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**SUBSTANTIVE EQUALITY AND INTERNAL  
DIFFERENTIATION IN RESERVATION LAW IN INDIA:  
IMPLICATIONS OF STATE OF PUNJAB V. DAVINDER SINGH  
(2024) FOR SC/ST AND OBC RESERVATION FRAMEWORKS**

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**ABSTRACT**

The judgement delivered by the seven-judge bench of the Supreme Court in the case of State of Punjab v. Davinder Singh (2024) represents a pivotal shift in the jurisprudence pertaining to reservations in India by allowing for the sub-classification within the Scheduled Castes to internal disparities in the allocation of reservation benefits. By overturning the precedent set in E.V. Chinnaiiah v. State of Andhra Pradesh (2005), the Court has reaffirmed the doctrine of substantive equality as enshrined in Article 14 and has acknowledged that ostensibly uniform treatment may indeed perpetuate inequalities among groups that are inherently unequal in their circumstances. Historically, the constitutional justification for reservations for Scheduled Castes and Scheduled Tribes has been differentiated from that for Other Backward Classes—rooted in a legacy of historical oppression and untouchability; however, contemporary judicial reasoning demonstrates a growing reliance on internal differentiation and principles of distributive justice to sustain equality in practice. This manuscript engages in a critical analysis of both the majority and dissenting opinions articulated in Davinder Singh, with a particular focus on the dissenting opinion of Justice Bela M. Trivedi, which raises concerns regarding the potential dilution of the reparative foundations underpinning reservations for Scheduled Castes and Scheduled Tribes and underscores the constitutional importance of Article 341. This paper contextualizes this development within the broader landscape of equality jurisprudence and evaluates its ramifications for the future trajectory of reservation policies pertaining to Scheduled Castes, Scheduled Tribes, and Other Backward Classes in India.

**Key words:** Reservations, Subclassification, Internal Differentiation, Distributive Justice, Etc.

## 1. Introduction

### Purpose and Scope

In India, reservations are a legally created tool intended to ensure substantive equality in a highly stratified and historically hierarchical society, not only a quota-based policy. The framers of the Constitution were acutely conscious that formal equality—understood as identical treatment before the law—would be inadequate in a social order structured by caste-based exclusion, graded inequality, and entrenched disadvantage. As Granville Austin famously contended, the Indian Constitution is fundamentally a “social document,” aimed at transforming social structures and redistributing power rather than merely restraining governmental authority.<sup>1</sup> Equality, therefore, was conceived not only as a negative injunction against discrimination but as a positive mandate to remedy structural injustice.

The equality code under Articles 14, 15, and 16 reflects this transformative vision. Article 14 guarantees equality before law and equal protection of laws; Articles 15(4), 15(5), and 16(4) expressly authorize special provisions for socially and educationally backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs). Article 46 further gives directive to the State to promote the educational and economic interests of weaker sections. Together, these provisions embody what Marc Galanter conceptualized as the accommodation of “competing equalities” — the tension between individual formal equality and group-based claims arising from historical disadvantage.<sup>2</sup> Reservation thus emerges not as a deviation from equality but as a constitutionally sanctioned method of reconciling these competing claims within a democratic framework.

The intellectual foundations of reservation are also traceable to Dr. B.R. Ambedkar’s theory of social democracy and safeguards for minorities. Dr. Ambedkar consistently emphasized in the Constituent Assembly that political democracy must rest upon social democracy, defined by liberty, equality, and fraternity. In a society marked by what he described as “graded inequality,” mere legal equality would perpetuate domination unless accompanied by protective discrimination and representation for oppressed communities.<sup>3</sup> Reservation,

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<sup>1</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 50–57, 75–83.

<sup>2</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Oxford University Press 1984) 1–9, 526–531.

<sup>3</sup> B Shiva Rao (ed), *The Framing of India’s Constitution: Select Documents*, vol II (Indian Institute of Public Administration 1967) 712–721.

therefore, functioned as a safeguard - ensuring access to state power and public institutions for communities historically excluded from them.

The theoretical justification of reservation also resonates with broader egalitarian thought. John Rawls' difference principle, though articulated in a different context, supports institutional arrangements that benefit the least advantaged members of society.<sup>4</sup> Similarly, theories of substantive equality emphasize that genuine equality sometimes requires differential treatment to offset structural barriers. Indian constitutional practice internalizes this idea by recognizing that identical treatment in unequal circumstances entrenches inequality rather than alleviating it.

Upendra Baxi has further described the Indian Constitution as embodying the “transformative” and “survival” ethos, where rights and affirmative measures operate as instruments of social revolution.<sup>5</sup> Reservation, in this perspective, is part of a larger constitutional commitment to dismantle systemic subordination and democratize access to opportunity. It reflects an understanding that representation in education, public employment, and legislatures is essential to substantive citizenship.

Accordingly, reservation must be understood not as a temporary concession or political compromise, but as a structural mechanism within the constitutional framework aimed at achieving justice—social, economic, and political - as proclaimed in the Preamble. It is a normative commitment to inclusion, representation, and redistribution, grounded in both constitutional text and transformative theory. By addressing historical disadvantage through targeted state intervention, reservation seeks to convert the formal promise of equality into lived reality.

However, the reservation to SCs, STs and OBCs though serve a common purpose of inclusion and representation in public offices were historically different in the constitutional foundations and normative justifications.

Reservation for SCs and STs is rooted primarily in reparative and protective justice. Dr. B.R.

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<sup>4</sup> John Rawls, *A Theory of Justice* (Harvard University Press 1971) 75–83.

<sup>5</sup> Upendra Baxi, ‘Preliminary Notes on Transformative Constitutionalism’ in *Politics of Reading the Constitution* (2000) 20–27.

Ambedkar, in the Constituent Assembly, described safeguards for the Depressed Classes as essential to remedy centuries of untouchability, social exclusion, and structural subordination. These communities were not merely backward; they were victims of a system of graded inequality embedded in caste hierarchy. The Constitution therefore provides specific recognition to SCs and STs under Articles 341 and 342, and guarantees reservation in legislatures (Articles 330–332) and public employment (Article 16(4)). In *State of Kerala v. N.M. Thomas* (1976)<sup>6</sup>, the Supreme Court recognized that equality under Article 14 permits differential treatment to offset historical discrimination.

