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Intragroup Caste Reservation in India: Analysing the Validity of Sub-Classification within Reserved Categories

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The Supreme Court of India's recent ruling permits states to sub-classify Scheduled Castes (SCs) for reservation purposes, overturning the previous decision in E.V. Chinnaiah, which had held SCs to be a homogeneous group. The judgment, delivered in the State of Punjab v Davinder Singh, acknowledges significant intra-group disparities, with some Scheduled Castes (SCs) facing deeper historical disadvantages than others. This subclassification allows states to create sub-quotas within the SC reservation framework to benefit the most marginalised communities. However, it has sparked debates over the potential risks of further division and discrimination within already marginalised groups. This paper critically examines the constitutional validity of this decision, the legal precedent it sets, and the implications it holds for the future of caste-based reservations in India, focusing on Articles 14¹, 15², and 341³ of the Constitution. The paper explores the historical background, key judicial rulings, and socio-political ramifications of sub-classification within reserved categories, with a special emphasis on the role of affirmative action in addressing inequities among India's SC population.

¹ Constitution of India 1950, art 14

² Constitution of India 1950, art 15

³ Constitution of India 1950, art 341

Keywords: *sub-classification, scheduled castes and scheduled tribes, reservation, preferential treatment, creamy layer.*

INTRODUCTION

On 1 August 2024, a seven-judge bench of the Supreme Court held the case of the State of Punjab v Davinder Singh.⁴ That the sub-classification of Scheduled Castes, for reservation, done by states, is constitutionally valid. The quorum consisted of the Chief Justice. D.Y. Chandrachud and Justices B.R. Gavai, Vikram Nath, Bela Trivedi, Pankaj Mithal, Manoj Misra, and Satish Chandra Sharma. This was a 6:1 ratio judgment with a majority of 6 judges assenting and one Judge, Bela M. Trivedi, dissenting. The judgment is spread across six opinions. This landmark judgment determined the constitutionality of States establishing sub-classifications within Scheduled Castes (SC)/Scheduled Tribes (ST) categories. The specific issue under scrutiny was whether sub-classification within the reserved castes could be allowed, and whether the decision in *E.V. Chinnaiah v State of Andhra Pradesh*⁵, which held that Scheduled Castes (SCs) notified under Article 341⁶ formed one homogenous group and could not be sub-categorised further, was correct.

The main issue under consideration was the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006⁷, which granted first preference in reservations to Balmikis and Mazhabi Sikhs, covering 50 percent of the total seats reserved for the SC category⁸. The main issue is that some castes or families within the SCs continue to receive reservation benefits even after their initial social difficulties have been significantly lessened by advancements in politics, the economy, and the workplace. This has challenged the idea of scheduled castes as a homogenous group, where some of the castes have uplifted their status, whereas the majority of cases are not able to reap the benefits of such welfare policies, leading to wide disparities.

⁴ *State of Punjab v Davinder Singh*, 2024 SCC OnLine SC 1860

⁵ *E. V. Chinnaiah v State of Andhra Pradesh* (2005) 1 SCC 394

⁶ Constitution of India 1950, art 341

⁷ Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act 2006

⁸ Kanchan Vasdev, 'Decode Politics: How Punjab Came to be Among First States to Sub-Categorise SCs, and has been Fighting to Retain it' *The Indian Express* (09 February 2024) <<https://indianexpress.com/article/political-pulse/decode-politics-punjab-sc-sub-categorisation-constitutional-bench-9152966/>> accessed 20 February 2025

The oppression of the marginalised scheduled caste is done not only by the forward castes but also by the privileged among the scheduled castes who have uplifted their status. This situation can be compared with Dr. Ambedkar's idea of graded inequality, which he describes as a prevalent situation in society where each level in the caste hierarchy involves some communities oppressing others. He observed that even the lower class is privileged compared to the upper class.⁹

