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## Substantive Equality and Reservation Jurisprudence: A Critical Commentary on State of Punjab v. Davinder Singh [(2024) 4 SCC 869]

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### ABSTRACT

This commentary examines the Supreme Court's recent decision in State of Punjab v Davinder Singh (2024), wherein a 7-judge Constitution Bench which delivered the order in a 6:1 majority, had set aside E.V. Chinnaiah and upheld the State's ability to sub-classify SCs for reservation. It explores the evolution of the Reservation Jurisprudence from Indra Sawhney to the homogeneity doctrine to examine the majority's embrace of substantive equality and the fiction that there are no differences among the SC communities, with regards to Article 341<sup>1</sup>. It brings to the fore the Court's emphasis on empirical conditionality and proportionality, which requires to be quantified in terms of data to justify sub-classification and its political misuse and thus renders the process judicially reviewable. The commentary also highlights the important concurring views of Justice Gavai who called for the extension of the principle of creamy layer to SCs and STs. It further analyses the judgment restoring the concept of reservation law as an evidence-based, accountability-based tool of transformational constitutionalism that is supposed to benefit the weakest of the weak and is sensitive to the limits of institutions that are asserted in dissent.

**Keywords:** Substantive Equality, Reservation Jurisprudence, Sub-classification of Scheduled Castes, Creamy Layer, Empirical Conditionality, *E.V. Chinnaiah*, Article 341.

**Full Citation:** State of Punjab v. Davinder Singh, (2024) 4 SCC 869

**Court:** Supreme Court of India — Seven-Judge Constitution Bench

<sup>1</sup> INDIA CONST. art. 341.

**Decided:** 1 August 2024

**Bench:** CJI D.Y. Chandrachud; JJ. B.R. Gavai, Vikram Nath, Bela M. Trivedi, Pankaj Mithal, Manoj Misra, Satish Chandra Sharma

**Majority:** 6:1 (J. Bela M. Trivedi dissenting)

## I. INTRODUCTION

The landmark judgment in *State of Punjab v. Davinder Singh (2024)*<sup>2</sup>, which was penned by a seven-judge Constitution Bench on 1 August 2024, has been a turning point in the history of Reservation Jurisprudence in India. The Supreme Court, by a majority of 6:1, had decided that State Legislatures indeed had the power to sub-classify Scheduled Castes (SCs) reservation so that the most backward and disadvantaged sub-classes within the SCs can be given preferential benefit. In the process of doing so, the Court has expressly overruled the five-judge bench decision, held in the case of *E.V. Chinnaiah v. State of Andhra Pradesh*<sup>3</sup>, which had essentially treated SCs as a constitutionally homogeneous class, being immune from further legislative sub-division. The judgment does not only reinvent the formal theory of reservation law, moving from a formal to substantive notion of equality, it is an affirmation of the transformative promise of Indian Constitution: differentiation within disadvantage.

## II. LEGAL ISSUES BEFORE THE COURT

- (i) Whether the Indian Constitution gives the states the legislative powers to sub-classify the Scheduled Castes who were notified under Article 341 to give preferential reservation to specific sub-groups of the SC quota?
- (ii) Whether the case of *E.V. Chinnaiah* was correctly decided in holding that SCs form a homogeneous, indivisible class that the State Legislature cannot sub-divide?
- (iii) Whether the Constitution of India bars the State Legislature from dividing the SCs into categories based on their caste? Is the so called 'creamy layer' doctrine as explained in the *Indra Sawhney* case (1992) 3 SCC 217 applicable to exclude socially and economically advanced members of the SC/ST categories?
- (iv) What is the basis for the application of the constitutional standard over the exercise of the sub-classification power, especially those of empirical justification?

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<sup>2</sup> *State of Punjab v. Davinder Singh*, (2024) 4 SCC 869

<sup>3</sup> *E.V. Chinnaiah v. State of Andhra Pradesh*, (2005) 1 SCC 394

### **III. JURISPRUDENTIAL TRAJECTORY: THE LINE OF PRECEDENT**

#### **A. CONSTITUTIONAL ARCHITECTURE: ARTICLES 14, 15(4), 16(4), AND 341**

The State has been given the power to make special provisions for the SC, ST groups and the socially and educationally backward classes under Article 15(4)<sup>4</sup> and 16(4)<sup>5</sup> of the Indian Constitution. These are not exceptions to the equality guaranteed by Article 14, but rather these are substantive aspect which allows the State to act differently to create real equality, as in *State of Kerala v. N.M. Thomas*<sup>6</sup>. Under Article 341, the President of India has the sole power to declare the lists of the SC/ST and Parliament has the power to amend the lists to form a 'closed list', thus keeping the lists away from interference of the States legislatures.