In contrast, OBC reservation which came into existence after the B.P. Mandal Commission Report, 1980 is constitutionally anchored in **social and educational backwardness**, rather than untouchability or historical stigma. Article 15(4) and Article 16(4), introduced and interpreted to enable affirmative action beyond SC/ST groups, address classes that are socially and educationally disadvantaged but not necessarily subject to the same degree of historical oppression. As Marc Galanter explains in *Competing Equalities*, OBC policy reflects a distributive model aimed at broadening access to state resources among intermediate and lower strata excluded from power, rather than compensating for a specific history of civil disabilities. In *Indra Sawhney v. Union of India* (1992)<sup>7</sup>, the Court observed that SC/ST reservations are founded upon a history of extreme social oppression and untouchability, which sets them apart from other backward classes. In *Indra Sawhney*, the Supreme Court crystallized this distinction by holding that backwardness under Article 16(4) must be social and educational, and by introducing the “creamy layer” doctrine for OBCs - explicitly excluding its application to SC/STs due to their distinct historical position. This point of argument will be separately carried further in this article at the later stage.

Thus, while both forms of reservation fall within the broader framework of substantive equality, SC/ST reservations are primarily reparative and protective in character, grounded in historical injustice and constitutional recognition of specific communities, whereas OBC reservations are classificatory and distributive, aimed at remedying relative social and educational disadvantage within the general population.

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

<sup>7</sup> *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217 (SC).

*State of Punjab v. Davinder Singh* (2024)<sup>8</sup> marks a significant turning point in India's equality jurisprudence by fundamentally recalibrating the constitutional understanding of reservation within Scheduled Castes by two reasons broadly: Firstly, in this decision, the Supreme Court upheld the permissibility of sub-classification within the Scheduled Castes for the purpose of ensuring equitable distribution of reservation benefits, thereby departing from the earlier view in *E.V. Chinniah v. State of Andhra Pradesh* (2005)<sup>9</sup>, which had treated the SC list under Article 341 as a homogeneous class incapable of internal differentiation and Secondly, it reaffirmed with the thumping majority the introduction of creamy layer principle for financially capable Scheduled Caste and Scheduled Tribe candidates disturbing the historical differences as explained above in this article, in constitutional foundations and normative justifications between SC/ST and OBC reservations.

The Court in *Davinder Singh* reaffirmed that Articles 14, 15, and 16 embody a doctrine of substantive equality, not formal uniformity. It held that if empirical data demonstrates that certain sub-groups within the Scheduled Castes remain more backward or underrepresented compared to others, the State may constitutionally tailor affirmative action to address such disparities. In doing so, the judgment strengthens the idea that equality is dynamic and context-sensitive, permitting targeted intervention to prevent the monopolization of benefits by relatively advanced sections within a reserved category.

By recognizing internal differentiation as consistent with constitutional design, the ruling deepens the commitment to distributive justice and shifts the focus from category-based entitlement to intra-group equity. Consequently, *Davinder Singh* represents a doctrinal evolution - from viewing reservation categories as static and indivisible to acknowledging the layered realities of disadvantage - thereby reinforcing the transformative character of the Indian Constitution's equality code.

However, the scope of this article is to critically examine the judgement from the perspective of dissenting opinion of Justice Bela M. Trivedi which cautions against the dilution of reparative foundations of Scheduled Castes and Scheduled Tribes reservations. It is to be noted that *Davinder Singh*, is only a turning point in Indian reservation jurisprudence which has raised many questions which need to be answered in subsequent judgements and gave

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<sup>8</sup> *State of Punjab v Davinder Singh* (2025) 1 SCC 1 (SC).

<sup>9</sup> *E V Chinniah v State of Andhra Pradesh* (2005) 1 SCC 394 (SC).

apprehension to certain possibilities which will be explored further in this article. The central theme of this article is to engage with the ideas of **substantive equality and internal differentiation**, with implications for both SC/ST and OBC reservation frameworks.

The article will not investigate the question if internal differentiation within Scheduled Castes is constitutionally permissible as it is already settled in *Davinder Singh, 2024*, but will attempt to evaluate if the reasoning advanced in *Davinder Singh, 2024* indicates a convergence in the frameworks governing SC/ST and OBC reservation and how the Court reconciles the principle of substantive equality with reparative justice.

## 2. Constitutional Framework Governing Reservation in India

The constitutional architecture of reservation in India is embedded within the equality code under Articles 14, 15, and 16. While Article 14 guarantees equality before law and equal protection of laws, the Supreme Court has progressively interpreted it as mandating substantive rather than merely formal equality. In *State of Kerala v N M Thomas*, the Court rejected the narrow view that equality requires identical treatment, holding instead that differential treatment to remedy structural disadvantage is consistent with Article 14.<sup>10</sup> This doctrinal shift was consolidated in *Indra Sawhney v Union of India*, where the nine-judge bench clarified that Article 16(4) is not an exception to equality but a facet of it.<sup>11</sup> Reservation thus operates within, not outside, the constitutional commitment to equality.

Articles 15(4) and 16(4) function as enabling provisions that empower — but do not compel — the State to make special provisions for socially and educationally backward classes (SEBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs). The conceptual distinction underlying these clauses is that between equality of treatment and equality of outcome. Formal neutrality in a caste-stratified society risks perpetuating inherited disadvantage. As Granville Austin observed, the Constitution was conceived as a transformative “social document,” intended to reconstruct entrenched hierarchies rather than merely proclaim abstract rights.<sup>12</sup> Affirmative action, therefore, is structurally integrated into the constitutional project of social justice.

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<sup>10</sup> *State of Kerala v N M Thomas* (1976) 2 SCC 310 (SC).

<sup>11</sup> *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217 (SC).

<sup>12</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1966) 50–57.

Within this broader equality framework, SC/ST reservations occupy a distinct normative space. Article 17 abolishes untouchability, constitutionally acknowledging the unique history of stigma and exclusion suffered by Scheduled Castes. Articles 341 and 342 provide for their identification through Presidential notification, underscoring their special constitutional status. In the Constituent Assembly, Dr B R Ambedkar emphasized that political democracy would be hollow without social democracy, and that safeguards were necessary to remedy “graded inequality.”<sup>13</sup> SC/ST reservation thus emerged not merely as a distributive mechanism but as a reparative and protective measure designed to secure meaningful participation in state institutions.

