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## **From Poona pact to Davinder Singh: The legal and constitutional journey of subclassification in SC/ST reservations**

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### **Abstract**

This study examines the evolution of affirmative action in India, with a focus on subclassification within the reservations of the Scheduled Castes (SC) and Scheduled Tribes (ST), as seen through the lens of the historic Davinder Singh case. The article traces the history of caste-based affirmative action, from the communal award and the Poona Pact to the post-independence constitutional provisions that attempted to address the socioeconomic disparities faced by SCs and STs. Examining the arguments for and against homogeneous versus heterogeneous classification within SC/ST groups highlights significant court decisions that have influenced the conversation, such as those issued by Chinnaiiah and Indra Sawhney. The Davinder Singh case can serve as a focal point for discussions about the constitutional and legal implications of reservation subclassification, the impact of empirical data on affirmative action policies, and India's overall pursuit of social democracy.

**Keywords:** Affirmative action, reservation, scheduled caste, scheduled tribe

### **Introduction**

How can social and political democracy be established in a caste-based society? This is a difficult question, especially for a third-world country like India, which has complex differences based on caste, religion, culture, geography, and language, as well as a long history of colonial rule. India, a populous country, was successful in establishing a republican state with a constitution that reflected modern social norms. The intentions and actions of the nation's founding fathers, the Preamble, Parts 3 and 4 of the Constitution, and other documents all help to establish political democracy in the newly formed country. Has political democracy been beneficial to social democracy? To achieve social democracy, the population's spirit of brotherhood and dignity must coexist. Instilling a sense of brotherhood in a society built on endogamous group relationships would necessitate strict laws and regulations, court interpretation, and constitutional values. Affirmative action is one strategy for transforming political democracy into social democracy.

### **Review of the Literature**

Affirmative action is a set of policies and practices within a government or organisation that aim to increase the representation of specific groups based on their gender, race, sexual orientation, creed, or nationality in areas where they are under-represented, such as education and employment. A few countries have implemented affirmative action to combat discrimination against historically oppressed groups. (M. Van Chandola) The Hindu caste system is a hierarchical structure of endogamous and permanent groups that is governed by complex social norms and sanctions, as well as various behaviours such as diet, dress, customs, and occupation. Untouchables have traditionally lived under a strictly enforced system of segregation. Following the adoption of the Indian Constitution, this rigid parochial system of segregation was abolished by Article 17 and the Untouchability Offences Act of 1955.

The history of backward class representation dates back to 1902, when Shahu, the then Maharaja of Kolhapur, initiated the first organised steps to provide reservations for the backward classes. (Zia Mody, 2013) <sup>[10]</sup>. In British India, the communal award sparked controversy and heated debate about representation and reservation as a result of the Round Table Conference's recognition of the then-untouchables as the depressed class. During the

first round table conference, Dr. B.R. Ambedkar proposed separate electorates for untouchables and depressed classes. Following the Round Table Conference (1930-32) on August 16, 1932, British Prime Minister Ramsay MacDonald issued the Communal Award of separate electorate, also known as the MacDonald Award, which extended the separate electorate to depressed classes now known as the Scheduled Caste and other minorities (Metcalf, Barbara; Metcalf, Thomas 2006) <sup>[9]</sup>. However, it was not acceptable to Indian national leaders, particularly Mahatma Gandhi. So, Gandhi began a fast against it, which resulted in Gandhi and Ambedkar's endorsement of the Poona Pact. Though the pact did not grant separate status to depressed classes other than Hindus, it recognised the need for special treatment and representation for Scheduled Castes and Scheduled Tribes within the Hindu fold.