#### **B. INDRA SAWHNEY (1992): EMPIRICISM AND THE OBC FRAMEWORK**

In the *Indra Sawhney*<sup>7</sup> case, there was a nine-judge bench decision that was the most exhaustive examination of reservation jurisprudence prior to *Davinder Singh*. The Court upheld OBC reservations with a 50% ceiling (with exception in extraordinary cases), and obliged to exclude the 'creamy layer' among OBCs, and also made a critical observation on the requirement of reservation policy being based on 'quantifiable data' that shows inadequacy of representation. As the Court was clear that creamy layer principle will not apply to SCs and STs, the constitutional sanctity of the Article 341 meant that the Court not only had moved the methodology of reservation jurisprudence to an empiricist one, which will subsequently be followed by *Davinder Singh*, but had also now added this to the list.

#### **C. E.V. CHINNAIAH (2005): THE HOMOGENEITY DOCTRINE**

The Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act of 2000, had divided SCs into four groups and allocated reservation percentages differentially. The Act was found to be unconstitutional by a five-judge bench in *E.V. Chinnaiah*. The main logic of this was that SCs are notified only by the President (by virtue of Article 341) and are not different classes as differs from one State to another. Intra-SC sub-classification was read as an indirect change to the Presidential list which cannot be made without the approval of the Parliament. The bench had also earlier ruled that any sub-classification would be discriminatory as between

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<sup>4</sup> INDIA CONST. art. 15(4).

<sup>5</sup> INDIA CONST. art. 16(4).

<sup>6</sup> *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310

<sup>7</sup> *Indra Sawhney vs Union of India* (1992) 3 SCC 217

SC communities inter se, which in turn would infringe the right to equality guaranteed under Article 14<sup>8</sup>. It remained in power for almost 20 years<sup>9</sup>.

#### **IV. CRITICAL ANALYSIS OF THE MAJORITY REASONING**

##### **A. REJECTION OF THE HOMOGENEITY PREMISE**

Most of them, presided over by CJI Chandrachud and in agreement with JJ. Fundamentally, Gavai, Nath, Misra and Sharma disagreed with the Chinnaiah premise. The Court had already said that inclusion of any SC community in the Presidential list as per Article 341 does not mean that all the SC communities are equally backward and backwardness among the communities of SC is not uniform but it is empirically graded<sup>10</sup>. Some sub-groups continue to be systematically debarred even from the pool of the beneficiaries of reservation even as they are systematically being preferred by the better-off SC castes. The key argument that has been put forward in favour of articles 15(4) and 16(4), together with 46, that is: the Directive Principle to promote the educational and economic interests of weaker sections, places on the States an affirmative obligation to ensure that reservation reaches the 'weakest of the weak'<sup>11</sup>. Sub-classification is therefore not an interference with Article 341 but an intra-quota exercise of the enabling power already vested in the State<sup>12</sup>.

##### **B. EMPIRICAL CONDITIONALITY AND PROPORTIONALITY**

Most importantly, the majority does not provide an automatic sub-classification licence. The Court draws from *M. Nagaraj v. Union of India*<sup>13</sup>, where the Court had asked the States for evidence that there was an “inadequacy of representation” of SC/ST employees to justify sub-classification of representation, and holds that the rationale for sub-classification must be based on empirical evidence. States have to show, on the basis of the statistics of representation and relative deprivation, that despite the SC reservation the targeted sub-group is not being

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<sup>8</sup> INDIA CONST. art. 14.

<sup>9</sup> Umesh Shrikrishnarao Aswar, *Analytical Study of the Judgment of the Supreme Court Pronounced in State of Punjab v. Davinder Singh*, 2024 INSC 562, 12 INTL J.L. 59 (2026).

<sup>10</sup> Anurag Bhaskar, *Reservation as a Fundamental Right: Interpretation of Article 16(4)*, 10 Indian J. Const. L. 3, 4 (2021), [https://ijcl.nalsar.ac.in/wp-content/uploads/2021/11/Bhaskar\\_IJCL\\_volume10\\_2021-3.pdf](https://ijcl.nalsar.ac.in/wp-content/uploads/2021/11/Bhaskar_IJCL_volume10_2021-3.pdf)

<sup>11</sup> Srishti Aishwarya, *Equality Before Law and Affirmative Action Under the Constitution of India: Whether the Creamy Layer Concept Is Still Relevant?*, 2 CALQ 46, 52 (2015),

[https://docs.manupatra.in/newslines/articles/Upload/1E4ADF5E-09B0-45F1-9993-302D98990920.4-c\\_constitution.pdf](https://docs.manupatra.in/newslines/articles/Upload/1E4ADF5E-09B0-45F1-9993-302D98990920.4-c_constitution.pdf)

<sup>12</sup> <https://www.scobserver.in/journal/supreme-court-review-2024-recognising-substantive-equality-to-address-systemic-barriers/>

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

adequately represented in public employment<sup>14</sup>. This standard of proportionality is one that is grounded in administrative accountability and provides meaningful judicial review to sub-classification so that it may not be used for political patronage.

