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JUDICIAL REWRITING OF RESERVATION: AN ANALYTICAL APPROACH OF SUB-CLASSIFICATION AND CREAMY LAYER IN SCHEDULED CASTE POLICY WITH SPECIAL REFERENCE TO STATE OF PUNJAB V. DAVINDER SINGH CASE

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1. ABSTRACT

This research examines the evolving judicial discourse on Indian reservation policy, particularly focusing on the application of the sub-classification and the concept of creamy layer to SC and ST. Recent court decision including "State of Punjab V Davinder Singh" case, have ignited national discussion by permitting further categorization within scheduled castes and scheduled tribes, despite the Constitutional protection established by Dr. Babasaheb Ambedkar for historical marginalized communities. This paper *"Judicial rewriting of reservation: An analytical approach of sub-classification and creamy layer in schedule cast policy with special refence to State of Punjab V Davinder Singh case"* explores whether such judicial shifts uphold or undermine the egalitarian principles embedded in Articles 14, 15 and 16 of the Indian Constitution. The work critiques the overreliance on economic markers like the creamy layer, arguing they overlook deep rooted social stigma and structural discrimination. Drawing upon landmark cases and dissenting opinions, it investigates whether these legal interpretations align with the original spirit of social justice or reflect an increasing trend toward judicial overreach. Ultimately, the paper calls for a constitutional and sociological revaluation of these interventions.

KEYWORDS: Reservation Policy, Sub-Classification, Creamy Layer, Judicial Overreach, Scheduled Caste, and Scheduled Tribe

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1.1. INTRODUCTION

The reservation policy is incorporated in constitution of India, to establish egalitarian society, but the government organs such as: legislature, executives and judiciary could not understand the policy, in its true sense and spirit, with which Dr. Babasaheb Ambedkar has framed the reservation policy. That is the reason why, even after lapse of 75 years of independence reservation policy has been entangled in the courtroom of the judiciary.

The main objectives of reservation policy are too free "Depressed Communities" from the clutches' of "caste system" and allow them to mingle freely among the main stream of the society, without any sort of discrimination. But very little success has been achieved till date, the sad part of today's situation is that, the sitting president of India Smt. Murmu was not allowed to enter the temple to worship and she was made to worship from the steps of the temple itself, just because she is from scheduled tribes. The same incident had occurred earlier also, Mr. Ram Nath Kovind, the former president of India and his wife, wanted to do puja at "BRAHMA TEMPLE PUSKSR" but they were prohibited from entering to temple, instead, both were made to offer prayers from the stairs itself, just because they are from scheduled caste. This clearly shows that discrimination on account of untouchability has not yet been eliminated in its true sense.

Therefore, there is no harm in saying that, all the three wings of the government: legislators, executives, and judiciary; have failed in their respective duties as envisioned by the makers of the constitution.

However, in this paper our main thrust of study is to critically analyses the role of judiciary, as in the very initial year of inception of the reservation policy, Supreme Court has had created hurdle in the execution of the reservation policy. of the reservation policy, for one or the other reasons

e.g. Champakam Dorairajan case.

Dr. Babasaheb Ambedkar being unhappy over the courts approach, while addressing the first Constitutional Amendment Bill of 1951in the Lok Sabha on May 18. He stated "Directive Principles are essentially a collection of provisions that implicitly contain the doctrine of implied powers developed by the Supreme Court. The court should utilize these principles to support

legislation enacted by parliament or state legislatures aimed at implementing the directive principles outline in the Constitution. I observed that these Directive Principles have become a subject of mockery, both by judges and the lawyer representing them. Article 37 of the Directive Principles has been subjected to ridiculed…This is not an appropriate way to address the Directive Principles."

Dr. Babasaheb Ambedkar himself made the first amendment in the constitution, till today almost more than 15 amendments have been made in the constitution, just because of the judicial interpretation of the constitution in connection with the reservation policy, and the same trend is continued under one or the other pretext. On the contrary, sad part is that Supreme Court has introduced some new concept unknown to the constitution like, Cap of 50 percent on reservation and Concept of Creamy layer in reservation policy.

The another surprising fact in this case is that, the bigger bench of Supreme Court of India comprising 9 judges have unequivocally stated in Indra Sawney case, that both these concepts cannot be made applicable to SC and ST, as both are *"homogeneous separate classes in itself"* and are totally different from the backward class: despite this fact, a smaller bench comprising seven judges overruled the decision of bigger bench; *is it not the violation of Article 141 of the constitution?*

The specific purpose of keeping SC and ST as a separate class from other backward class is a social. The backward class did not face the *"Stigma of Untouchability;"* and that is the main cause of backwardness of the SC and hence, scheduled caste is treated as a separate *"class of untouchables;"* likewise scheduled tribes are also a *"separate class"* which has been geographically separated from the mainstream society."