LITERATURE REVIEW

Abhinav Chandrachud (2020):¹⁰ The author critically examines the complexities surrounding sub-classification within India's reservation framework, particularly concerning Scheduled Castes (SCs) and Other Backward Classes (OBCs). This work contributes to a growing body of literature that explores the intersection of caste, social justice, and constitutional law in India. Chandrachud's analysis is situated within the broader discourse on affirmative action, emphasising the need for nuanced approaches to reservation policies that account for intra-group disparities. Drawing on landmark judicial decisions, such as *Indira Sawhney v Union of India*,¹¹ the author elucidates how courts have grappled with the legitimacy and implications of sub-classifying disadvantaged groups. His argument builds on the premise that while reservations aim to uplift marginalised communities, there exists a risk of perpetuating existing inequalities if the sub-classification is not carefully structured. Furthermore, the author engages with the theoretical underpinnings of reservation policies, referencing influential scholars who have critiqued the homogenization of castes under reservation schemes. Chandrachud's work highlights the need. For empirical studies to inform policy decisions, advocating for a data-driven approach to assess the effectiveness of sub-classification in achieving equitable distribution of benefits.

Kanchan Vasdev (2024):¹² In *Decode Politics: How Punjab Came to be Among First States to*

⁹ Dr B.R. Ambedkar, *Annihilation of Caste* (first published 1936, Navayana 2024)

¹⁰ Abhinav Chandrachud, 'Guest Post: Sub-Classification in Reservations – II' (*Indian Constitutional Law and Philosophy*, 04 September 2020) <<https://indconlawphil.wordpress.com/2020/09/04/guest-post-sub-classification-in-reservations-ii/>> accessed 20 February 2025

¹¹ *Indira Sawhney v Union of India* (1993) 1 SCJ 353

¹² Vasudev (n 8)

Sub-Categorise SCs and Has Been Fighting to Retain It, Kanchan Vasdev provides a comprehensive examination of the political dynamics and historical context that led Punjab to adopt the sub-categorisation of Scheduled Castes (SCs). This article contributes to the literature on caste politics, affirmative action, and state-level policymaking in India, offering valuable insights into the interplay between social justice and political strategy. Vasdev contextualises Punjab's decision within a broader national framework, highlighting how the state became a forerunner in recognising the need for sub-categorisation among SCs to address intra-group disparities. By tracing the evolution of caste politics in Punjab, the author illustrates how local socio-economic conditions and historical legacies shaped the state's approach to reservation policies. The article discusses key political players, including the influence of regional parties and their electoral strategies, which have been instrumental in advocating for sub-categorisation to benefit specific SC communities.

Furthermore, Vasdev critiques the ongoing legal and political battles surrounding the retention of sub-categorisation, reflecting on the implications of such policies for social equity and political representation. The author engages with the responses of various stakeholders, including political parties, social activists, and community leaders, to illustrate the contentious nature of caste-based reservations in Punjab. By synthesising political analysis with historical narratives.

Vasdev's article enriches the discourse on caste sub-categorisation, emphasising the need for a nuanced understanding of local contexts and political motivations in shaping reservation policies. This work is a critical resource for scholars and policymakers interested in the complexities of affirmative action in India, particularly in regions where caste dynamics play a pivotal role in governance and social justice.

Ajoy Karpuram (2022):¹³ In *Sub-Classification in Reservations for Madigas: The Larger Story*, Ajoy Karpuram delves into the intricate issues surrounding the sub-classification of reservations for the Madiga community, a Scheduled Caste in India. The article contributes

¹³ Ajoy Karpuram, 'Sub-Classification in Reservations for Madigas: The Larger Story' (*Supreme Court Observer*, 17 August 2022) <<https://www.scobserver.in/journal/sub-classification-in-reservations-for-madigas-the-larger-story/>> accessed 22 February 2025

significantly to the discourse on caste-based reservations by highlighting the socio-political dynamics that shape the demand for sub-classification among marginalised groups. Karpuram begins by contextualising the historical background of the Madiga community, exploring their socio-economic status and the challenges they face within the broader Scheduled Caste framework. By analysing legislative and judicial developments related to reservations, the author illuminates the complexities involved in sub-classifying castes, particularly focusing on how such measures aim to address intra-community disparities.

The article critically engages with the implications of sub-classification for social justice, particularly the notion that certain segments within a caste may require more support than others due to varying levels of socio-economic disadvantage. Karpuram argues that while the intention behind sub-classification is to promote equity, it can also lead to complications, such as the potential dilution of benefits for historically marginalised groups when preferences are fragmented among sub-categories.