The Poona Pact had nine points, seven of which specified the manner and extent of the depressed classes' representation in the central and provincial legislatures. Separate electorates for depressed classes were not mentioned in the document; instead, the Pact proposed a system of joint electorates with reserved seats. It retained 148 seats from the general electorate for depressed classes, 78 more than the Communal Award had proposed. The Pact also urged efforts to ensure that depressed classes are not discriminated against in public services and that the community is fairly represented. It also included a provision proposing the allocation of a portion of the state's educational grant to depressed classes. Even though supporters and opponents were divided on the issue of reservation in the Constituent Assembly, it was a significant step towards correcting the historical wrong of oppression through reverse discrimination. This is evident in the words of Constituent Assembly member Muhammed Ismail Sahib of Madras: "Scheduled castes fully deserve it; they are the class of people who have been the victims of oppression and so many difficulties for ages; and, therefore, now that we are emerging into the world of freedom, it is only right that they be given the freedom of coming before the world and saying what they want to say." (Bidyut Chakrabarty, 2017) <sup>[7]</sup>. The Indian Constituent Assembly seriously debated the representation of SC and SC and adopted "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistent with the maintenance of administrative efficiency in the making of appointments to services and posts in connection with the affairs of the Union or of a State." The fathers of the Indian Constitution considered various measures to alleviate the oppressed social condition of the untouchables. The consensus was that without a system of compensatory discrimination, Under affirmative action, untouchables would be unable to compete with the rest of society. (M. Van Chandola).

## Method

This study takes a qualitative approach, using historical and legal analysis to trace the evolution of affirmative action in India, with a focus on caste-based reservations. The analysis is organised

## Indian Constitution and Reservation

Articles 15(4), 16(4), 46, 164, 309, 330, 332, 334, 335, 338, 338-A, 341, 342, and 366 of India's constitution, enacted in 1949 and adopted in 1950, provide several protections for

the untouchables, also known as the "Scheduled Castes" under the constitutional nomenclature. (Bidyut Chakrabarty, 2017) <sup>[7]</sup>. Article 14 of the Indian Constitution expressly guarantees equality before the law; however, the principle of equality does not imply that every law must apply to all persons who are not in the same position by nature, attainment, or circumstance, as the varying needs of different classes of people frequently necessitate separate treatment (Basu DD, 2013) <sup>[6]</sup>. The provision of special benefits, protection, or rights to a specific group of citizens for rational reasons is contemplated by Article 14 and is implicit in the concept of equality. (Basu, D.D., 2013) <sup>[6]</sup>. Article 15(4) empowers the state with special provisional actions that allow it to implement policies aimed at advancing the disadvantaged section of society. Policies such as reservations in government jobs and educational institutions for Scheduled Castes, Scheduled Tribes, and other underprivileged groups. These policies benefit the most vulnerable members of society by giving them opportunities for representation, and the state achieves its goal of creating an equitable society. Article 16(4) of the Indian Constitution makes reservations in public employment for communities that are under-represented and backward. Article 46 of the Constitution directs the state to take steps to advance the educational and economic interests of backward classes, specifically the SC and ST, and imposes a duty on the state to protect these classes from social injustice and discrimination.

Article 309 of the Indian Constitution states that acts of the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts concerning the affairs of the Union or any state. Article 335 promotes state government jobs for SC and ST candidates while ensuring that appointments to specific positions are made on the basis of the candidate's merit. This helps to maintain a balance between reserved and general category candidates. The Supreme Court's landmark decision in *State of Kerala v. N.M. Thomas* established the government's right to create special preferences for Scheduled Castes and Scheduled Tribes in government employment. Article 340 empowers the President of India to establish a commission to advise on improving the conditions of the backward classes. Articles 341 and 342 specify how to determine which castes and tribes should be classified as SCs and STs, respectively (Zia Mody, 2013) <sup>[10]</sup>.

The High Court of Madras invalidated the controversial Communal Government Order of Madras State, which endorsed a caste-based quota system, in 1951 because it contradicted the Indian Constitution's credentials by allocating seats in educational institutions to non-Brahmin Hindus, backward Hindus, Brahmins, Harijans, Anglo-Indians, and Indian Christians and Muslims. Subsequently, the Supreme Court upheld the decision of the Madras High Court. (Aishwarya Agrawal, 2023). Some degree of inequality exists in any classification. The state, as a sovereign and obliged to follow the rules of the Constitution, however, may only create "reasonable classification. In *Akhil Bharatiya Soshit Karmachari Sangh v. Union of India*, "for instance, the Indian Supreme Court maintained that a reservation (quota) for the Scheduled Castes and Tribes that was not noticeably above fifty percent was a reasonable classification. The Court did, however, declare that arbitrary and unreasonable

classifications were unconstitutional. In *M.R. Balaji v. State of Mysore*, the Supreme Court ruled that reservations should not exceed 50%. (AIR 1963 SC 649).