That is the reason why Dr. Babasaheb Ambedkar created two separate classes, but the Supreme Court could not appreciate it "conceptually" i.e. a creation of separate class of SC and ST.

The above explanation itself shows that the concept of "creamy layer" is also not applicable to both the categories: SC and ST, as they are not concerned with economic or financial conditions or economic development of these classes. Therefore, such irrational interpretation of constitutional concept is nothing but the brain child of privileged class. That is why, one of the

great sociologists said, "The objective of caste-based Reservations is to remove, the caste monopoly in access to social resources, and she further added that the discourse of reservation is forcibly turned towards economic criteria, because the upper castes want to avoid dealing with caste reservations in our country."

The fact behind the reservation policy in India is not a "poverty alleviating program," however, not only the privileged class but the judiciary is also harping on it, to implement it as a judicial law.

Thus, both the concepts: cap of 50 %) % and creamy layer cannot be made constitutionally applicable to scheduled caste and scheduled tribe. Because, it has been unequivocally stated by the bench comprising judges in the case Indra Sawhney, the creamy layer concept does not apply to Scheduled Caste (SC) and Scheduled Tribes (ST). Despite of this fact, it has been mentioned in the case under reference.

Concerning the sub-classification within Scheduled Castes (SC) and Scheduled Tribes (ST), the decision given by the constitutional bench comprising of five judges has been openly doubted by the division bench comprising of 3 judges and recommended to be heard it, by the larger bench, without any cogent reasons. Is it all right for division bench to express doubt about the judgement given by the constitutional bench, that too in an open court? *Does this not constitute the violation of the article 141 of the Constitution in both instances?*

In view of all the above discussion: application of creamy layer and sub-classification to SC and ST communities needs to be studied in this paper along with other judgements given by the supreme court in connection with reservation policy.

1.2. CRITICAL ANALYSIS OF, "STATE OF PUNJAB VS. DAVINDER SINGH." 1ST AUGUST, 2024[2]

[2] *State-of-Punjab-and-Ors-vs-Davinder-Singh.Pdf*, https://www.manupatracademy.com/assets/pdf/legalpost/state-of-punjab-and-ors-vs-davinder-singh.pdf (last visited Jul. 29, 2025).

Recently, Supreme Court has given the judgement in case of, "State of Punjab Vs. Davinder Singh," wherein "E.V. Chinaiah vs. State of Andhra Pradesh" case has been overruled. This overruling has created upheavals all over the country, more particularly, among the scheduled castes and scheduled tribes; in that judgement Supreme Court has opined that, *"Doctrine of Creamy layer and sub-classification should also be made applicable to scheduled castes and scheduled tribes, on the lines of other backward classes."*

In fact, a bench of nine judges in case of "Indra Sawhney case" has already confirmed that, both these concepts are not applicable to scheduled Castes (SC) and Scheduled Tribes (ST); despite this, a bench of seven has overruled the judgement given by bench of nine judges, which is against laid down norms of judicial conventions.

1.2.1. FACT OF THE CASE

The Punjab government issued circular number 1818-sw-75/10451 on May 5, 1975, which stated that fifty percent of the seats reserved under the Scheduled Castes quota would be allocated Valmiki's and Mazhabi Sikhs. However, this circular was annulled by the Division Bench of the Punjab Haryana HC, and the special leave petition filed against this decision was also dismissed.

Despite this the Punjab government later included a similar provision in the Punjab Scheduled Castes and Backward classes (Reservation in Service) Act, 2006, which mandate that 50% of vacancies from the "Reserved Quota" be allotted to Valmiki's and Mazhabi Sikhs, giving them first preferences among Scheduled Castes candidates, depending on their availability.

Once again, this provision was rejected by the Division Bench of the Punjab and Haryana court, which reference the judgement in "E.V. Chinnaiah Vs State of Andhra Pradesh, 2004", among others. Consequently, case was brought before a five-judge bench of the Supreme Court, which concluded that the "E.V. Chinnaiah Vs State of Andhra Pradesh" judgment should be revaluated by a larger seven-judge bench, as it had not adequately addressed important aspects related to the matter.