Judicial doctrine historically reinforced this distinctiveness. In *E V Chinniah v State of Andhra Pradesh*, 2005 the Supreme Court treated the list under Article 341 as constituting a homogenous constitutional class, thereby prohibiting internal sub-classification by states.<sup>14</sup> Although later reconsidered, this reasoning reflected the traditional view that SC/ST reservation rests upon constitutional recognition of historically oppressed communities rather than a general inquiry into backwardness.

By contrast, OBC reservation is anchored in the concept of “social and educational backwardness” under Articles 15(4) and 16(4). In *Indra Sawhney*, the Court held that backwardness must be primarily social and introduced the “creamy layer” doctrine to exclude the advanced sections among OBCs from reservation benefits.<sup>15</sup> Crucially, the creamy layer principle was not extended to SCs and STs in that judgment, reaffirming the doctrinal separation between backwardness-based reservation and historically reparative reservation. Marc Galanter has described this constitutional arrangement as mediating “competing equalities” — balancing group disadvantage with the principle of individual equality through calibrated affirmative action.<sup>16</sup>

Thus, prior to *State of Punjab v Davinder Singh*, the jurisprudence maintained a structured distinction: SC/ST reservations were justified on grounds of historical stigma and constitutional recognition, while OBC reservations were grounded in demonstrable social and educational backwardness subject to internal differentiation. It is this carefully constructed

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<sup>13</sup> Constituent Assembly Debates (Official Report), vol XI, 25 November 1949, 979.

<sup>14</sup> *E V Chinniah v State of Andhra Pradesh* (2005) 1 SCC 394 (SC).

<sup>15</sup> *Indra Sawhney* (n 11).

<sup>16</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (OUP 1984) 1–9.

doctrinal separation that forms the constitutional baseline against which the transformative implications of *Davinder Singh* must be assessed.

### **3. E.V. Chinnaiah and the Doctrine of Homogeneity: The Pre-*Davinder Singh* Position**

The decision in *E.V. Chinnaiah v State of Andhra Pradesh* (2005)<sup>17</sup> crystallised what came to be known as the “homogeneity doctrine” in Scheduled Caste (SC) jurisprudence. For nearly two decades, it stood as binding authority for the proposition that Scheduled Castes, once notified under Article 341 of the Constitution, form a single, indivisible constitutional class incapable of internal sub-classification by State legislatures. The significance of its eventual overruling in *State of Punjab v Davinder Singh* (2024)<sup>18</sup> can only be appreciated against the doctrinal stability and constitutional logic that *Chinnaiah* entrenched.

#### **3.1 *E.V. Chinnaiah v State of Andhra Pradesh* (2005)**

The dispute in *Chinnaiah* arose from the Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act 2000, which divided Scheduled Castes into four groups and apportioned reservation benefits among them in different proportions. The legislative objective was redistributive: to address the perceived monopolisation of reservation benefits by relatively advanced sub-castes within the SC category.

A five-judge Bench of the Supreme Court invalidated the Act. The Court held that the SCs specified under Article 341 constitute a homogeneous class and that any attempt at internal division by a State legislature would amount to altering the Presidential list, which is constitutionally impermissible.<sup>19</sup> Article 341(1) empowers the President to specify castes deemed to be Scheduled Castes in relation to a State, and Article 341(2) provides that any subsequent inclusion or exclusion may be effected only by Parliament.<sup>20</sup> The Court reasoned that once such specification is made, the identified castes collectively form a constitutionally recognised class for the purposes of Articles 15(4) and 16(4).<sup>21</sup>

The judgment placed considerable emphasis on the constitutional architecture. It held that the

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<sup>17</sup> *Chinnaiah* (n 14)

<sup>18</sup> *Davinder Singh* (n 8)

<sup>19</sup> *Chinnaiah* (n 14)

<sup>20</sup> Constitution of India 1950, art 341.

<sup>21</sup> *ibid* arts 15(4), 16(4); *Chinnaiah* (n 14) [83]–[86]

power to identify SCs is distinct from the power to grant reservation. While States possess enabling authority under Articles 15(4) and 16(4) to provide special provisions for SCs, this authority cannot be exercised in a manner that fractures the integrity of the class identified under Article 341.<sup>22</sup> Any sub-classification, according to the Court, would result in treating some members of the constitutionally recognised class differently from others, thereby offending Article 14.<sup>23</sup>

The Court conceptualised the SC category as unified by the shared experience of untouchability and systemic social stigma.<sup>24</sup> This common historical disability, in its view, justified treating the class as a whole for remedial purposes. The equality principle was interpreted formally: once a group is constitutionally designated as backward, equal treatment within that group is mandated. Consequently, redistribution of reservation benefits among sub-castes was regarded not as an extension of substantive equality but as unconstitutional differentiation within an already protected class.

The practical effect of *Chinnaiah* was to significantly constrain State power. Even where empirical data indicated internal disparities in access to reservation benefits, States were barred from tailoring allocation among SC sub-groups. The judgment thus insulated the Presidential list not merely from alteration in composition, but from differential treatment in implementation.

### **3.2 Consistency and Stability of the Homogeneity Doctrine**

Following *Chinnaiah*, the Supreme Court consistently reaffirmed the principle that Scheduled Castes form a constitutionally indivisible class. The judgment was treated as settling the issue of sub-classification, and High Courts uniformly invalidated State measures attempting internal redistribution. The doctrinal position remained stable for nearly two decades, reflecting judicial deference to the textual scheme of Article 341 and concerns regarding federal overreach.

This stability stood in marked contrast to the Court's approach to Other Backward Classes (OBCs). In *Indra Sawhney v Union of India* (1992), a nine-judge Bench upheld the permissibility of sub-classification within OBCs to ensure that reservation benefits reach the

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<sup>22</sup> *Chinnaiah* (n 14) [92]–[96].

<sup>23</sup> Constitution of India 1950, art 14; *Chinnaiah* (n 1) [100]–[102].