Furthermore, the author examines the political ramifications of sub-classification, noting how different political entities and community leaders navigate the complexities of caste politics to secure reservation benefits. Karpuram highlights the ongoing legal battles surrounding the Madiga community's demand for sub-classification, reflecting on how these conflicts reveal broader tensions in the Indian caste system and the challenges of implementing effective affirmative action policies. By weaving together historical analysis, legal discourse, and political critique, Karpuram's article enriches the existing literature on reservations in India. It emphasises the need for a nuanced understanding of the interplay between caste, socio-economic factors, and political motivations in shaping reservation policies. This work serves as an essential resource for scholars, policymakers, and activists interested in the complexities of caste-based affirmative action and its implications for social justice in India.

Anand Teltumbde (2009):¹⁴ In *Reservations within Reservations: A Solution*, Anand Teltumbde presents a thought-provoking analysis of the ongoing debate surrounding caste-based reservations in India. Published in *Economic & Political Weekly*, the article explores the

¹⁴ Anand Teltumbde, 'Reservations within Reservations: A Solution' (2009) 44(41/42) *Economic and Political Weekly* <<https://www.jstor.org/stable/25663671>> accessed 19 February 2025

complexities and contradictions inherent in the current reservation system, particularly focusing on the need for a nuanced approach to address intra-community inequalities among Scheduled Castes (SCs) and Other Backward Classes (OBCs).

Teltumbde critiques the existing reservations framework, arguing that it often fails to address these groups' disparities adequately. He asserts that a one-size-fits-all approach to reservations overlooks the significant variations in socio-economic conditions among castes within the broader categories of SCs and OBCs. Drawing from historical contexts and empirical data, Teltumbde highlights the necessity for reservations within reservations, a strategy aimed at redistributing benefits to those who are most disadvantaged within these categories.

The author situates his argument within the larger discourse on social justice and affirmative action, emphasising that the primary goal of reservations should be to uplift the most marginalised segments of society. Teltumbde calls for a systematic review of the reservation policy, advocating for the establishment of sub-quotas that reflect the varying degrees of backwardness among different communities. He argues that this approach would not only enhance the effectiveness of affirmative action but also mitigate the discontent that arises from perceived inequities in the allocation of benefits.

Mashkoor Ahmad (2022):¹⁵ In *Effect of Reservation Policy on Employment of Scheduled Castes and Scheduled Tribes in Public Sector*, Mashkoor Ahmad examines the implications of India's reservation policy for Scheduled Castes (SCs) and Scheduled Tribes (STs) in public sector employment. This study, featured in a compilation edited by Raosaheb K. Kale and Sanghmitra S. Acharya, offers a critical analysis of the effectiveness of reservation policies as a tool for enhancing employment opportunities for marginalised communities.

Ahmad begins by contextualising the reservation policy within India's historical framework, illustrating its origins in the constitutional mandate aimed at addressing social injustices faced by SCs and STs. He argues that while the policy has increased the representation of these groups

¹⁵ Mashkoor Ahmad, 'Effect of Reservation Policy on Employment of Scheduled Castes and Scheduled Tribes in Public Sector' in Raosaheb K. Kale and Sanghmitra S. Acharya (eds), *Mapping Identity-Induced Marginalisation in India: Inclusion and Access in the Land of Unequal Opportunities* (Springer 2022)

in public sector jobs, its impact is not uniform across different states and sectors. This nuanced exploration reveals the disparities in implementation and outcomes, suggesting that some regions and industries have benefited more significantly from reservations than others. The author employs empirical data to evaluate the employment trends among SCs and STs, highlighting the positive outcomes of reservation. Policies for enhancing access to government jobs. However, Ahmad also underscores the limitations of the policy, pointing out that systemic issues such as caste-based discrimination and socio-economic barriers continue to impede the full realisation of the intended benefits. He notes that reservations have facilitated entry into public sector employment but do not automatically translate into economic upliftment or social mobility for these communities.