Therefore, the matter reached before the bench of five judges of Supreme Court, who opined that, the judgement of E.V. Chinnaiah requires to be revisited by a larger bench of seven judges, *as it has failed to consider significant aspects bearing on the issue.*

Accordingly, the issue was put up before a bench of seven judges; and the judgement of E.V. Chinnaiah VS. State of Andhra Pradesh was dismissed by the said bench with majority of 6:1 and passed the judgement that, both the concepts creamy layer and sub-classification are applicable to the Scheduled Castes and Scheduled Tribes. However, judgement has six different opinions. Chief justice wrote on behalf himself and Justice Manoj Mishra, Justice Gavai and Pankaj Mittal authored separate, but concurring opinions. Justices Vikram Nath and S.C. Sharma authored opinions agreeing with the Chief Justice and Justice Gavai.[3] Justice Bela Trivedi wrote a dissenting judgement.

But majority of the Scheduled Castes (SC) and Scheduled Tribes (ST) people did not like this judgement resulting into upheavals and criticisms. *Therefore, the issue for research is to study the legality of that judgement on the anvil of the constitutionality.*

1.2.2. THE ISSUES BEFORE THE BENCH

Is sub classification of reserved category allowed under Article 14, 15, and 16?

Do Scheduled Castes represent a Homogenous and Heterogenous group?

Does Article 341 establish a Homogeneous class through the application of a deeming fiction?

Are there any restrictions on the extend of sub-classification?

[3] https://www.scobserver.in/reports/sub-classification SCO/written by Saisampada

1.2.4. CLASSIFICATION

The term classification means a systematic arrangement in groups or categories according to established criteria.[4] Naturally, sub-classification means to further classify the existing groups for a specific purpose

1.2.4.1. SUB-CLASSIFICATION

In simple terms and in plain language sub- classification means dividing a larger group or Category into smaller, more specific sub-groups based on shared common characteristics or types.

1.2.4.2. REASONABLE CLASSIFICATION[5]

The concept of Reasonable Classification" arises from article 14 of the Indian Constitution, which guarantees fundamental rights to equality for all citizens. This provision is crucial as it ensures equality for everyone within the territory of India and safeguard against discrimination based on religion, caste, race, gender, or place of birth. Article 14 encompasses two key elements: Equality before the law and Equal protection of the law. Previously assessment of the regional classification involves determining whether the legislation in question established a valid and reasonable classification, thereby ensuring its constitutional validity.

1.2.4.3. INTELLIGENT DIFFERENTIA[6]

Intelligent differentia refers to clean and identifiable basis for distinguishing one group or situation from another in legislative contexts. It served as a criterion for justifying differentia treatment among groups. To maintain the principle of equality, this classification must meet two essential conditions:

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[4] Merriam-Webster Dictionary.

[5] Aishwarya Agrawal, *Doctrine of Reasonable Classification*, LAWBHOOMI (Dec. 22, 2023), https://lawbhoomi.com/doctrine-of-reasonable-classification/.

[6] *Intelligent+differentia | Indian Case Law | Law*, HTTPS://WWW.CASEMINE.COM, https://www.casemine.com/search/in/intelligent+differentia (last visited Aug. 5, 2025).

It must be based on intelligence differentia that distinctly separates the grouped individuals from those excluded.

The differentia must have a rational connection to the law's objective, ensuring that the distinction in both real and substantial.

1.2.4.4. EQUALITY BEFORE LAW[7]

The State shall noy deny any individual equality before the law or equal protection of the laws within the territory of India.

The judgement is turning around the concept of, "classification and sub- classification; in fact, the entire epitome of this case is erected on these concepts: classification and sub-classification; Therefore, it becomes very important to understand what does it mean?

The term classification means a systematic arrangement in groups or categories according to established criteria.[8] Naturally, sub-classification means to further classify the existing groups for a specific purpose.

In the instant case, the issue is sub -classification of "Reserved Class" i.e. which has been already carved out from the general class having common characteristics, for the specific purpose of giving them certain privileges/ benefits are to be treated as a "Reserved Class."

Therefore, the issue is whether the, "Reserved Class" can further be classified, and if yes! What would be its Constitutionality from the perspective of Article 14, 15 and 16 of the Constitution? This trio is not only part of fundamental rights but also deals with right to equality.

Article 14 stipulates that the State shall not deny any person "equality before the laws" and "equal protection of law" within India. While framers of the Constitution emphasized the right to equality, there have been instances where parliament has attempted to limit its scope to implement various welfare programs. Article 14 allows reasonable classification to achieve specific objectives,

[7] Constitution of India by V.N. Shukla
[8] Merriam-Webster Dictionary.

provided that such classification is not discriminatory or arbitrary and adhere to three principles: Intelligible differentia, national nexus, and intended objective.