<sup>24</sup> *Chinnaiah* (n 14) [79]–[82].

most backward among them.<sup>25</sup>The Court explicitly recognised that backward classes are not homogeneous and that the “creamy layer” must be excluded to preserve the integrity of affirmative action.<sup>26</sup> Sub-classification was endorsed as a tool of substantive equality rather than as an affront to Article 14.

The divergence between SC/ST and OBC jurisprudence created an internal tension within reservation law. On one hand, the Court acknowledged that equality under Articles 14, 15, and 16 permits—and in some cases requires—differentiation within backward classes to ensure equitable distribution. On the other hand, *Chinnaiah* insulated SCs from similar treatment by anchoring its reasoning in the constitutional specificity of Article 341.

The homogeneity doctrine thus reflected a formal conception of equality within the SC category. It presumed uniformity of disadvantage and prioritised constitutional symmetry over empirical differentiation. While this approach preserved the symbolic unity of Scheduled Castes as a class historically subjected to untouchability, it rendered the constitutional framework relatively inflexible in addressing internal inequities.

Over time, scholarly critique and policy debates highlighted the distributive consequences of this rigidity. Evidence from various States suggested that certain sub-castes disproportionately benefited from reservation, leaving the most marginalised segments underrepresented. However, until *Davinder Singh*, judicial fidelity to precedent and the perceived sanctity of Article 341 foreclosed doctrinal reconsideration.

In this background, the reference to a larger Bench in *Davinder Singh* signalled a constitutional re-examination of first principles. By ultimately overruling *Chinnaiah*, the Supreme Court departed from the long-standing assumption of homogeneity and reoriented the discourse toward substantive equality within the SC category. The endurance of the homogeneity doctrine for nearly two decades underscores the transformative character of this shift. Understanding *Chinnaiah* is therefore indispensable to appreciating the constitutional significance of its overruling.

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<sup>25</sup> Indra Sawhney (n 7).

<sup>26</sup> *ibid* [792]–[807].

#### 4. The Majority Opinion in *State of Punjab v. Davinder Singh* (2024)

The Constitution Bench decision in *State of Punjab v Davinder Singh* (2024)<sup>27</sup> marks a decisive doctrinal shift in reservation jurisprudence by overruling *E.V. Chinnaiah v State of Andhra Pradesh* (2005).<sup>28</sup> The majority rejected the foundational premise that Scheduled Castes (SCs) form a constitutionally homogeneous and indivisible class. At the same time, the Court carefully preserved the structural safeguards embedded in article 341 of the Constitution. The judgment thus recalibrates equality doctrine without unsettling the constitutional framework governing SC identification.

##### 4.1 Rejection of the Homogeneity Assumption

The central holding of the majority is the rejection of the assumption that all Scheduled Castes are equally situated for the purpose of reservation benefits. The Court recognised that while SCs share a common history of untouchability and structural discrimination, this does not imply uniformity in present levels of advancement or access to state opportunities.<sup>29</sup> Empirical realities demonstrate that certain sub-castes within the SC list have secured a disproportionate share of benefits in education and public employment, leaving others persistently underrepresented.

The majority clarified that article 341 identifies which communities are to be recognised as Scheduled Castes; it does not constitutionalise a presumption of internal equality.<sup>30</sup> The earlier view in *Chinnaiah* had treated constitutional identification as synonymous with sociological homogeneity. The present Bench found this reasoning flawed. Constitutional recognition ensures inclusion within the protective framework of reservation, but it does not prohibit the State from addressing differential backwardness within that framework.

The Court further observed that rigid adherence to uniform distribution may perpetuate inequality rather than remedy it. Formal equality—treating all SC communities identically in allocation—could enable relatively advanced sub-groups to consolidate benefits. The Constitution’s commitment, the majority held, is not to mechanical uniformity but to meaningful access.<sup>31</sup>

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<sup>27</sup> *Davinder Singh* (n 8)

<sup>28</sup> *Chinnaiah* (n 9)

<sup>29</sup> *Davinder Singh* (n 8).

<sup>30</sup> Constitution of India 1950, art 341.

<sup>31</sup> *Davinder Singh* (n 8).

## 4.2 Substantive Equality and Article 14

The majority anchored its reasoning firmly in article 14.<sup>6</sup> Reaffirming the doctrine of reasonable classification, the Court held that equality permits differentiation where there exists an intelligible differentia and a rational nexus to the objective sought to be achieved.<sup>32</sup> Sub-classification within SCs, if based on demonstrable disparities in backwardness or representation, satisfies this test.

In this respect, the Court embraced a substantive conception of equality: treating unequals unequally may be necessary to achieve real equality. Articles 15(4) and 16(4), as enabling provisions, are instruments of advancement and must be interpreted consistently with the broader equality code.<sup>33</sup> If evidence establishes that certain sub-castes remain severely marginalised despite decades of reservation, the State is not constitutionally barred from designing mechanisms to ensure equitable distribution.

The judgment thus harmonises SC jurisprudence with the logic earlier applied in *Indra Sawhney v Union of India*, where internal differentiation within OBCs was upheld to prevent monopolisation of benefits.<sup>34</sup> While acknowledging textual differences between OBC identification and SC notification, the majority held that equality principles under article 14 apply across categories unless expressly excluded by the Constitution.

## 4.3 Interpretation of Article 341

A critical component of the majority's reasoning lies in its interpretation of article 341.<sup>35</sup> The Court drew a sharp distinction between identification and implementation. Article 341(1) empowers the President to specify the castes deemed to be Scheduled Castes in relation to a State, and article 341(2) vests Parliament with exclusive authority to include or exclude communities from that list.<sup>36</sup>

However, the majority held that sub-classification does not amount to alteration of the Presidential List. So long as no caste is excluded from recognition as an SC, differential

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<sup>32</sup> *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

<sup>33</sup> Constitution of India 1950, arts 15(4), 16(4).

<sup>34</sup> *Indra Sawhney* (n 7).

<sup>35</sup> Constitution of India 1950, art 341.

<sup>36</sup> *ibid* art 341(1)–(2).

allocation within the reserved quota does not infringe article 341.<sup>37</sup> The earlier decision in *Chinnaiah* had conflated distribution of benefits with modification of the list itself. The present Bench corrected this conflation.

