National Law School of India Review

Volume 32 | Issue 2 Article 2

2020

Chebrolu Leela Prasad: Making Apparent The Existing Gaps in Reservations Jurisprudence

Shivam Singh

Harpreet Singh Gupta

NLSIR

CHEBROLU LEELA PRASAD: MAKING APPARENT THE EXISTING GAPS IN RESERVATIONS JURISPRUDENCE

—Shivam Singh* and Harpreet Singh Gupta**

Abstract The Constitution Bench of the Indian Supreme Court in Chebrolu Leela Prasad has held that 100% reservation for tribal teachers in Scheduled Areas is unconstitutional. To arrive at this conclusion, the court analysed the interface between Articles 16(1) and 16(4) of the Indian Constitution. We argue that while doing such analysis, the court lacked clarity and made contradictory observations about whether Article 16(4) is an exception or an affirmation of Article 16(1). Further, we critique the direction of the court to the government to revise the lists of backward classes in order to ensure trickling down of benefits and locate it in the debate around sub-classification of backward classes. We argue that with its contradictions and erroneous direction, this judgement makes apparent the gaps in the Indian reservations jurisprudence.

I. INTRODUCTION

The Indian Supreme Court recently heard and decided a challenge against Andhra Pradesh Government's Office Memorandum 3 of 2000, which reserved all teaching positions in schools in a particular part of a Scheduled Area only for Scheduled Tribes.[1] In this case, *Chebrolu Leela Prasad v State of A.P.*

* Shivam Singh is a counsel at the Supreme Court of India and works with Chamber 20A. He has read law at the Harvard Law School, the Columbia Law School and the National Law School of India University.

** Harpeet Singh Gupta is a counsel at the Supreme Court of India and works with Chamber 20A. He is an alumnus of the National Law School of India University.

The authors represented and argued for one of the parties in *Chebrolu Leela Prasad Rao v State of A.P.* 2020 SCC Online SC 383. They are thankful to Priyanshu Jain, Ankita Gupta and Aman Garg for their research assistance. They would also like to thank the peer reviewer of the National Law School of India Review for comments on earlier draft of this article.

1 *Chebrolu Leela Prasad Rao v State of A.P.* 2020 SCC Online SC 383 ('Chebrolu Leela Prasad').

('Chebrolu Leela Prasad'), the Supreme Court had several questions before it, pertaining *inter alia* to permissibility of 100% reservations and whether 100% reservation in favour of Scheduled Tribes can be considered as reasonable classification under Article 16(1) of the Indian Constitution.[2] In response to these, the Supreme Court held that providing 100% reservation to Scheduled Tribes is not permissible as per the Indian Constitution.[3] Further, the court observed that 100% reservation would be unfair, unreasonable, and irrational.[4] Additionally, the court also directed the government to take steps towards revision of lists of Scheduled Castes/Scheduled Tribes to ensure that benefits of reservations provided under Article 16(4) trickle down to the needy.[5]

In Part II of this article, we present a brief overview of the relevant facts and judgment in *Chebrolu Leela Prasad*. In Part III, we present a two-fold analysis of the court's reasoning. We analyse the observations and approach of the court in relation to the nature of affirmative action as well as the interface of Articles 16(1) and 16(4) of the Indian Constitution. We explore whether the Supreme Court saw reservation as an affirmation of equality of opportunity or as an exception to the same. In Part IV, we analyse the direction given by the court to the government to revise lists of Scheduled Castes/Scheduled Tribes in light of the debate around sub-classification of backward classes, an issue that has been referred by a constitution bench in *Davinder Singh v Union of India* to a larger bench of seven or more judges of the Supreme Court.

II. FACTS AND JUDGMENT

A five-judge bench of the Supreme Court heard a challenge to the validity of the erstwhile Andhra Pradesh Governor's Office Memorandum 3 of 2000. This office memorandum provided 100% reservation to Scheduled Tribe candidates for teaching positions in schools located in the scheduled areas in Andhra Pradesh. This office memorandum was challenged before the Administrative Tribunal ('Tribunal') of Andhra Pradesh, which quashed the same. Aggrieved by the order of the Tribunal, the scheduled tribe teachers preferred writ petitions before the Andhra Pradesh High Court.[6]

A three-judge bench of the Andhra Pradesh High Court rejected the challenge to the office memorandum. It highlighted that the office memorandum was in the constitutional spirit as the Constitution provides special treatment to scheduled areas. The majority of the bench highlighted that the notification was based on "intelligible differentia" and that "the classification made had nexus with the object sought to be achieved". It further stated that 50%

---

2 ibid [2].
3 *Chebrolu Leela Prasad* (n 1) [115].
4 *Chebrolu Leela Prasad* (n 1) [116].
5 *Chebrolu Leela Prasad* (n 1) [153].
6 *Chebrolu Leela Prasad* (n 1) [5].