1.2.5. JUSTICE SUBBA RAO AND CLASSIFICATION[9]

Justice Subba Rao cautioned his colleagues about the risk of reducing equality clause to "a mere rope of sand." He wanted that an excessive focus on the doctrine of classification or eager research for valid classification could strip article 14 of its essence, leading the court to replace the "Doctrine of equality" with "doctrine of classification." Additionally, the Supreme Court has, at times, diminished the vigor of Article 14 by showing an excessive defense to the theory of classification and nexus test. Nevertheless, the Supreme Court has affirmed that the right to equality encompasses right to equal access to justice, the right to live with dignity, right to fair trial, and right to be free from arbitrary discrimination.

1.2.6. ARTICLE 15(1)[10] AND 16(1)[11]

Both Article were interpreted as clarification of the equality principle outlined in article 14. However, the court was hesitant to apply the doctrine of reasonable classification, which is based on the premise that not all individuals and situations are the same, to the context of reservations.

1.2.7. TEST OF REASONABLE CLASSIFICATION[12]

The doctrine of classification serves as a supplementary rule designed to provide practical meaning to the principle of equality. However, placing too much emphasis on classification could lead to a replacement of the doctrine of equality with the doctrine of classification. To meet the criteria for permissible classification, two conditions must be satisfied: the presence of an intelligible differentia and a rational connection to the intended objective. This was further clarified in the case of "Ram Krishna Dalmia Vs Justice Tendolkar, 1958"[13], where the Supreme Court articulated the principle of equality before law. The court stated that the state is allowed to create differential

[9] God save the Hon'ble Supreme Court by Fali Nariman (page No.228)
[10] *Article 15 in Constitution of India*, https://indiankanoon.org/doc/609295/ (last visited Aug. 7, 2025).
[11] Article 16 in Constitution of India, *supra* note 5.
[12] Student.manupatra.com/academic/abk/constitutional- law-of-India/chapter-7.htm
[13] *CASE ANALYSIS OF RAMKRISHNA DALMIA V. JUSTICE TENDOLKAR » Lawful Legal*, (Feb. 10, 2024), https://lawfullegal.in/case-analysis-of-ramkrishna-dalmia-v-justice-tendolkar/.

classification of subjects, which would otherwise be prohibited by article 14, if the classification is based on an intelligent differentia and has a rational connection to the goal that the classification aims to achieve.

1.2.8. INTELLIGIBLE DIFFERENTIA

The classification must be founded on an intelligible differentia which distinctly distinguishes the groups formed due to classification of persons or things based on certain characteristic. It means the group of untouchables can be easily differentiated between untouchable and touchable.

1.2.9. NEXUS WITH THE OBJECT

The differentia must be related to the objective intended to be achieved by the statute in question, which is referred to as the nexus. These two concepts intelligible differentia and close nexus are crucial in the context of the "Doctrine of Reasonable Classification." This concept holds significant importance within the Indian Constitution. The Supreme Court of India has consistently applied the theory of Reasonable classification when assessing the constitutional validity of any legislation challenged under Article 14.

Furthermore, to implement various welfare schemes and promote the development of specific groups within society, the state may sometimes feel compelled to enact laws that treat different classes of people in distinct ways. Thus, the doctrine of reasonable classification plays a vital role in this context. However, it is essential for both the court and the government to ensure that such classifications are reasonable and avoid of any arbitrariness.

Considering the above, it is evident that the Constitution allows for valid classification if two condition are met: first, there must be an intelligible differentia that distinguishes individual grouped together from those excluded from the group. The term intelligible differentia refers to a difference that can be understood. Such a difference is comprehensible when there is clear criterion to differentiate included class from those excluded; without such criteria, the differentiation would lack a basis and thus be deemed unreasonable.

Now we will address the issue raised in points (b) and (c), which we have combined for the sake of brevity and convenience:

(b) Do the scheduled castes form a homogenous heterogenous group?

(c) Does Article 341 create a homogenous class through the application of a deeming fiction?

1.3.1. WHAT IS HOMOGENOUS

The word homogenous comes from Greek word "homogenous" meaning thereby that, *"of the same kind,"* from homo means the same and genos means kind.

In every context, in which it is used, is used to describe things that are essentially alike or uniform throughout, without any or much variation.