The Court nevertheless imposed clear limits. Sub-classification must be supported by objective data and aimed at addressing genuine disparities. It cannot be arbitrary, excessive, or politically motivated. Any such measure remains subject to judicial review under article 14.<sup>38</sup> Thus, the expansion of State discretion is accompanied by constitutional discipline.

#### 4.4 Observations on Creamy Layer

Although the principal issue concerned sub-classification, the majority also made important observations regarding the creamy layer doctrine. Drawing from *Indra Sawhney*, the Court acknowledged that exclusion of the advanced sections within a backward class is conceptually linked to equality.<sup>39</sup> However, it stopped short of mandating the application of the creamy layer principle to Scheduled Castes.

The discussion remained normative rather than prescriptive. The Court noted that while the logic of preventing monopolisation is relevant, the historical stigma of untouchability distinguishes SCs from OBCs and warrants caution.<sup>40</sup> Any extension of the creamy layer principle would require careful constitutional consideration in an appropriate case.

#### Conclusion

The majority opinion in *Davinder Singh* recalibrates equality jurisprudence by replacing the rigid homogeneity doctrine with a framework grounded in substantive equality and distributive fairness. By distinguishing identification under article 341 from implementation of reservation policy, the Court preserves constitutional safeguards while permitting nuanced State action. The decision thus marks an evolution rather than a rupture—aligning SC reservation law more closely with the transformative aspirations of the Constitution.

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<sup>37</sup> *Davinder Singh* (n 8).

<sup>38</sup> Constitution of India 1950, art 14.

<sup>39</sup> *Indra Sawhney* (n 7).

<sup>40</sup> Constitution of India 1950, art 17.

## 5. Justice Bela M. Trivedi's Dissent: Constitutional Structure, Reparative Justice and Judicial Restraint

Justice Bela M. Trivedi's dissent in *State of Punjab v Davinder Singh* (2024) represents one of the most structurally grounded and institutionally cautious opinions in contemporary reservation jurisprudence. While the majority recalibrates equality doctrine to permit sub-classification within Scheduled Castes (SCs), the dissent advances a competing constitutional vision — one rooted in status-based protection, parliamentary supremacy, and fidelity to precedent. Far from being a mere disagreement over policy outcomes, the dissent articulates a principled constitutional caution regarding the limits of judicial transformation.

### 5.1 SCs as a Constitutionally Unified Class: Status and Reparative Justice

At the heart of Justice Trivedi's reasoning lies the proposition that SCs constitute a constitutionally unified class under art 341 of the Constitution of India.<sup>41</sup> Unlike Other Backward Classes (OBCs), whose identification depends upon evolving socio-educational criteria and executive commissions, SC status flows directly from constitutional specification. The Presidential List is not a sociological catalogue but a constitutional instrument recognising communities historically subjected to untouchability.

The dissent emphasises that the defining feature of SC identity is not relative backwardness in measurable terms but collective stigma embedded in the caste order. This stigma is expressly repudiated through art 17, which abolishes untouchability.<sup>42</sup> Reservation for SCs must therefore be understood as an instrument of reparative justice — a constitutional response to civilisational injustice rather than a technocratic tool for balancing relative disadvantage.

This distinction is crucial. In the dissent's framework, SC reservation is grounded in historical wrong and structural humiliation. It is not merely redistributive but recognitional. The Constitution does not treat SCs as a fluid category subject to internal calibration; rather, it recognises them as a class united by shared constitutional injury. The unity of the class reflects common exposure to stigma, exclusion, and systemic degradation.

Sub-classification, in this light, risks fragmenting a constitutionally constructed collective. Once the Constitution identifies SCs as a single class of historically oppressed communities,

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<sup>41</sup> Constitution of India 1950, art 341.

<sup>42</sup> Constitution of India 1950, art 17.

differential allocation of benefits within that class may undermine the equal constitutional status conferred upon each listed caste. Justice Trivedi's concern is not that disparities do not exist, but that the remedy for such disparities cannot compromise the structural identity of the constitutional category itself.

The dissent thus advances a status-based conception of equality within the SC framework. The guarantee operates at the level of group protection. Introducing internal hierarchies may shift the scheme from reparative justice to distributive engineering — a transformation that, in the dissent's view, lacks clear constitutional mandate.

## **5.2 Article 341 and Parliamentary Supremacy: Structural Limits on State Power**

Justice Trivedi's dissent is deeply attentive to constitutional architecture. Article 341 vests the power to specify Scheduled Castes in the President, subject to parliamentary amendment.<sup>43</sup> This design reflects deliberate centralisation. It ensures national uniformity and insulates the identification of SCs from local political pressures.

The dissent argues that permitting States to sub-classify within SCs risks indirectly modifying the constitutional scheme. Even if the Presidential List formally remains intact, differential allocation of reservation benefits may alter the substantive content of inclusion. Communities disadvantaged within the quota may effectively experience diminished access to representation.

The constitutional structure, according to the dissent, draws a careful distinction between identification and implementation. Identification is a central constitutional function; implementation must remain consistent with that structure. If sub-classification substantially reconfigures the practical equality of listed castes, it may blur this distinction and encroach upon parliamentary prerogative under art 341(2).<sup>44</sup>

This concern is not merely technical but federal. The Constitution distributes authority deliberately. Allowing States to internally differentiate among SCs could create divergent regimes across the Union, weakening the uniformity inherent in constitutional recognition. The dissent thus situates the issue within broader institutional boundaries, emphasising that

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<sup>43</sup> Constitution of India 1950, art 341(1).

<sup>44</sup> Constitution of India 1950, art 341(2).

transformative goals must operate within constitutionally prescribed channels.

### **5.3 Stare Decisis and the Critique of Overruling *E.V. Chinnaiah***

A further dimension of Justice Trivedi's dissent lies in its defence of doctrinal stability. In *E.V. Chinnaiah v State of Andhra Pradesh*, the Supreme Court had held that SCs constitute a homogeneous class and that States lack the authority to create sub-classifications within the Presidential List.<sup>45</sup> That ruling structured legislative and administrative practice for nearly two decades.

The dissent underscores the importance of stare decisis, particularly in constitutional adjudication involving sensitive social categories. Legal certainty fosters institutional legitimacy and public confidence. Overruling precedent is permissible, but it demands compelling constitutional justification.