Following independence, the Government of India established the first backward commission, the Kaka Kalelkar Commission, in 1953 under Article 340. The commission classified 2399 backward groups based on education, participation in public employment, trade and occupation, and Hindu caste status. The commission's report was submitted in 1955. Aside from other suggestions for improving the backwardness of the depressed classes, it strongly advocated for a caste-based enumeration of the population in the 1961 census to determine backwardness and classification. In 1965, the Government of India appointed a Lokur committee to review the SC and ST lists. In 1979, a second backward commission was formed, chaired by B.P. Mandal, to determine the criteria for defining socially and educationally backward classes and to make recommendations for changes to reservation policies. Based on a 1931 caste census, the commission identified 3743 socially and economically backward classes, as well as 2108 depressed classes. To determine backwardness, the commission used eleven indicators categorised as social, educational, and economic. It emphasised the importance of giving preference to the poorer sections in reservations, and that if there were any vacancies after giving first preference to the poorer sections, they could be filled by others in the backward classes. The need for preference in reservation quotas highlighted the importance of caste census data.

### Discussion

This analysis reveals that, while India's affirmative action policies have traditionally sought to address socioeconomic disparities between SCs and STs, the issue of intra-category inequality remains contentious. The *Davinder Singh* case emphasises the importance of a nuanced approach to reservations, where subclassification may be necessary to address the under-representation of specific castes within the larger SC/ST categories. However, this raises complex questions about the groups' homogeneity and the constitutionality of such subclassification. The *E.V. Chinnaiah* case highlighted the risk of violating the right to equality if subclassification is not handled carefully, whereas the *Indra Sawhney* decision set a precedent for such measures within the OBC category. The discussion also emphasises the importance of using empirical data from caste censuses to design and implement affirmative action policies, arguing that a data-driven approach could help ensure that reservations effectively target the most marginalised.

### Affirmative Action vs. Sub-Categorisation

Sub-categorisation within castes refers to the formation of subgroups within the existing Scheduled Tribes (STs), Scheduled Castes (SCs), and Other Backward Classes (OBCs) categories for affirmative action and reservation purposes. Subcategorisation aims to address intra-category disparities while also ensuring equitable opportunities and benefits for society's most marginalised and deprived segments. (Saket Sarang Param, 2024) <sup>[12]</sup>. The Punjabi government divided the 25% reservation for the Scheduled Castes (SC) into two categories with a notification published in 1975. Balmikis (also known as Valmikis) and Mazhabi Sikhs were to be given preference for half of the

seats set aside for the SC category. The remaining SC groups occupied the other half of the reserved seats. This notice was in effect for 31 years until a comparable Andhra Pradesh law was declared invalid by the Supreme Court's five-judge bench decision in *E.V. Chinnaiah v. State of Andhra Pradesh* (2004).

The state of Andhra Pradesh appointed a commission chaired by Justice Ramachandra Raju to determine which Scheduled Castes were included in the list prepared under Article 341 of the Indian Constitution by the president, who had been unsuccessful in obtaining the benefits of the state's reservations for Scheduled Castes regarding appointment to positions in the state's professional colleges and services. By ordinance, the state of Andhra Pradesh divided the 57 castes on the Presidential List into four groups (A, B, C, and D) based on their relative backwardness and established a separate quota for each of these groups. The question of whether subclassification is appropriate or incorrect came to trial. The Supreme Court later ruled in the *Chinnaiah* case that states cannot further subclassify the list to provide a quota within a quota for the more marginalised and weaker castes within the SC and ST groups because these groups are homogeneous.