In sociology a society that has little diversity is considered homogenous[14]

If two things are homogenous, then they are congruous, alike in constitution of uniform nature or character throughout, A population is homogenous if its members have some common characteristic.[15]

Homogenous group consist of individuals or elements that share several important characteristics. In a social context, for instance, homogenous group may include members who are of the same age or possess similar socio-economic background, values, work experience, and educational levels. In an educational setting, a homogenous group could refer to an entire class or a smaller subset within a class that is formed based on comparable abilities in a particular subject, such as mathematics, in contrast to a heterogenous group.

A homogenous group has a lot of characteristics in common. The primary goal of the team should be to achieve the objectives since they provide the group with direction and a sense of purpose.

[14] Https://www.dictionary.com/browse/homogenous
[15] https://pmc.ncbi.nim.nih.gov/article/pmc1114842/

1.3.2. HETEROGENOUS:

The adjective "Heterogenous" is a comparative term that implies that two or more entities differ in substance or nature. For instance, a heterogenous mixture consists of two substances that that do not fully blend, such as oil and water. The word "Heterogenous" has its root in Greek, combining "heteros," which means "others," and "genos," meaning "kind," thus conveying the meaning of "other kind."[16]

1.3.3. ARTICLE 341[17]

The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race, or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

1.3.4. (D) IS THERE A LIMIT TO EXTENT OF SUB-CLASSIFICATION?

To start with the discussion, we must focus on to what extent "scheduled castes" is said to be heterogeneous as claimed by the honorable CJI.

The word Scheduled caste connotes "untouchability" which is the major characteristic used to prepare the schedule of caste. It is quite possible that some of the caste listed in the schedule might be having some other unique or uncommon characteristic. In such a situation, castes having

[16] *Heterogenous - Definition, Meaning & Synonyms*, VOCABULARY.COM, https://www.vocabulary.com/dictionary/heterogenous (last visited Aug. 7, 2025).
[17] *Article 341: Scheduled Castes*, CONSTITUTION OF INDIA, https://www.constitutionofindia.net/articles/article-342-scheduled-tribes/ (last visited Aug. 7, 2025).

variable character cannot be clubbed together unless they possess some common base. Therefore, there are some common characteristics in scheduled castes are as under,

All the caste listed under scheduled are untouchable

1. All are outcaste
2. All stay on the outskirts of the village
3. All are not allowed to use "water-bodies" of the villages commonly used by high caste communities.
4. All of them are not part of "Varnashrama Dharma," counted in Pancham-Varna.

Apart from this each caste or communities have their unique habits or practices; unless such things are kept aside no one can prepare a developmental plan for up liftmen of such communities. That is the reason why, while preparing the schedule "untouchability "has been considered the basic main characteristic; which not only differentiate but separates them from the main stream society.

If we want to draw some scheme for such outcaste people, then we have no other alternative but to forget the minor variables otherwise it is not only difficult but impossible to plan a scheme for their development. Though homogenous is a biological term, now it has been commonly used in other field also; and it has been defined as given in point no.1.3.1. that in *sociology "a society that has little diversity is considered homogenous*[18]*"*

According to the views of honorable CJI, each caste will form a separate class, and then the scheduled caste will have to be sub-classified in thousands of sub-classes. Take the example of Maharashtra there are 59 castes are classified as a scheduled caste; all the caste are again divided into sub-caste.

In such a situation how the policy maker will plan the policy to do distributive justice, even if they do it well, will be a futile exercise from implementation point of view. Therefore, Practicality must be considered to get positive results.

[18] Https://www.dictionary.com/browse/homogenous

Take the example of a family, each member has got his own traits and habits but all them are counted as a member of that family, and day to day activities are performed keeping away the habits and liking of individual of that family; likewise all the outcastes have their own rules and regulations habits and practices, but one common thing is that, they all are untouchables, forming a homogenous group.

Therefore from sociological point of view, we can firmly say that Scheduled caste is homogeneous group for all practical purposes and the same is separate from the touchable and hence it can be called as a valid classification…because both the groups: Group of untouchables, Group of touchable; are not only distinctly distinguishable from each other, but also established the rational relation to the object sought to be achieved by the law called as a social justice.

We have already defined the term Intelligible Differentia at point No.1.2.8. according to which the main cause of separation of one group from the other is not only vitally important but can also be distinctly distinguishable from each other.

This difference between touchable and non-touchable is very easily deducible with the common knowledge; even the surrounding situation and circumstances are enough to differentiate one group from the other. Therefore, from sociological point of view, and with a common characteristic of the group of scheduled castes is Untouchability in terms of the definition of Homogeneity given, the discussion given above is sufficient to prove that scheduled caste is a homogeneous.