Justice Trivedi questions whether the majority has demonstrated such necessity. In her view, *Chinnaiah* was grounded in a structural reading of art 341 and in a coherent understanding of SC identity. Departing from it risks unsettling settled expectations and altering the constitutional equilibrium governing reservation policy.

The dissent therefore reflects a philosophy of judicial discipline. Courts must be cautious in recalibrating foundational doctrines absent clear textual or structural compulsion. Transformative constitutionalism cannot justify unbounded judicial redesign of affirmative action frameworks.

### **5.4 Equality, Recognition and the Limits of Redistribution**

At a deeper level, the dissent articulates a normative disagreement with the majority's substantive equality paradigm. While the majority emphasises distributive fairness and the principle that unequals must be treated unequally under art 14,<sup>46</sup> the dissent stresses that equality within the SC framework is anchored in equal constitutional status rather than relative advancement.

In this conception, SC reservation addresses status-based oppression, not gradational

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<sup>45</sup> *E.V. Chinnaiah v State of Andhra Pradesh* (2005) 1 SCC 394.

<sup>46</sup> Constitution of India 1950, art 14.

backwardness. Applying redistributive logic within the class may obscure this foundational distinction. The dissent also exhibits caution regarding the extension of creamy layer principles to SCs, recognising that the conceptual basis of SC reservation differs from that of OBC reservation.

Thus, the divergence between majority and dissent reflects two competing equality imaginaries: one distributive and dynamic, the other protective and status-conscious. Justice Trivedi's opinion insists that constitutional recognition of historical stigma must not be diluted by intra-group ranking.

### **Conclusion: A Jurisprudence of Structural Fidelity**

Justice Bela M. Trivedi's dissent stands as a jurisprudence of structural fidelity. It defends the unity of SCs as a constitutionally recognised class, safeguards parliamentary supremacy under art 341, and affirms the value of *stare decisis* in socially sensitive domains. Rather than resisting equality, the dissent proposes a different conception of it — one grounded in recognition of collective stigma and institutional restraint.

In centring constitutional structure over distributive recalibration, the dissent invites renewed reflection on the limits of transformative adjudication. Whether ultimately persuasive or not, it represents a principled and coherent constitutional vision — one that cautions that justice must operate within the architecture of the Constitution itself.

## **6. Reconciling Reparative Justice with Substantive Equality**

The decision in **State of Punjab v. Davinder Singh** compels a theoretical reconciliation between two constitutional commitments that have historically operated in parallel yet distinct spheres: *reparative justice* for Scheduled Castes and Scheduled Tribes, and *substantive equality* as a dynamic doctrine under arts 14, 15 and 16 of the Constitution of India. The dissent of **Bela M. Trivedi** foregrounds the structural integrity of the SC category, whereas the majority reorients the framework toward distributive equity within the class. The task, therefore, is not to choose between these paradigms, but to examine whether and how they may coexist within constitutional design.

### **6.1 Identification versus Distribution of Benefits**

A foundational analytical distinction emerging from *Davinder Singh* is between **identification**

and **distribution**. Article 341 is properly understood as an *identificatory* provision. It empowers the President, subject to parliamentary amendment, to specify which communities constitute Scheduled Castes in relation to a State.<sup>47</sup> This mechanism constitutionalises recognition: it acknowledges historically oppressed communities and embeds their status within the constitutional order.

However, identification does not automatically determine *how* benefits are to be allocated within the identified class. Distribution of reservation benefits flows from arts 15(4) and 16(4), which are enabling provisions permitting the State to design affirmative action policies.<sup>48</sup> The majority in *Davinder Singh* clarifies that art 341 secures inclusion within the constitutional fold but does not mandate uniform allocation of benefits among all listed castes.<sup>49</sup>

This conceptual separation is crucial. Inclusion answers the question: *Who qualifies as a Scheduled Caste?* Allocation answers: *How should reservation benefits be structured to achieve equality?* Conflating these inquiries, as the Court did in **E.V. Chinnaiah v. State of Andhra Pradesh**, led to the homogeneity doctrine.<sup>50</sup> By treating the Presidential List as both identificatory and distributive, *Chinnaiah* constitutionalised uniformity.

The majority in *Davinder Singh* restores structural coherence by recognising that the Constitution centrally regulates identification but leaves implementation to equality jurisprudence under arts 14, 15 and 16. So long as sub-classification does not exclude any caste from the SC list, it does not infringe art 341.<sup>51</sup> Instead, it operates within the distributive discretion of the State, subject to judicial review for arbitrariness under art 14.<sup>52</sup>

Justice Trivedi's dissent, however, cautions that distribution cannot substantially erode the equal constitutional status conferred through identification.<sup>53</sup> Her concern is institutional: if allocation fragments the unity of the constitutional class, the distinction between identification and implementation may collapse in practice. The reconciliation, therefore, lies in maintaining a principled boundary—ensuring that differential allocation enhances representation without

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<sup>47</sup> Constitution of India 1950, art 341.

<sup>48</sup> Constitution of India 1950, arts 15(4), 16(4).

<sup>49</sup> *State of Punjab v Davinder Singh* (2024) SCC (Const Bench).

<sup>50</sup> *E.V. Chinnaiah v State of Andhra Pradesh* (2005) 1 SCC 394.

<sup>51</sup> *Davinder Singh* (n 3).

<sup>52</sup> Constitution of India 1950, art 14.

<sup>53</sup> *Davinder Singh* (n 3) (Trivedi J, dissenting).

symbolically or practically degrading constitutional recognition.

## 6.2 Internal Differentiation as an Equality Technique

The majority's embrace of internal differentiation rests upon the doctrine of substantive equality. Article 14, as interpreted in **State of Kerala v. N.M. Thomas** and later consolidated in **Indra Sawhney v. Union of India**, permits differential treatment where it advances genuine equality.<sup>54</sup>

Internal differentiation serves three constitutional objectives.

**First, preventing monopolisation of benefits.** In *Indra Sawhney*, the Court recognised that backward classes are not homogeneous and that exclusion of the 'creamy layer' is necessary to prevent advanced sections from cornering benefits.<sup>55</sup> The same distributive logic informs sub-classification within SCs, albeit within a different historical framework.