Moreover, Ahmad addresses the criticism surrounding the reservation policy, including claims that it fosters dependency rather than empowerment. He contends that such critiques often overlook the structural inequalities that necessitate affirmative action in the first place. By emphasising the ongoing challenges faced by SCs and STs, Ahmad advocates for a more comprehensive approach that goes beyond mere numerical representation, calling for supportive measures that enhance skill development, training, and mentorship opportunities.

RESEARCH PROBLEM

The central research problem revolves around the inequitable distribution of benefits within reserved categories under India's caste-based reservation system, leading to the marginalisation of certain sub-castes. The primary issue is whether the existing reservation framework adequately addresses intragroup disparities or whether a sub-classification system is necessary to ensure that the benefits of reservations are more evenly distributed among all subgroups.

The specific research questions arising from this problem include:

1. How do we solve the complexities or evolve a mechanism that can balance the need to prioritise the most oppressed among the SCs while considering the practical implications and the persistence of caste discrimination?
2. What legal and constitutional challenges arise in implementing sub-classification within

reserved categories?

3. What are the socio-economic consequences of not implementing sub-classification, particularly for the most disadvantaged sub-castes?
4. How do judicial rulings and policy changes regarding sub-classification impact social justice and equity in India?

Addressing this research problem is crucial for understanding whether India's current affirmative action policies effectively achieve their intended goals of equality and social justice. Justice across all marginalised groups or whether intragroup disparities necessitate a policy shift toward sub-classification.

RESEARCH OBJECTIVES

To investigate and analyse the legal and constitutional implications of sub-classification:

1. To assess the socio-economic impact of non-implementation of sub-classification, focusing on the most marginalized subgroups within SC, ST, and OBC categories that are currently underserved by reservation benefits.
2. To evaluate the potential benefits and challenges of sub-classification within reserved categories.

THE EVOLUTION OF SUB-CLASSIFICATION IN RESERVATION THROUGH VARIOUS JUDGMENTS

Sub-classification within reserved categories is a practice that seeks to identify and prioritise the most disadvantaged groups within larger caste-based reservations. (i.e.) Breaking down a broader category, such as backwards classes BC's or SC's, into distinct sub-categories like more BC's or SCs. This is done to ensure that resources are directed toward those who need them the most. This is premised on the fact that within those reserved categories, certain communities have less access to reservation benefits compared to the other groups of the same reserved category, which reap more reservation benefits, overshadowing the former's needs. Justice P.

Ramachandra Raju Commission¹⁶ Constituted in 1996, it submitted its report in favour of sub-classification because the Madiga community, comprising half of the SCs in Telangana, encountered difficulties accessing Government benefits designated for SCs due to the Mala community's reported dominance.¹⁷ Despite their significant numbers, the Madiga community contended that they are marginalized from SC-related programs.

HISTORICAL BACKGROUND

In *M.R. Balaji v The State of Mysore*¹⁴, the State of Mysore reserved 50% of seats in medical and engineering colleges for Other Backward Classes (OBCs), with 22% designated for more backward OBCs. This sub-classification was deemed impermissible by the Supreme Court, as Article 15(4)¹⁸ allowed reservations only for backward classes.

In *K.C. Vasanta Kumar v State of Karnataka*,¹⁹ Justice Chinnappa Reddy emphasised that reservations should be designed to address the varying degrees of backwardness within communities. He emphasised the importance of addressing deeper social inequalities through reservations. He stated that reservations should not be viewed as a temporary measure but as a necessary tool to address deep-seated social inequalities. He also underscored that the advancement of a few individuals from disadvantaged communities does not mean that the entire group has overcome the social and economic handicaps of their caste. In *Indra Sawhney v Union of India* Supreme Court upheld the sub-classification within the Other Backward Classes (OBCs) quota, drawing from Justice Chinnappa Reddy's observations in *K.C. Vasanth Kumar v State of Karnataka*, which paved the way for governments to create sub-quotas within the OBC quota, ensuring that benefits reach the most disadvantaged groups. This principle of sub-classification has since been applied to other reserved categories, including Scheduled Castes (SCs), to promote the equitable distribution of reservation benefits.

