

FOR THE WEAKEST: THE HINDU EDITORIAL ON SUB-CLASSIFICATION AMONG SCS

Relevant for: Developmental Issues | Topic: Rights & Welfare of STs, SCs, and OBCs - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The Supreme Court has given cogent reasons for a reconsideration of the [verdict given by a five-judge Bench in 2004](#) that State legislatures have no power to create sub-classifications among the list of Scheduled Castes notified by the President. A five-judge Bench headed by Justice Arun Mishra has [affirmed the competence of the States](#) to give preferential treatment to the weakest among the Scheduled Castes without depriving other castes of any benefit. The Court has noted that the SC list contains many castes and cannot be treated as a homogeneous group. It has recognised the obligation of States to identify for preferential treatment those sections within the SC communities to whom reservation benefits had not trickled down, and were in the same state of backwardness for decades. The Bench has disagreed with the formulation in [E.V. Chinnaiah vs. State of Andhra Pradesh \(2004\)](#) that classifying Scheduled Castes into groups amounts to 'tinkering' with the Presidential list. Also, the Constitution has been amended in 2018 to introduce Article 342A under which the President notifies, in consultation with the States, the list of Backward Classes, with a caveat similar to the ones in respect of Scheduled Castes (Article 341) and Scheduled Tribes (Article 342) that Parliament can make inclusions or exclusions in this list, and that once such a change is notified, "it shall not be varied by any subsequent notification". What is the effect of this? The Court says it could mean that just as the BC list can be divided into 'backward' and 'more backward', the same could be done among SCs too.

As *E.V. Chinnaiah* is also a verdict by a Bench with a strength of five, the matter has been referred to a larger Bench. If the judgment is reconsidered, it would provide welcome relief to States that wish to fulfil their obligation to the castes within the SC communities that have made the least progress. In the present case, the affected State was Punjab, which wanted to give preference to Balmikies and Mazhabi Sikhs among seats reserved for SC candidates, but the measure was struck down by the High Court, citing *E.V. Chinnaiah*. Tamil Nadu has also carved out 3% compartment for Arundhatiyars within the 18% SC quota. Such affirmative action programmes will be protected if a larger Bench overturns the Chinnaiah formulation. However, the outcome may not be an unmixed blessing for Dalits at large. Recent jurisprudence is veering towards the view that the 'creamy layer' concept should be applied to SC/ST candidates too. Given the oppression and marginalisation Dalits continue to face, it is a moot question whether this is the appropriate time to begin excluding some of them on the ground that they are better off than the rest of the community. The concern should be less about the 'creamy layer' occupying posts under SC quota and more about ensuring adequate representation to the most marginalised among Dalits.

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