**Second, addressing intra-category inequality.** Formal parity may obscure layered disadvantage. In *N.M. Thomas*, the Court emphasised that equality is not mere uniformity but requires the State to take positive steps to redress structural barriers.<sup>56</sup> Sub-classification operationalises this understanding by directing benefits toward the most marginalised sub-groups within the broader class.

**Third, ensuring representation of the most marginalised.** Reservation has always been linked to representation and participation in public institutions.<sup>57</sup> If some sub-groups remain invisibilised within the quota, the constitutional objective of meaningful participation is undermined.

However, internal differentiation must remain disciplined by constitutional safeguards. It cannot devolve into political fragmentation or arbitrary allocation. Measures must be supported by objective data and satisfy the test of reasonable classification under art 14.<sup>58</sup> Sub-classification is thus an *equality technique*—a method of refining affirmative action—not an abandonment of reparative foundations.

The dissent's caution remains significant. Reparative justice emphasises collective stigma rather than gradational disadvantage. If internal differentiation begins to rank degrees of historical suffering, it risks eroding the symbolic unity of SC identity. The reconciliation lies in recognising that internal differentiation addresses *present representation*, not *past*

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<sup>54</sup> *State of Kerala v N.M. Thomas* (1976) 2 SCC 310; *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217.

<sup>55</sup> *Indra Sawhney* (n 8).

<sup>56</sup> *N.M. Thomas* (n 8).

<sup>57</sup> See *Indra Sawhney* (n 8); Constitution of India 1950, arts 330–332.

<sup>58</sup> Constitution of India 1950, art 14; *Indra Sawhney* (n 8).

*oppression*. It does not deny shared stigma; it refines the means by which constitutional redress is delivered.

### 6.3 Implications for SC/ST and OBC Reservation Frameworks

The implications of *Davinder Singh* extend beyond Scheduled Castes. Historically, SC/ST reservations were grounded in reparative justice tied to untouchability and constitutional recognition under arts 341 and 342,<sup>59</sup> while OBC reservations were based on demonstrable social and educational backwardness under arts 15(4) and 16(4).<sup>60</sup> The creamy layer doctrine, introduced in *Indra Sawhney*, applied exclusively to OBCs because their backwardness was relative rather than status-based.<sup>61</sup>

Post-*Davinder Singh*, a partial convergence in *techniques* is evident, even if moral rationales remain distinct. SC/ST reservation continues to rest upon historical stigma and constitutional recognition. OBC reservation continues to be classificatory and backwardness-based. Yet both frameworks now potentially employ similar tools: empirical assessment, internal differentiation, and distributive calibration.

This convergence does not erase normative differences. SC/ST reservations remain anchored in reparative justice and recognition of civilisational injustice, as reflected in art 17 of the Constitution abolishing untouchability.<sup>62</sup> OBC reservations remain grounded in relative socio-educational disadvantage. However, the unifying thread is substantive equality as a constitutional principle.

Substantive equality demands context-sensitive measures to achieve real inclusion. It acknowledges that equality is not static but responsive to social realities.<sup>63</sup> In this sense, *Davinder Singh* represents not a doctrinal rupture but an evolution—aligning SC/ST jurisprudence more closely with the broader equality framework without dissolving its reparative core.

Ultimately, the reconciliation between reparative justice and substantive equality lies in recognising that both serve the same constitutional promise: transforming formal equality into lived equality. The Constitution's commitment, expressed in the Preamble and equality code, is to secure justice—social, economic and political.<sup>64</sup> *Davinder Singh* thus invites a

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<sup>59</sup> Constitution of India 1950, arts 341–342.

<sup>60</sup> Constitution of India 1950, arts 15(4), 16(4).

<sup>61</sup> *Indra Sawhney* (n 8).

<sup>62</sup> Constitution of India 1950, art 17.

<sup>63</sup> N.M. Thomas (n 8); *Indra Sawhney* (n 8).

<sup>64</sup> Constitution of India 1950, Preamble.

jurisprudence that is simultaneously transformative and structurally faithful — a balance that will shape the future of SC/ST and OBC reservation frameworks in India.

## 7. Implications and Constitutional Safeguards

The doctrinal shift effected in *State of Punjab v Davinder Singh* (2024)<sup>65</sup> does not merely alter the position on sub-classification within Scheduled Castes; it reconfigures the architecture of equality adjudication in India. Yet, contrary to apprehensions that the judgment licenses unrestrained fragmentation of constitutionally recognised categories, the decision simultaneously embeds a framework of safeguards. These safeguards operate at three interlocking levels: evidentiary discipline, structural limits flowing from Article 341, and continuing judicial review under Article 14.

The real significance of *Davinder Singh* lies not in expanding State discretion simpliciter, but in redefining how that discretion must be constitutionally exercised.

### 7.1 Limits on State Power

#### (a) The Centrality of Empirical Justification

The most immediate implication of the judgment is that sub-classification within Scheduled Castes cannot be justified merely on political assertion or anecdotal perceptions of disparity. The majority's reasoning, though transformative, is not unstructured. It draws implicitly from the jurisprudential discipline articulated in *Indra Sawhney v Union of India*<sup>66</sup> and later reaffirmed in *M Nagaraj v Union of India*,<sup>67</sup> where the Supreme Court emphasised that affirmative action must be grounded in demonstrable data.

The constitutional logic is straightforward: substantive equality is not a rhetorical device; it is a structured doctrine. Where the State claims that certain sub-groups within the Scheduled Castes have been unable to access reservation benefits proportionately, it bears the burden of establishing such underrepresentation through reliable material. Sub-classification, therefore, becomes constitutionally permissible only when supported by:

- Objective assessment of representation in public employment or education;
- Evidence of persistent disadvantage despite formal inclusion;
- Demonstrable nexus between the proposed classification and the goal of equitable distribution.

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<sup>65</sup> *State of Punjab v Davinder Singh* (2024) SCC OnLine SC \_\_\_\_ (Constitution Bench).

<sup>66</sup> *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217 (9-Judge Bench).

<sup>67</sup> *M Nagaraj v Union of India* (2006) 8 SCC 212.

This evidentiary requirement performs two important functions. First, it ensures that internal differentiation remains tethered to constitutional purpose rather than electoral expediency. Second, it answers the structural anxiety articulated in Justice Bela M Trivedi's dissent — that fragmentation of SC identity may become politically driven.<sup>68</sup>

Thus, while the homogeneity doctrine has been rejected, arbitrariness has not been sanctioned. The equality code demands calibration, not convenience.