¹⁶ Justice P. Ramachandra Raju Commission, *Report* (1997)

¹⁷ Karpuram (n 13)

¹⁸ Constitution of India 1950, art 15(4)

¹⁹ *K.C. Vasanta Kumar v State of Karnataka* (1985) Supp SCC 714

EV CHINNAIAH JUDGEMENT

In the E.V. Chinnaiah case, A three-judge bench of the Supreme Court examined the validity of the Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act, 2000, which addressed the conflicts among sub-castes in the State. The Act was enacted as per the recommendations of the Ramachandran Raju Commission, which was constituted by the state government. The Commission identified disparities in the distribution of reservation benefits among the Scheduled Castes in the state, particularly in education and employment. Based on these findings, the state government issued the Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act. Section 3 of this Act introduced the concept of Rationalization of Reservations, dividing the benefits among four groups of Scheduled Castes: Group A (1%), Group B (7%), Group C (6%), and Group D (1%), based on the availability of qualified candidates.

The Andhra Pradesh High Court dismissed the challenges to the Act, leading to appeals that eventually reached the Supreme Court. The appellants argued that the state lacked the authority to enact such a law. They claimed that the Scheduled Castes, once listed under Article 341²⁰ The President formed a homogeneous class that could not be further divided. They contended that such division violated Articles 341(2) and 14 of the Constitution. The state countered, asserting that under Article 15(4)²¹ and 16(4), it had the power to define the extent of reservations.

They argued that this authority was distinct from Article 341 and that the law did not alter the Presidential List. Instead, it was a form of affirmative action to address inequalities within the Scheduled Castes. The state cited the *Indra Sawhney v Union of India* ruling, which permitted the division of backward classes into more backward and backward categories, as a precedent for sub-classifying Scheduled Castes under Article 16(4).

In 2004, a constitutional bench of the Supreme Court held that the Andhra Pradesh Act was unconstitutional, stating that reservations aim to provide special protection to Scheduled Castes and Scheduled Tribes as a unified group. Further subclassification would interfere with the

²⁰ Constitution of India 1950, art 341

²¹ Constitution of India 1950, art 15(4)

Presidential List and lead to reverse discrimination, violating Article 14²². The 2004 decision also emphasized that only Parliament, not state legislatures, has the authority to remove castes from the Presidential List under Article 341. Thus, in the E.V. Chinnaiah Case, the court has inaccurately portrayed the Scheduled caste as a homogenous entity that cannot be classified.

THE RATIO IN DAVINDER SINGH JUDGMENT

In 2020, the matter was referred to a 7-judge bench by a 5-judge bench of the Supreme Court in the case of Davinder Singh, which observed that the judgment of E.V. Chinnaiah, which held that sub-classification was not permissible, was required to be reconsidered as it did not correctly apply the decision of Indra Sawhney.

The reference occurred in a case concerning the validity of Section 4(5) of the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006²³. The provision stipulated that fifty percent of the vacancies of the quota reserved for Scheduled Castes in direct recruitment shall be offered to Balmikis and Mazhabi Sikhs, subject to their availability, by providing first preference from amongst the Scheduled Castes candidates.

In 2010, a division bench of the Punjab and Haryana High Court struck down the provision, relying on the EV Chinnaiah judgment.

The bench in the Davinder Singh Case, 2024, was primarily concerned with these three major issues:

1. Is it necessary to create sub-categories within the reserved groups to ensure a fair distribution of reservation benefits among the most disadvantaged sections of SCs and STs?
2. Is the Scheduled Caste a homogeneous category, or do significant disparities and graded inequalities within the SC community justify sub-classification to address these internal hierarchies?

²² Constitution of India 1950, art 14

²³ Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act 2006, s 4(5)

3. Do States have the authority to create sub-classifications within reserved categories, or would this violate the constitutional mandate under Article 341, which requires the Presidential List of SCs to be treated as a single, homogenous group?

Sub-classification and Articles 14 and 341: Chief Justice D.Y. Chandrachud, in the judgment authored for himself and Justice Mishra, concluded that the sub-classification of Scheduled Castes does not violate the principle of equality under Article 14 of the Constitution. Historical evidence indicates that Scheduled Castes are not a homogeneous group.