outer limit can be breached in exceptional cases, and exceptional absenteeism of teachers and low literacy rates in scheduled areas of Andhra Pradesh constitute one such scenario, which must be treated as an exceptional case.[7] Lastly, it stated that power granted to the Governor under Paragraph 5(1) of Schedule V of the Indian Constitution, through which the impugned notification was issued, overrides all other provisions of the Constitution.[8]

Aggrieved by the Andhra Pradesh High Court's judgment, non-scheduled tribe teachers preferred an appeal before the Supreme Court. The Supreme Court allowed the appeal and invalidated the Government Order. The court saved the existing appointments on the condition that a similar exercise will not be attempted in the future and imposed costs on the State Government.

The Court framed four broad issues for consideration including the scope of the Governor's powers under Paragraph 5(1) of Schedule V of the Constitution of India. The two issues that are relevant to this comment are:

"(2) Whether 100% reservation is permissible under the Constitution?

(3) Whether the notification merely contemplates a classification under Article 16(1) and not reservation under Article 16(4)?"[9]

In response to these issues, the Supreme Court invoked the 50% outer limit for reservations laid down in the landmark case of *Indira Sawhney v Union of India*[10] and held that 100% reservation is not permissible under the Constitution. It stated that the non-obstante clause in Paragraph 5(1) of Schedule V cannot be read in a wide manner such that it overrides fundamental rights. Further, it stated that the notification cannot be treated as a classification under Article 16(1). Once reservation has been provided to Scheduled Tribes under Article 16(4), no such power can be exercised under Article 16(1).[11] Hence, the notification was deemed to be violative of Articles 14 and 16(4) of the Constitution of India.

---

7 *Chebrolu Leela Prasad* (n 1) [6]; In *Indra Sawnhey* the Supreme Court observed that the percentage of seats reserved should not exceed 50% of the total seats available. It also observed that this cap of 50% reservation could only be breached in exceptional circumstances.

8 *Chebrolu Leela Prasad* (n 1) [6]; The Constitution of India 1950, sch V, Para 5(1): "*Law applicable to Scheduled Areas: (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect*."

9 *Chebrolu Leela Prasad* (n 1) [2].

10 *Indra Sawhney v Union of India* 1992 Supp (3) SCC 217 ('Indra Sawhney').

11 *Chebrolu Leela Prasad* (n 1) [139].

The Supreme Court also observed that now there is a cry within the reserved classes.[12] It stated that socially advanced classes within the Scheduled Tribes and Scheduled Castes do not permit the benefits of reservation to trickle down to those who actually need them.[13] There is usurpation of benefits by those who have now come up using the benefits of reservations in the last seven decades.[14] In line with this, the court stated that there is a need for revision of lists of Scheduled Tribes and Scheduled Castes, despite such a revision not being in issue before the court.[15]

In light of this background, we will comment on two aspects of the *Chebrolu Leela Prasad* judgment in the following parts of this article: *first*, the interface between Articles 16(1) and 16(4) of the Indian Constitution; and *second*, the Supreme Court's direction regarding revision of the lists of Scheduled Castes/Scheduled Tribes.

III. ARTICLE 16(4): EXCEPTION TO OR EMPHATIC REAFFIRMATION OF ARTICLE 16(1)?

Article 16(1) of the Indian Constitution provides equality of opportunity as a specific right as against the overarching right to equality provided under Article 14.[16] The right to equality of opportunity in public employment mandates "treating similar similarly and different differently".[17] It is in this light that the existing inequalities in access to opportunities in employment are recognized and an endeavour is made to rectify them through Article 16(4).

Initially, the Supreme Court, in cases such as *Southern Railway v Rangachari*[18] and *Chitralekha v State of Mysore*,[19] viewed Article 16(4) as an exception to Article 16(1). In other words, it viewed "reservations as an exception to the general rule of equality". However, this initial view of the Supreme Court was overturned in the case of *N.M. Thomas*, where it was observed that Article 16(4) is a facet of equality and of Article 16(1).[20] This was followed by several cases including the *Indra Sawhney*.

However, one of the major problems with Indian jurisprudence on Article 16 is that while courts in certain cases have held that Article 16(4) is a facet of Article 16(1), they have failed to explore the implications that follow from the

---

12 *Chebrolu Leela Prasad* (n 1) [153].
13 ibid.
14 ibid.
15 *Chebrolu Leela Prasad* (n 1) [153] – [154].
16 The Constitution of India 1950, art 16(1).
17 The Constitution of India 1950, arts 14 – 16.
18 *Southern Railway v Rangachari* AIR 1962 SC 36 : (1962) 2 SCR 586.
19 *R. Chitralekha v State of Mysore* AIR 1964 SC 1823.
20 *State of Kerala v N.M. Thomas* (1976) 2 SCC 310 ('N.M. Thomas').

said statement.[21] As Bhatia notes in his book '*The Transformative Constitution*', if Article 16(4) is a facet of Article 16(1), the approach to questions on substantive equality is completely transformed. The State, in such a scenario, does not only have the power but also the duty to remedy inequalities.[22] Therefore, it is important to explore the approach of the courts with regards the interface of Articles 16(1) and 16(4) of the Indian Constitution. In this part, we explore the approach of the Supreme Court in *Chebrolu Leela Prasad* on this interface.

