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Case Comment: The State of Punjab v Davinder Singh: Sub-Classification within Scheduled Castes for Reservation, Valid or Not?

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INTRODUCTION

Affirmative action or positive discrimination has always been debated before the legislature and the judiciary. People who are not beneficiaries of reservation under Article 330[1], Article 332[2], Article 15[3] and Article 16[4] have consistently opposed these provisions as discriminatory and anti-merit, but the legislature and judiciary, through various legislations and precedents made it clear that these provisions are not discriminatory and always ruled in favour of the reservation. With time, people, i.e., scheduled castes and scheduled tribes, who are beneficiaries of reservation, also started questioning the criteria of reservation because it has been benefiting only a certain section of the class and the strata who need the benefit of reservation the most are not getting it. Thus, the demand for sub-classification of scheduled

[1] Constitution of India 1950, art 330
[2] Constitution of India 1950, art 332
[3] Constitution of India 1950, art 15
[4] Constitution of India 1950, art 16

castes and scheduled tribes arose so that there could be equitable distribution of benefits of reservation within the scheduled caste and scheduled tribe classes.

In the case of Indra Sawhney[5], sub-classification of other backwards classes (OBCs) was made permissible on the ground of differentiation that exists among OBCs. But in the case of E.V. Chinnaiah[6], the sub-classification of scheduled castes (SCs) was held unconstitutional.

In the present seven-judge bench case, the validity of E.V. Chinnaiah[7] was challenged and the apex court gave an elaborate and detailed decision on the validity of the E.V. Chinnaiah case and decided the question of whether sub-classification of SCs is constitutionally permissible or not.

FACTS OF THE CASE

The issue arose because the Punjab legislature enacted the Punjab Scheduled castes and Backward Classes (Reservation in Services) Act, 2006 through which 50 % of reservation provided in favour of scheduled castes was reserved for particular scheduled castes such as *Balmikis* and *Mazhbi Sikhs* in direct recruitment; thus, sub-classification within the SCs had been done through this legislation. The validity of this legislation was challenged before the High Court by invoking the writ jurisdiction under Article 226 of the Constitution of India. This legislation was held unconstitutional by the constitutional bench of the Punjab and Haryana High Court by relying on the judgment of **E.V. Chinnaiah v State of Andhra Pradesh and Ors.**[8] Thus, section 4(5) of the aforesaid act, which sub-classified SCs was held invalid.

In the same way, in Haryana[9] and Tamil Nadu,[10] through a notification and an act, respectively, sub-classification of SCs for reservation in educational institutions and appointment in services had been done. These were also challenged and came for consideration before the seven-judge bench in the present case to decide a **common issue,** which is whether sub-classification of scheduled castes is constitutionally valid.[11]

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[5] *Indra Sawhney v Union of India* (1992) Supp (3) SCC 217
[6] *E.V. Chinnaiah v State of Andhra Pradesh* (2005) 1 SCC 394
[7] *Ibid*
[8] *Ibid*
[9] *The State of Punjab v Davinder Singh* (2024) INSC 562
[10] Tamil Nadu Arunthathiyars Act 2009
[11] *State of Punjab v Davinder Singh* (2024) SCC Online SC 1860

ISSUES RAISED

To decide the common issue mentioned in the facts of the case, the Constitution bench has to decide the following issues:

1. Whether sub-classification of a reserved class is permissible under Articles 14, 15 and 16 in the Indian Constitution.
2. Whether the SCs constitute a homogeneous or a heterogeneous grouping.
3. Whether Article 341 creates a homogeneous class through the operation of the deeming fiction.
4. Whether there are any limits on the scope of sub-classification.

SUBMISSIONS OF BOTH PARTIES

Since the Punjab Act, Haryana notification, and Tamil Nadu Act were held unconstitutional based on the E.V. Chinnaiah case, the submissions of both parties were restricted to the issue of whether the judgment of the apex court in Chinnaiah required to be reconsidered.

Petitioners Arguments:

1. Petitioner argued that SCs are not a homogeneous class and inter-se disparity exists among the SCs. They relied on Indra Sawhney[12] and NM Thomas[13] cases and Article 16(4) and Article 341 to prove that internal differences exist among SCs and that further classification within the class is possible. Thus, it was argued that Chinnaiah is not in line with empirical data collected by the state because several castes or tribes within the scheduled castes and tribes are not similarly situated.

2. They argued that the creamy layer and sub-classification are two different principles. The creamy layer results in the exclusion of some classes, but sub-classification did not exclude classes from the benefit of reservation thus, it will not amount to tinkering with the Presidential list listed under Article 341 of the Constitution of India, because no exclusion is being done.

[12] *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217
[13] *NM Thomas v State of Kerala* (1976) 2 SCC 310

3. They submitted that there is no connecting link between Article 341 and subclassification, and Article 341 does not limit the power of the state legislature to classify the listed scheduled class.

4. Article 14 not only mandates equal treatment to all but also bars discrimination by equal treatment of unequals. A special treatment to unequals can be provided under Article 38(2) of the Constitution, thus, Article 341 has to be read along with Article 38(2).

Respondents Arguments:

1. Scheduled castes are a class by themselves and under Article 341, only Parliament is allowed to make any inclusion or exclusion in the list after the President lists castes in the list. The executive has no power to change the list because if it does, there is are chance of tinkering with the list by the executive for political ends. Dr. B.R. Ambedkar mentioned this view while drafting the provisions of Article 341 and Article 342.

2. Article 341 creates a deeming fiction, and the heterogeneous castes notified under Article 341, once notified, are put in an artificial mould of homogeneity by deeming fiction.