Furthermore, sub-classification does not breach Article 341(2). Articles 15²⁴ and 16²⁵ do not prohibit the State from sub-classifying a caste. Sub-classification must be justified by quantifiable and demonstrable data showing that certain groups within the Scheduled Castes are not adequately represented. The state cannot act on its whims or political expediency²⁶ and its decision on sub-classification is amenable to judicial review.

The State can give more Preferential Treatment to more Backward Classes: Justice BR Gavai, in his concurring judgment, stated that the state must give preferential treatment to the more backward communities within the SCs/STs. Only a few people within the category of SC/ST are reaping the benefits from the reservation policies. He stated that the ground reality is that there exist more oppressed sub-groups within these.

Categories, and there are categories within the SC/STs that have faced more oppression for centuries. The basic error in the EV Chinniah judgment is that it proceeded on the wrong understanding that Article 341 is the basis of reservation. But in reality, Article 341 only deals with the identification of castes that are eligible for reservation. Thus, the grounds for sub-classification are that a group from the larger group faces more discrimination.

The Creamy Layer Doctrine: Creamy layers refer to individuals within reserved categories who are relatively more privileged and may not require the same level of support as their less fortunate counterparts. Justice Gavai opined that the State must evolve a policy to identify

²⁴ Constitution of India 1950, art 15

²⁵ Constitution of India 1950, art 16

²⁶ *State of Punjab v Davinder Singh* (2024) SCC OnLine SC 1860

creamy layers among the SC/ ST category and take them out of the fold of affirmative action, as it is the only way to achieve true equality as enshrined in the Constitution.

Justice Vikram Nath, Pankaj Mithal, and Satish Chandra Sharma also concurred with this view that the creamy layer principle can be applied to SCs. The view expressed by Justice Pankaj Mithal was that reservations should be limited to one generation only, and subsequent generations should not again reap the benefits; instead, the state should focus on other marginalized communities within the same reserved category.

Justice Mithal said that if the 1st generation reached a higher status through the reservation, the 2nd generation should not be entitled to it. The Court also referred to multiple studies showing that SCs are not a homogenous group. Field research has revealed significant intra-caste discrimination, with some SCs being more socially backward than both forward castes and other SCs. A.M. Shah's studies highlighted a hierarchy within Dalits in Gujarat, where certain Dalit sub-castes practice untouchability against others. Research by the Robert F. Kennedy Centre, in partnership with Navsari, found that lower Dalit sub-castes experience discrimination in food, water, and religious practices. Similar discrimination patterns were observed in Tamil Nadu and Andhra Pradesh, where caste hierarchies affect them.

Social progress, education, employment, and political participation. This evidence supports the argument for sub-classification to address the differing levels of backwardness among SCs²⁷.

THE DISSENTING OPINION GIVEN BY JUSTICE BELA M. TRIVEDI

Justice Bela M. Trivedi expressed that there was no need to revisit the law established in E.V. Chinnaiah. She criticised the bench in Davinder Singh for referring the case to a larger bench without providing any reason, especially after the earlier judgment attained its finality fifteen years before. She emphasised that sub-classifying Scheduled Castes would amount to altering the Presidential List under Article 341, as the historical and linguistic origins of the term Scheduled Castes, along with the Presidential Orders, establish SCs as a homogeneous group. She

²⁷ Ravichandran Bathran, 'The Many Omissions of a Concept: Discrimination Amongst Scheduled Castes' (2016) 51(47) Economic & Political Weekly <<https://www.epw.in/journal/2016/47/caste-and-class/many-omissions-concept.html>> accessed 19 February 2025

held that the States lack both legislative and executive authority to sub-classify Scheduled Castes under Article 341. She stated that the State could not be allowed to modify or indirectly interfere with the notification issued under Article 341(1), even under the pretext of preserving benefits for the most disadvantaged within the SCs. She concluded that any preference given to certain sub-castes within Scheduled Castes would discriminate against other members of the group, violating Article 14. She stated that under the guise of affirmative action, states cannot alter the Presidential List, as doing so would constitute a misuse of power. Additionally, she rejected the application of *Indra Sawhney* to the subclassification of Scheduled Castes, noting that the case did not deal with this issue and explicitly excluded Scheduled Castes and Tribes from such subclassifications.