Moreover, it is not new development that Indian society has become heterogeneous. The Social heterogeneity is the product of Indian Caste system based on "graded Inequality" as said by Dr. Babasaheb Ambedkar. It is true that, he has said so, it is also true; but it should not be forgotten that Dr. Babasaheb Ambedkar was not only legal expert and constitutionalist; he was a renounced sociologist and economist also, and know it well, what is mean by "graded Inequality" and to what extent, it would help to do social distributive justice. He being a social scientist, he classified the Indian population between two groups: untouchable and touchable, instead of any other method of classification. To adopt any other methods is nothing but a deliberate procrastination of implementation of reservation policy. Justice Bela Trivedi also said so in her dissenting judgement.

With the above discussion, we can firmly say that, Article 341 has created a homogenous group of Scheduled castes which cannot be varied by subsequent notification.

1.3.5. NOW, COMING TO THE FOURTH ISSUE TITLED AS

D): IS THERE A LIMIT TO EXTENT OF SUB-CLASSIFICATION?

The important point here is that, the court could not appreciate the social difference between the scheduled castes and other backward class. Life and living of scheduled caste cannot be compared with Other Backward Class. There is a vast difference between the two, and hence "one size fit all" concept is not applicable. That is the reason why Dr. Babasaheb Ambedkar has deliberately used the word Scheduled Castes (SC) and Scheduled Tribes (ST) separately in Article 15(4),15(5),15(4-A);16(4-A) 46 and article 335,[19] other Backward class has never been victims of social boycott, exclusion, or untouchability. All of them live within the outskirt of the village; share the same waterbodies with high caste. It means the other Backward Class, are no doubts are backwards; buts because of their backwardness is not entirely social, like scheduled caste (SC) and scheduled tribes (ST). It also involved economic factors; once the economic condition improves, its tag of backwardness gets evaporated, automatically. It is not the case with scheduled caste and scheduled tribes, whatever, may be the financial statues of scheduled caste and scheduled tribes, the stigma of untouchability never drops down unless there is change in the mindset of high caste communities. e.g. Once the then home minister of India, Jagjivan Ram Babu had visited the statue of Swami Sampurnanad and garlanded it, people had not only resisted it, purified by sprinkling "GO-MUTRA."

In the recent past, the then president Ramnath Kovind was not allowed to enter temple and made to do puja from the steps itself, same was the case with President of India she was not allowed to enter the temple and she was made to do puja from the steps itself.

[19] Constitution of India by Jb international.(page No,25/26)

Though substantial physical development said to have been occurred, but no change in the mindsets of the high caste communities, on the contrary it has been deteriorated. In view of the above incident can be firmly inferred so.

Thus, there is a vast difference between Other Backward Class (OBC) and scheduled caste (SC) and scheduled tribes (ST) as for social status is concerned. That is the reason why the schedules prepared for classifying the castes facing the stigma of untouchability has been given constitutional status by incorporating it in Article 341 of the Indian constitution and unequivocally stated there that, "once the notification is has been issued by the president about the scheduled, then no addition or deletion cannot be done even by the president, that power vest with parliament only. In such a situation, how a family belonging to castes can be deleted or taken out of that scheduled arbitrarily, which amount to Doctrine of Colorable legislation[20]*, means thing which cannot be done directly, how it can be done indirectly?*

Thus, the above discussion is a suitable reply to the issue raised at point (d); it means Article 341[21] *of the constitution prohibit further sub- classification of scheduled caste.*

In the light of the above, I believe justice Bela Trivedi has aptly referenced Justice Benjamin Cardozo, who stated, "It cannot be denied that the Constitution is viewed as a living and organic document, designed to last for generations and to be adaptable to the diverse challenges of human affairs. It must be interpreted in broad and liberal manner. However, Benjamin Cardozo noted, "A judge is not a knight-errant wandering freely in search of his own ideals of beauty and goodness. A judge should not innovate at will."

The CJI said sub-classification in scheduled castes does not violate article 341(2)[22] and ready to create as many groups as possible based on the heterogeneity. In fact, from implementation point of view, it is very difficult, still the court is putting the entire responsibility on the state and said that, state must collect data on the inadequacy of representation in the services of the state, because it will be used as an indicator of backwardness.