### **(b) The Prohibition on Total Exclusion**

A second structural safeguard lies in the clear distinction between redistribution and exclusion. Article 341 of the Constitution of India constitutionalises identification.<sup>69</sup> The Presidential List determines who constitutes a Scheduled Caste in relation to a State, and any inclusion or exclusion from that list may only be effected by Parliament under Article 341(2).<sup>70</sup>

The majority in *Davinder Singh* draws a careful boundary: sub-classification does not amount to modification of the Presidential List so long as no caste is excluded from the reservation framework altogether. Internal differentiation must therefore operate within the umbrella of recognition.<sup>71</sup>

This limitation is critical. It preserves the constitutional status of every listed caste as an equal bearer of Scheduled Caste identity. Redistribution may alter the internal allocation of benefits, but it cannot extinguish entitlement.

The dissent's concern that sub-classification might dilute the equal constitutional status of listed castes finds partial reassurance here. The Court does not permit States to rank castes in terms of constitutional worth. It permits them only to tailor distribution in order to correct demonstrable disparities.<sup>72</sup>

The difference is subtle but constitutionally decisive. Recognition remains indivisible; allocation may be calibrated.

### **(c) Judicial Review as an Ongoing Constitutional Check**

Perhaps the most significant safeguard is that sub-classification remains subject to judicial review under Article 14.<sup>73</sup> The doctrinal apparatus of reasonable classification continues to

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<sup>68</sup> *Davinder Singh* (n 1) (Trivedi J, dissenting).

<sup>69</sup> Constitution of India 1950, art 341(1).

<sup>70</sup> Constitution of India 1950, art 341(2).

<sup>71</sup> *Davinder Singh* (n 1).

<sup>72</sup> *ibid* (Trivedi J, dissenting opinion).

<sup>73</sup> Constitution of India 1950, art 14.

apply, as articulated in *State of West Bengal v Anwar Ali Sarkar*<sup>74</sup> and refined in *E.P. Royappa v State of Tamil Nadu*.<sup>11</sup> Any sub-group differentiation must satisfy:

- The existence of an intelligible differentia;
- A rational nexus to the objective of achieving substantive equality;
- Proportionality in design and implementation.<sup>75</sup>

Courts retain the authority to invalidate measures that lack evidentiary foundation, disproportionately burden particular communities, or reflect manifest arbitrariness.

Thus, *Davinder Singh* does not displace constitutional scrutiny; it intensifies it. If anything, States proposing sub-classification now carry a heightened justificatory burden. The departure from homogeneity demands more, not less, constitutional discipline.

## 7.2 The Future of the Creamy Layer Debate

While sub-classification was the immediate issue, the decision inevitably revitalises the debate on whether the “creamy layer” principle — developed in the context of OBC reservations — should apply to Scheduled Castes and Scheduled Tribes.

The majority’s observations stop short of mandating such application. However, by emphasising distributive fairness within SCs, the judgment raises foundational questions about convergence between SC/ST and OBC frameworks.

### (a) Normative Tension: Status versus Relative Advancement

In *Indra Sawhney*, the creamy layer doctrine was justified on the premise that backwardness under Article 16(4) is relative and gradational.<sup>76</sup> OBCs are identified based on social and educational disadvantage; therefore, once members of that class achieve sufficient advancement, continued reservation would distort equality.

SC/ST reservation, by contrast, has historically been understood as status-based - anchored in stigma, untouchability, and civilisational humiliation recognised under Article 17.<sup>77</sup> The rationale was reparative and protective, not merely distributive.

The application of creamy layer exclusion to SCs/STs would require reconceptualising reservation as a function of present socio-economic advancement rather than enduring structural stigma. This shift would represent a deeper transformation than sub-classification.

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<sup>74</sup> *E.P. Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

<sup>75</sup> See *Modern Dental College & Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353 (proportionality doctrine).

<sup>76</sup> *Indra Sawhney* (n 2).

<sup>77</sup> Constitution of India 1950, art 17.

The constitutional tension therefore lies between two conceptions of equality:

- Equality as recognition of collective historical wrong;
- Equality as calibrated redistribution based on contemporary relative advancement.

*Davinder Singh* does not resolve this tension. It opens space for reconsideration but preserves doctrinal caution.

### **(b) Constitutional Constraints on Extension**

Any extension of the creamy layer doctrine to SC/STs must confront constitutional text and precedent. Articles 341 and 342 embed identification within a constitutional framework distinct from the executive classification applicable to OBCs.<sup>78</sup>

Moreover, prior jurisprudence explicitly declined to apply creamy layer exclusion to SC/STs on the ground that their backwardness stems from untouchability rather than mere socio-economic lag.<sup>79</sup>

Justice Trivedi's dissent reinforces this distinction. In her view, introducing economic filters risks undermining the symbolic and structural recognition of SC identity. If reservation is primarily reparative, economic advancement does not erase historical stigma.<sup>80</sup>

The constitutional question, therefore, is not merely administrative feasibility but normative coherence: can recognition-based reservation coexist with economic exclusion criteria?

### **(c) The Case for Legislative Deliberation**

Given the sensitivity of this debate, judicial incrementalism may be insufficient. If recalibration of SC/ST reservation is contemplated, legislative clarity may provide greater democratic legitimacy.

Parliament possesses the constitutional authority to amend the Presidential Lists and shape affirmative action policy within constitutional limits.<sup>81</sup> A structured legislative framework addressing internal advancement, if deemed necessary, would provide clarity and stability.

Until such deliberation occurs, the creamy layer issue remains constitutionally open but doctrinally unsettled.

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<sup>78</sup> Constitution of India 1950, arts 341–342.

<sup>79</sup> *E.V. Chinnaiah v State of Andhra Pradesh* (2005) 1 SCC 394; see also *Jarnail Singh v Lachmi Narain Gupta* (2018) 10 SCC 396 (distinguishing SC/ST backwardness).

<sup>80</sup> *Davinder Singh* (n 1) (Trivedi J, dissenting).

<sup>81</sup> Constitution of India 1950, art 341(2).