### **C. JUSTICE GAVAI'S CONCURRENCE: EXTENDING THE CREAMY LAYER DOCTRINE**

Justice Gavai's separate concurrence is the most architecturally significant element of the judgment. He believes the 'creamy layer' principle has to be followed by SCs and STs, a principle that the main majority has not formally accepted as binding ratio but has a good persuasive force. His reasoning is structurally similar to Indra Sawhney: as long as the SC member has materially benefited from the State and moved up socio-economically, his continued preferential claims offsets benefit that the Constitution had in mind for those for whom it had been designed<sup>15</sup>. In Gavai J.'s opinion, the grant of the right to enjoy benefits in perpetuity to SC families that are relatively better off is a violation of Articles 14 and 16 in conjunction with the constitutional concept of social justice. This concurrence is a judicial call to Parliament and State Legislatures to legislate creamy layer exclusion criteria for SC/ST categories<sup>16</sup>.

## **V. IMPLICATIONS FOR EQUALITY AND RESERVATION JURISPRUDENCE**

### **A. CONSTITUTIONALISING SUBSTANTIVE EQUALITY**

Davinder Singh introduces substantive equality doctrine, in which the treatment of the unequal is different, into the reservation jurisprudence that applies to SCs. This also springs from the transformative equality paradigm that the Court has adopted in *NALSA v. Union of India*<sup>17</sup> and *Navtej Singh Johar v. Union of India*<sup>18</sup>, where it was recognised that formal neutrality can cause systemic disadvantage.

### **B. EMPIRICISM AS A CONSTITUTIONAL DISCIPLINE**

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<sup>14</sup> Meraj Ahmed, <https://lawschoolpolicyreview.com/2025/10/10/the-supreme-courts-conceptual-muddling-of-substantive-equality/>

<sup>15</sup> Bijoy Biswas, *Sub-Classification of SCs and STs in Reservation Policies: An Analysis Considering Supreme Court Jurisprudence*, 6 Indian J. Integrated Rsch. L. II, 15 (2026), <https://ijirl.com/wp-content/uploads/2026/03/SUB-CLASSIFICATION-OF-SCS-AND-STs-IN-RESERVATION-POLICIES-AN-ANALYSIS-CONSIDERING-SUPREME-COURT-JURISPRUDENCE.pdf>

<sup>16</sup> Mandar Govindrao Latpate, *Formal and Substantive Equality*, 6 Int'l J.L. Mgmt. & Hum. 2023, 2028 (2023), <https://ijlmh.com/wp-content/uploads/Formal-and-Substantive-Equality.pdf>

<sup>17</sup> *NALSA v. Union of India* (2014) 5 SCC 438

<sup>18</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1

The mandatory data requirement introduces a proportionality regime into the SC reservation policy, similar to the one Indra Sawhney introduced in the OBC reservation policy, and Nagaraj in the SC/ST promotional reservations policy. State Governments are thus required to now undertake and report on comprehensive surveys of representation before enacting sub-classifications, and then have such a threshold reviewable under Article 226/32 of the Constitution.

### **C. THE CREAMY LAYER HORIZON**

Even though it is not a binding ratio, Justice Gavai's concurrence in the creamy layer exclusion of SCs and STs will be taken up or discussed in future benches. It introduces the transformative possibility, and contested imperative, of making reservations a generation-sensitive instrument of social mobility and not a static right, and calls for legislative activity at the earliest opportunity.

### **VI. CONCLUSION**

State of Punjab v. Davinder Singh is a constitutionally historic case. The Court has thus moved toward an empirical, institutionally accountable and substantively just understanding of reservation law in the course of overturning Chinnaiyah. The overwhelming consensus of the majority that the 'same is not equal', there is a different deprivation for different members of the SC category, is a jurisprudential growth long called for by the social reality. The empirical conditionality and proportionality test does not create an unlimited discretion for the State, but rather the sub-classification is a constitutionally disciplined, judicially reviewable decision. Although Justice Trivedi's dissent was overruled, it is a salutary reminder of the institutional limits that any classification, even the most well-intentioned, must place. Therefore, Davinder Singh reiterates the goal of the Constitution Preamble, justice, social, economic and political, and assigns it to the legislature, executive and judiciary to continue the work of realizing it based on empirical evidence.

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