[20] Constitution of India by V.N.Shukla (EBC) page no.806.
[21] Article 341, *supra* note 19.
[22] *Id.*

This concept is not only unknown to the Constitution, but it is not correct from the sociological point of view also. This numerical figure will only convey inadequacy, but it is not sufficient to be treated as a yardstick to measure backwardness.

Whatever, classification and reclassification done in terms of this judgement will amount to violation of article 14 of the constitution. Means arbitrarily pushed classification of scheduled castes into A, B, C, and D amount to be unconstitutional.

The judicial history of reservation policy shows that the poor scheduled castes and scheduled tribes never fought for their rights in Supreme Court, almost every role in judicial arena is played by the high castes people. The poor scheduled castes are helplessly suffering judicial discrimination since they could not retaliate such judicial activism.

In the entire discussion, it has been forgotten that there is vast difference between scheduled castes and other backward class. The backward classes are not outcastes or untouchables. On the contrary scheduled castes are still suffering from that stigma of untouchability. In such a situation, can the government will be able to classify scheduled castes as more untouchable or most untouchable or less untouchable.

How ex-president Mr. Kovind, or President Murmu will be classified(?) less untouchable or more untouchable, since they have not been allowed to enter the temple because they are untouchables; in such a situation, what will be their social status more untouchable or less untouchable (?) But they are untouchable, can this fact be denied (?) Apart from one important point that has been overlooked is that, the reservation is given to the "scheduled caste" community as a whole and not as an individual member. How an individual then can be deprived of the reservation benefit without supporting legal reasoning, would not this constitute a violation of article 14 of the Constitution?

1.4. JUDGEMENT OF HONORABLE JUSTICE B.R GAVAI

Now coming to the judgement given by Honorable justice Gavai, it becomes necessary to verify, whether the issue of "creamy layer" was required to be revisited by the bench of seven judges.

The issue of revisit was pertaining to sub-classification in scheduled castes. Despite this honorable justice Gavai touched the issue of "Creamy Layer" which has been specifically decided by the larger bench of, *"Nine judges" in case of "Indra Sawhney vs. Union of India", Wherein, explicitly stated that, Creamy layer have no relevance with scheduled castes"*

1.4.1. CONSTITUTIONAL PROVISIONS MENTIONED BY JUSTICE GAVAI IN HIS JUDGEMENT

Justice Gavai has made lot of references from the speeches of Dr. Babasaheb Ambedkar and the Constitution; and has mentioned that, if any elimination or addition must be made in the list of Scheduled castes, it can be done by parliament and not by the president. The reason such a provision has been specifically mentioned by Dr. Babasaheb Ambedkar is, "… to eliminate any kind of political factors having a play in the matter of the disturbance in the schedule so published by the president." No one should forget that Dr. Babasaheb Ambedkar was a great statesman, that is why he visualized that, certain section will play the reservation policy and will try to deprive the benefits if reservation from the families, who has received pittance of benefits.

Justice Gavai has mentioned it in para 43[23] of his judgement, but he did not appreciate it in its true sense and sprit with which Dr. Babasaheb Ambedkar incorporated such provision. In fact, justice should have reached the logical conclusion ads for as the issue of sub-classification is concerned.

Justice Gavai has stated in last para of his judgment (Para no. 296/viii)[24] that, the criteria for exclusion of the creamy layer from the scheduled castes and scheduled tribes for the purpose of affirmative action, could be different from the criteria as applicable to the other backward classes.

Yes! Justice Gavai has very correctly observed that, the criteria used for other backward class for creamy layer elimination, cannot be made applicable, to scheduled castes and scheduled tribes. But different means what (?) or what should be the criteria (?) is it possible without statistical data pertaining to the various caste and their method of earning lively hood, whether scheduled caste and scheduled tribes' own lands like OBC(?)The creamy layer is economical concept and problem

[23] *The State Of Punjab vs Davinder Singh on 1 August, 2024*, https://indiankanoon.org/doc/155595286/ (last visited Aug. 7, 2025).
[24] *Id.*

of scheduled castes (SC) and scheduled tribe (ST) is social, in such a situation how to reconcile it (?).

In fact, the process of elimination of scheduled castes and scheduled tribe's candidates is already working in almost all the government department, by not selecting the candidates of scheduled castes and scheduled tribes under the guise of efficiency. Therefore, unless the statistical data about the adequacy and inadequacy is made available, it is impossible to implement this judgement to do complete justice. If arbitrarily pushed it, for political gains it amounts to violation of article 14[25] of the constitution.