The Supreme Court decision in *E.V. Chinnaiah* can be divided into two sections. First and foremost, no group of people can be designated as a Scheduled Caste by state governments. According to Article 341, only the President has this authority. Second, there was only one "homogeneous" group in the Scheduled Caste category. This implied that further classification within a homogeneous group would result in differential treatment of members of the same class, undermining their right to equality. Two years after the Supreme Court's decision, the Punjab & Haryana High Court invalidated the 1975 notification giving preference to Balmikis and Mazhabi Sikhs in *Drishtias*. The Punjab government re-passed the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act of 2006 (the Act). The Balmikis and Mazhabi Sikhs were given "first preference" reservations under Section 4(5) of the Act, which means they would be given half of the seats allotted to the SC category ahead of any other SC group. Based on the Supreme Court's decision in the *Chinnaiah* case, the Punjab and Haryana High Court invalidated this Act provision on March 29, 2010, prompting an appeal to the Supreme Court. The Punjab government argued that the nine-judge bench decision in *Indra Sawhney v. Union of India* (1992) had no bearing on *E.V. Chinnaiah*'s ruling. In the *Indra Sawhney* case, the Supreme Court recognised that certain classes classified as Other Backward Classes (OBC) may be more or less backward than others. As a result, states were legally permitted to address these disparities by establishing subcategories within the OBC classification. According to the Punjab government, *E.V. Chinnaiah* misinterpreted this, implying that only the OBC category, not the SC category, could be subclassified. In 2014, the Supreme Court assigned the case to a five-judge constitution bench to evaluate the validity of *E.V. Chinnaiah*'s ruling.

The five-judge bench, led by Arun Mishra, noted that subclassification was permitted for socially and educationally backward classes (SEBCs) under Article 342A (enacted in 2018), which gives the President the authority to compile a list of SEBCs, even though the case was later transferred to a larger bench of seven judges. It

ruled that the constitutional clauses recognising Scheduled Tribes (Article 342)<sup>[16]</sup>, Scheduled Castes (Article 341), and Scheduled Eastern Border Communities (SEBCs) were "in pari materia," or "on the same matter," and should be interpreted accordingly. According to Indra Sawhney, sub-classification was permitted within the SEBC category, so it cannot be prohibited for the Scheduled Caste and Scheduled Tribe categories. The Supreme Court went on to say that in order to uphold the spirit of the right to equality, the state must be allowed to implement subclassification, as it has the authority to grant reservations for the SC and ST categories under Articles 15 and 16. Because the appeal against E.V. Chinnaiah involved the interpretation of Articles 14, 15, 16, 338, 341, 342, and 342A, it was critical to follow Indra Sawhney and other Supreme Court precedents, especially since this was a matter of great public importance. On August 27, 2020, a 7-judge bench, following a 5-judge bench, in the State of Punjab vs. Davinder Singh case, declared that the Chinnaiah decision needed to be reviewed by a larger bench due to its failure to take into account important factors that could have affected the decision. (Ananthakrishnan G). The constitutional bench must decide whether the Scheduled Castes' subclassification for affirmative action, including reservation, is legal. Despite dissenting opinions, the majority of judges on the bench have validly sanctioned Scheduled Caste sub-classification. This subclassification has been found to be constitutionally permissible. Simultaneously, the rulings support the notion that any assignment involving the state classifying people into smaller groups must be supported by empirical evidence demonstrating how much smaller these groups are than the constitutional class as a whole a fact that should be highlighted. (2024 INSC 562)

The decision will have far-reaching consequences for states hoping to extend protection to some castes that, compared to the so-called dominant scheduled castes, are glaringly under-represented even with reservations. In addition, "historical and empirical evidence indicates that Scheduled Castes are not a homogenous class," the court ruled. (Apurva Vishwanath, 2024)<sup>[2]</sup>. This is where the question arises: what criteria allow for classification or subclassification? It is unacceptable to have a quota function in the absence of data. The exact proportion of OBCs, SCs, and STs in India is unknown. According to Zia Mody (2013)<sup>[10]</sup>, a country cannot impose job and education quotas on a vulnerable group of people while remaining silent on the limits of these benefits. Before seriously considering strategies for complete representation based on brotherhood and dignity, we must first understand India's caste system.

## Conclusion

The evolution of affirmative action in India mirrors the ongoing struggle for social democracy in a caste-based society. While political democracy has been established, social democracy remains elusive, especially among marginalised communities. The Davinder Singh case marks a watershed moment in the ongoing debate over subclassification within SC/ST reservations, emphasising the need for a more nuanced understanding of caste-based inequalities. The article concludes that, while subclassification may be a necessary tool for achieving greater equity within the SC/ST categories, it must be implemented with due regard for constitutional principles

and empirical evidence. Finally, the pursuit of social democracy in India necessitates a commitment to dignity and brotherhood, as well as a legal framework that ensures equitable representation for all marginalised groups.

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