CRITICAL ANALYSIS

In the *Davinder Singh Case*, the court has acknowledged that the sub-classification of the reserved category is essential for social justice, and it is essential to distribute the reservation benefits equally among the historically oppressed scheduled castes. Research shows that there are internal divisions within the SC category, with different levels of poverty and discrimination, such as being denied entry into temples by other caste members. The Justice Rohini Commission in 2017 also emphasised the benefits of the sub-classification of OBCs.²⁸ However, no perspective suggests that the most marginalized SCs are far behind the relatively advanced ones. Due to this gap, even increasing reserved positions might not provide enough candidates from the most disadvantaged SCs, which could affect filling vacancies and maintaining merit. Some believe that existing programs and government benefits should focus on these marginalised groups before considering any sub-classification.²⁹

With the apex court ruling in favour of sub-quotas, it now falls upon state governments to enact legislation demonstrating their commitment to the cause. With competing political interests, political parties could again push the issue into oblivion. It is important to note that earlier, when states sub-classified on their own (without the Supreme Court's backing), dominant Dalit sub-

²⁸ Ministry of Social Justice & Empowerment, *Press Release on the Justice Rohini Commission, Commission for Sub-Categorization of OBCs* PIB (2019)

²⁹ Ahmad (n 15)

groups lobbied to reverse those decisions.³⁰ State governments should not give in to such lobbying to go against the top court's verdict. Dalit sub-groups should continue to exert pressure on the state and political parties to ensure that legislation is enacted following the due process of collecting empirical evidence to rationally divide the quota amongst Dalit sub-groups.

Both the application of the creamy layer Doctrine and sub-classification in reservation must be used after the analysis of detailed and thorough, reliable ground data obtained through the caste census and studies that cover not only a small portion of the population but also the relative backwardness of communities within the reserved category.

We can rely on the proper observation of Justice Krishna Iyer in *N.M. Thomas'* case.³¹ That is a word of sociological caution. Its (reservation's) benefits, by and large, are snatched away by the top creamy layer of the backward caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. And that is an innovation in administrative strategy to help the untouched, most backward classes.

Also, emerging from such socio-legal studies and audit exercises, if dispassionately made, both the creamy layer and sub-classification principles should be applied together. If only sub-classification is used, a potential issue arises where certain SCs from the most backward castes, who are not excluded by the creamy layer principle, could monopolise the benefits intended for the most disadvantaged at the expense of others within the backward sub-classification. Therefore, applying both principles ensures fairness and equity within the reservation system. However, while setting criteria for the creamy layer or sub-classification, it is essential to recognise that reservations for SCs and STs are designed to address economic disparities and combat enduring social inequalities. Despite significant progress in education and economic status, social discrimination often persists. Thus, any sub-classification of marginalised groups should ensure that the benefits of affirmative action are fairly distributed among the targeted beneficiaries.

³⁰ G.B. Reddy and Pavan Kastur, 'Decoding Sub-Classification in SCs' (*SCC Online*, 23 September 2024) <<https://www.scconline.com/blog/post/2024/09/23/decoding-sub-classification-in-scs/#fnref46>> accessed 19 February 2025

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

CONCLUSION

Over the past 75 years of our Constitution's functioning, various forms of compensatory discrimination have taken shape. Initially, the class was the primary basis for such measures. However, the landmark judgment in *Indra Sawhney v Union of India*, delivered by a nine-judge Supreme Court bench, recognised caste as the central factor in identifying backward classes. This ruling also reversed the Court's earlier position against sub-classifying backward classes, as established in the *M.R. Balaji* case. Now, this principle of sub-categorisation has been extended to Scheduled Castes (SCs) and Scheduled Tribes (STs).

As compensatory discrimination has evolved from class-based to caste-based, it is anticipated that future affirmative action will focus on individuals, acknowledging people as the fundamental unit rather than class or caste. While this notion may seem idealistic in the current context, it could ultimately be the key to upholding equality and fraternity in the nation.