain communities within the list are inadequately represented relative to others. The judgment is a significant constitutional development. It affirms the principle that formal inclusion in a reservation category does not guarantee substantive access to its benefits, and that the State has an obligation to ensure the fruits of reservation actually reach the communities for which they were intended.

What the judgment does not do is specify how sub-categorisation is to be conducted. It requires an empirical foundation, but it does not prescribe the methodology, the indicators to be used, or the institutional process by which communities are to be ranked and sub-divided. This is where the NCBC's role becomes both important and problematic.

THE ROHINI COMMISSION DATA AND WHAT IT REVEALS

The Justice G. Rohini Commission, appointed in 2017 to examine sub-categorisation of OBCs in Central services, submitted its report in 2023 after six years of work.[4] Its findings were striking: approximately 40 communities out of over 2,600 in the Central OBC list had cornered nearly half of all OBC reservation benefits in Central government employment over the preceding decade.[5] The remaining communities, the vast majority by number, shared the other half, with many receiving no meaningful benefit at all.

This data gives concrete shape to a problem that critics of the Mandal framework have long identified. Reservations are not reaching the most disadvantaged OBC communities because more organised and politically powerful communities within the list are better

[3] *E.V. Chinnaiah v. State of Andhra Pradesh*, AIR 2005 SC 162.
[4] Justice G. Rohini Commission Report on Sub-Categorisation of OBCs, submitted to Government of India, 2023, para 4.1.
[5] ibid, para 4.3 (finding that 40 communities cornered approximately 50 per cent of OBC reservation benefits in Central services).

positioned to compete for reserved posts. The Rohini Commission's proposed solution was to divide OBCs into four sub-categories based on their representation in Central services and to allocate a proportionate share of the 27 per cent quota to each. This is a reasonable starting point. The difficulty lies in translating it into policy without the exercise being captured by the very political dynamics that created the problem.

THE RISK OF POLITICAL CAPTURE

The NCBC's constitutional mandate is to examine complaints regarding over-inclusion and under-inclusion in the OBC list and to advise the Central Government accordingly.[6] In practice, the Commission operates under significant political constraints. Its members are appointed by the executive, its recommendations are advisory rather than binding, and the final decision on inclusion or exclusion rests with the Government of the day. In a political environment where OBC communities represent large and organised vote banks in virtually every State, the temptation to add communities to the list before elections and to defer genuine rationalisation indefinitely is structural, not incidental.

Sub-categorisation sharpens this risk. Once it becomes possible to allocate larger or smaller shares of the OBC quota to specific communities, the political stakes of NCBC recommendations rise considerably. A government that controls the NCBC appointment process and is not bound by its recommendations can effectively use the sub-categorisation framework to reward allied communities and disadvantage others, all while claiming to be implementing the constitutional mandate of *Davinder Singh.* The formal legal architecture of post-102nd Amendment NCBC is constitutionally sound. The informal political architecture around it is not.

TOWARDS A DATA-DRIVEN MATRIX: DEPOLITICISING INCLUSION

The Supreme Court in *M. Nagaraj v. Union of India*[7] held that reservation policies must rest on quantifiable data rather than assumption. This requirement, combined with the *Davinder Singh* framework, creates both the constitutional obligation and the legal space for a genuinely data-driven approach to OBC sub-categorisation. The question is what that approach should look like.

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[6] Constitution of India, 1950, art 338B(9) (the NCBC shall discharge its functions in accordance with such procedure as may be prescribed by the President by rule).
[7] *M. Nagaraj v. Union of India*, (2006) 8 SCC 212, 272 (requiring quantifiable data to justify reservation policies).

The Socio-Economic and Caste Census of 2011[8] collected granular data on the social and economic conditions of individual caste communities across India. Only a portion of this data has been released. A serious sub-categorisation exercise would begin by demanding full disclosure of the SECC data, supplemented by an updated caste census with standardised indicators across States. The indicators used to assess backwardness and representation should be fixed in advance by statute or by binding NCBC regulation, covering at minimum: representation in Central and State government employment by grade, enrolment in publicly funded higher education institutions, land ownership and asset data, literacy rates disaggregated by gender and generation, and inter-generational occupational mobility.

Sub-categorisation decisions made on the basis of a transparent, publicly available matrix of this kind would be substantially harder to manipulate for electoral purposes. Communities could challenge their placement in any sub-category by reference to the published data, and courts could review NCBC recommendations against the same matrix. This does not eliminate politics entirely; no institutional design can do that. But it raises the evidentiary bar high enough that purely political manipulation becomes visible and therefore contestable.

CONCLUSION

The sub-categorisation debate is, at its core, a debate about whether the promise of reservation is being kept to those who need it most. The NCBC has the constitutional mandate and, after *Davinder Singh,* the legal space to address one of the most persistent failures of the Mandal framework. Whether it has the institutional independence and the evidentiary foundation to do so fairly is a different question.

Reservation policy in India has always been shaped by the intersection of constitutional principle and political interest. That intersection is not going away. What a data-driven sub-categorisation matrix offers is not a depoliticised utopia but a framework where decisions must be justified against publicly available evidence rather than privately negotiated electoral calculations. For communities that have waited since 1993 for a share of a quota that was meant for them, that shift in the burden of justification is not a small thing.

[8] Registrar General of India, *Socio-Economic and Caste Census 2011*, released in part, 2015.