3. Sub-classification will lead to the exclusion of some SCs, which is a power given to no authority other than Parliament under Article 341(2); thus, the state legislature is incompetent to make sub-classification because it will lead to the exclusion of SCs.

4. The respondents discussed the interplay of Article 16(4) and Article 341 of the constitution.

5. Indra Sawhney's judgment approval for the sub-classification of OBCs will not apply to SCs and STs because both classes are different in terms of social backwardness.

6. The State legislature and the National Commission for Scheduled castes can make recommendations for inclusion or exclusion of SCs in or from the list, but the power to approve those recommendations is only vested with the Parliament.

JUDGEMENT AND OBSERVATION

The Supreme Court considered the reference through a seven-judge bench and held the validity of the sub-classification of SCs for reservation. In the 6:1 judgment, the majority gave the following reasons for the constitutionality of sub-classification:

1. Referring to the observations of the court in E.V. Chinnaiah about Scheduled castes being class in themselves and further classification of scheduled castes would violate the principle of reasonableness which would lead to reverse discrimination and that it would be contrary to Article 14 of the Indian Constitution; the apex court analyzed the contours of Article 14 and observed that classification under Article 14 is permissible when two conditions are satisfied, firstly the presence of intelligible differentia, i.e., difference capable of being understood and secondly this differentia must have rational nexus with the object. Thus, by applying this principle of reasonable classification, sub-classification of SCs and STs for reservation can be made. It was held that this power of the state legislature to sub-classify is recognised under Articles 15(4) and 16(5) of the Indian Constitution. Thus, under Articles 14, 15, and 16 of the Constitution of India, sub-classification is permissible.

2. By analysing historical and empirical data, the majority unanimously came to the conclusion that scheduled castes are an amalgamation of castes that are not the same, i.e., they are different in terms of discrimination faced by them. Some castes are more backwards and even faced discrimination within SCs, which means they were being treated by affluent SCs in the same way as Upper castes treated all SCs. Thus, it was held that inter-se backwardness exists among SCs, which shows that they are not a homogeneous class. There is an existence of heterogeneity among SCs because of which some classes faced more discrimination in comparison to others.

3. It was observed that Article 341(1) does not create a deeming fiction of homogeneity. The phrase 'deemed' is used in the provision to mean that the castes or groups notified by the President shall be 'regarded as' the scheduled castes. The deeming fiction is for the constitutional identification of the scheduled caste, not for the creation of homogeneity.

4. About the scope of sub-classification, it was held that the principle of reasonable classification must be used for sub-classification, and in Article 15(4), the yardstick must be 'social and educational backwardness' and for Article 16(5), the yardstick is 'whether the class is adequately represented or not and whether this inadequacy of representation is leading to social backwardness or not. Thus, the state legislature must consider the above principle and questions while making any legislation on the sub-classification of SCs for the purpose of reservation.

So, the court solved the issues raised by the above reasoning and overruled the judgment of E.V. Chinnaiah[14] by holding that sub-classification of SCs is constitutionally permissible and nothing in the constitution prohibits the state legislature from enacting a law that sub-classifies scheduled castes for reservation, provided the state legislature followed the rational procedure for such sub-classification.

ANALYSIS OF THE JUDGEMENT

The Apex Court, through this judgment, clarified that sub-classification is permissible under the Indian Constitution and that the State legislature has power under Articles 14, 15, and 16 to enact a law or issue any notification related to sub-classification of Scheduled castes, provided the state legislature uses proper and reasonable methods for such sub-classification. And such sub-classification is not tinkering with the presidential list under Article 341(1). It was held that there are disparities within scheduled castes that need to be addressed, and sub-classification is the method for addressing the disparity and for proper distribution of the benefits of reservation.

This Judgement is a detailed, concrete, and landmark judgment because it addresses the issue of inter-se backwardness, which, if not addressed, will cause the oppression of the weakest of the weak. As stated by J. Krishna Iyer, 'One law for the lion and Ox is oppression', which means if within SCs there are *lions* (advanced group) and *ox* (weak group) and reservation is provided to them without reasonable classification, then *lions* will take a major benefit even if they don't need it and the needy, i.e., the *ox* will not get the extent of reservation which they should get, thus, they will be oppressed. Thus, this judgment is followed properly and policies are formulated taking into consideration what has been suggested in the judgment, then it will help in the achievement of the right to equality and ensure social and economic justice.

As there are always two sides to the same coin, this judgment can also lead to negative consequences. As stated in the judgment itself, the candidates who are selected in the reservation quota have always faced the stigma of incompetence attached against them because they are externalised as 'affirmative action beneficiaries' or 'quota candidates'; thus, they are oppressed through these stereotypical terms. After this judgment, there is the

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

possibility that the weakest of the weak are oppressed within the scheduled caste by advanced groups of the scheduled caste through the same terms that are used by open category candidates for all SCs.

Thus, it is important that, by taking into consideration both aspects, the policies must be made in such a way that positive consequences will follow.

CONCLUSION

Through this judgment, the Supreme Court overruled a 15-year-old precedent, E.V. Chinnaiah[15] and upheld the constitutionality of sub-classification within scheduled castes for reservation. In conclusion, it can be said that this is a remarkable judgment in the field of affirmative action and right to equality. The sub-classification principle will not only ensure the growth of the weakest of the weak, but through this, the benefit of reservation will be distributed more equitably and reasonably, which was always the aim of the drafters of our constitution. Thus, the prospects and consequences of judgment are very broad and can be positive, if the legislature proceeds carefully and reasonably by taking into consideration the negative side of the judgment also.

[15] *Ibid*