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Dr. Rinu Saraswat



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Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"CRITICAL ANALYSIS OF STATE OF PUNJAB VS. DAVINDER SINGH"

AUTHORED BY - ABHIJIT MAHADEO CHAVAN

1.1. "Critical Analysis of, "State of Punjab VS. Davinder Singh." 1st August, 2024¹"

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

¹

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).

concluded that the “E.V. Chinnaiah Vs State of Andhra Pradesh” judgment should be reevaluated 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.² 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.

- a) Is sub classification of reserved category allowed under Article 14, 15, and 16?
- b) Do Scheduled Castes represent a Homogenous and Heterogenous group?
- c) Does Article 341 establish a Homogeneous class through the application of a deeming fiction?
- d) Are there any restrictions on the extend of sub-classification?

1.3. Justice Subba Rao and Classification³:- 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

² <https://www.scobserver.in/reports/sub-classification> SCO/written by Saisampada

³ God save the Hon’ble Supreme Court by Fali Nariman (page No.228)

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.

1.4. 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 43⁴ of his judgement, but he did not appreciate it in its true sense and spirit with which Dr. Babasaheb Ambedkar incorporated such provision. In fact, justice should have reached the logical conclusion as for as the issue of sub-classification is concerned.

Justice Gavai has stated in last para of his judgment (Para no. 296/viii)⁵ 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.

⁴ *The State Of Punjab vs Davinder Singh on 1 August, 2024*, <https://indiankanoon.org/doc/155595286/> (last visited Aug. 7, 2025).

⁵ *Id.*

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 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 14⁶ 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 judges⁷ 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.

⁶ Article 14, *supra* note 3.

⁷ 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 23⁸, 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- handedness⁹”

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.

1.6. Conclusion and Suggestions

Conclusions:

1) 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.

⁸ *Id.*

⁹ State of punjab vs. devindar singh (para 23 of the justice Trivedi’s judgement.)

2) 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 these concept is not based on any statistical data.

3)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:

- 1) *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.*
- 2) *Judges sitting on constitutional benches should not be merely constitutional expert but must be well conversant with social sciences like sociology etc.*
- 3) *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.*