1.5. JUDGEMENT OF JUSTICE BELA TRIVEDI

The dissenting judgement of Justice Bela Trivedi appears be more closure to reservation policy from the practicability as well as Constitutionality point of view. She has retorted in strong words and said as to how a smaller bench can pass a *cryptic and perfunctory order*, without cogent reasons, that too, against the settled judicial law, made by a larger bench and prevailing for the last fifteen years.

The judgement given by Justice Bela Trivedi neither supports the views of CJI for sub-classification of scheduled castes nor support justice Gavai for his views on Creamy layer.

In fact, justice Trivedi was very much annoyed for the way in which a bench of three judges pushed the case to higher bench of five judges[26] without cogent reason, and that bench also shunted it to further higher bench of seven judges, surprisingly that bench also accepted it without any grudge or question to either of the benches, for shirking the responsibility, without any cogent and substantive reason for referring the matter to further higher benches.

In fact, according to Indian jurisprudence of judicial process, court does not overrule the established precedent, unless the mandating circumstances are aroused. Here in the instant case, there was no occasion or reason to overrule the settled judicial law for more than law fifteen years.

[25] Article 14, *supra* note 3.
[26] The State Of Punjab vs Davinder Singh on 1 August, 2024, *supra* note 25.

Moreover, the way, in which the case has been consecutively pushed to higher benches without any cogent and rational reasons, and surprisingly the higher bench also, welcomed it without any grudge or raising any question to either of the lower benches. Therefore, the suspicion aroused as to why neither the bench of three judges nor the bench of five judges could provide any cogent and rational reasons for referring the matter to higher benches? Is it not amount to creation of chaotic situation and instability in judicial system, leading to the issue of judicial credibility?

In view of this, Justice Trivedi has rightly quoted the example of US court in para 23[27]*, wherein Justice Robert said that, "It is a jolt to legal system when you overrule precedent. Precedent plays an important role in promoting stability and even- handedness*[28]*"*

Despite this fact, both the courts have knowingly or unknowingly created instability in the jurisprudence of judicial process; Above all the final judgement also overruled judicially settled law for more than thirty years that too, without any substantive reasons and supportive statistical data in hand; and shunted that responsibility to the state to collect the statistical data before implementation of the judgement i.e. sub-classification in Scheduled caste and application of Creamy layer to Scheduled caste and scheduled tribes.

In fact, in this regard Dr. Babasaheb Ambedkar has stated in an unequivocal term that, any addition or deletion in the schedule is permissible to the parliament and not the president. However, the judgement says that, without making any change in the schedule, individual can be eliminated from the list of scheduled castes, does it not amount to colorable legislation (?) Both the honorable justices have stated in clear terms that, state must collect the required statistical data before implementations of the judgment.

Such act of judiciary clearly shows that judiciary is heading towards judicial activism.

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[27] *Id.*

[28] State of punjab vs. devindar singh (para 23 of the justice Trivedi's judgement.)

1.6. CONCLUSION AND SUGGESTIONS

CONCLUSIONS

After elaborative analysis of the Supreme Court judgements, it has been realized that, due to lack of conceptual understanding reservation policy remained pending for implementation and issues are languishing in the courtyard of judiciary; for example, issue of promotion could not be sorted out till date amicably.

Under the guise of creativity, judiciary has not only introduced new concept unknown to the constitution but has indulged in policy making also; for example, imposition of a ceiling of 50% and the concept of creamy layer. Both theses concept is not based on any statistical data.

The courts sometimes appear to have obsessed with bias thinking, for example, in case of sub-classification of scheduled castes, in fact it is a settled judicial law, made by a larger bench of nine judges, however, a bench of five judges, acted on it, just because it was doubted by the court of three judges; that too without giving any cogent reasons. It shows nothing but a bias views about the Scheduled castes community.

Secondly, in case of scheduled caste, their backwardness is 100% linked with social cause, which has not yet been eliminated from the society, still under the guise of creamy layer, the court is trying to pull out the individual member from the group of his caste, instead of that entire caste. This is totally unconstitutional.

> The aim of researcher was to find out, the causes as to why, even after lapse of 75 years reservation policy could not be successful, has been proved that judiciary is equally responsible along with the other wings of the government.

SUGGESTIONS

There should be fixed constitutional benches at least two comprising seven and nine judges it means no benches of three and five judges; it will certainly save judicial time.

Judges sitting on constitutional benches should not be merely constitutional expert but must be well conversant with social sciences like sociology etc.

Social diversity must be followed while constituting benches for dealing with social issues; because most of the time judges cannot cast away their castes and occasionally result it in biasness.

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