In *Chebrolu Leela Prasad*, to decide the permissibility of 100% reservations and whether the notification was a reasonable classification under Article 16(1), the Supreme Court had to deal with the interface of Articles 16(1) and 16(4) of the Indian Constitution. One of the fundamental questions that the court was required to analyse was whether Article 16(4) is an exception or an affirmation of Article 16(1).

The Supreme Court, in its analysis on permissibility of 100% reservations under the Indian Constitution, observed that the quantum of reservations should not be "societally injurious" and "excessive".[23] The court also observed that "reservation is an exception to the general rule".[24] In effect, in paragraph 116 of *Chebrolu Leela Prasad*, the Supreme Court observed that Article 16(4), which provides affirmative actions in public employment, is an exception to Article 16(1), which provides for equality of opportunity in matters pertaining to public employment.

However, this part of the court's analysis contradicts the observations made by the court while answering the next question: is the impugned notification, which provided 100% reservation, a method of classification under Article 16(1) or a case of reservation under Article 16(4) of the Indian Constitution?[25] In this part, the court after noting the cases of *Indra Sawhney*,[26] and *N.M. Thomas*,[27] stated that Article 16(4) is not an exception to Article 16(1) but is a part of equality.[28] It also noted that Articles 14, 16(1), and 16(4) are all facets of equality.[29] The court in this case, however, noted that the impugned notification is a case of reservation under Article 16(4) and not a tool of classification under Article 16(1).[30] This was court's way of ensuring that 50% cap

---

[21] See ibid; *Indra Sawhney* (n 10); Anant Sangal, 'The Supreme Court's 100% Reservation Judgment – Two Inconsistencies' (*Indian Constitutional Law and Philosophy*, May 10, 2020) <https://indconlawphil.wordpress.com/2020/05/10/guest-post-the-supreme-courts-100-reservation-judgment-two-inconsistencies/> accessed 2 June 2020.

[22] See Gautam Bhatia, *The Transformative Constitution* (Harper Collins 2019) ('Bhatia').

[23] *Chebrolu Leela Prasad* (n 1) [116].

[24] Ibid..

[25] See Sangal (n 21).

[26] *Indra Sawhney* (n 10).

[27] *N.M. Thomas* (n 20).

[28] *Chebrolu Leela Prasad* (n 1) [137].

[29] ibid.

[30] *Chebrolu Leela Prasad* (n 1) [134].

on reservations (as laid down in the *M.R. Balaji* and *Indra Sawhney*),[31] applies, which would not be the case had it been held that the notification is a case of classification.[32]

In light of the aforesaid contradictory observations, the question that arises after reading the judgment of the constitution bench in *Chebrolu Leela Prasad* is: what notion does the court actually subscribe to? From the approach and observations of the court, it appears that the court lacked clarity. Further, it is apparent that the court did not emphatically abide by the principle that Article 16(4) is an affirmation of Article 16(1) of the Indian Constitution.

Two instances from the judgment in *Chebrolu Leela Prasad* which highlight that the court did not view Article 16(4) as an affirmation of Article 16(1) are: *first*, where the court states that once the Scheduled Tribes are granted the benefit of reservations, they cannot claim the benefit of classification under Article 16(1).[33] In other words, the court stated that reservation for backward classes gets exhausted under Article 16(4) and they cannot claim any further benefit under Article 16(1) of the Indian Constitution. This shows that the court views Article 16(4) as an exception to Article 16(1), because if it did not, then there would be no reason for this finding, as nothing in the Constitution bars the backward classes from claiming benefits under both the provisions. Further, if Article 16(4) is seen as a facet of equality and an affirmation of Article 16(1), then there is all the more reason to allow claiming of benefits under both the provisions.[34]

Secondly, the court's inability to accept 100% reservations and its statement that they are antithetical to the norm of equality show that it views Article 16(4) as an exception to Article 16(1).[35] Further, the court also observed that 100% reservations could not be termed as anything except "unreasonable and unfair".[36] At several places in *Chebrolu Leela Prasad*, the court discusses that 50% ceiling can only be breached in exceptional circumstances. This obsession with the ceiling is again an indication that the court subscribes to the view that reservations are an exception to equality of opportunity.[37] If reservations are viewed as part of the jurisprudence on substantive equality, then there is no reason to be obsessed with ceiling and numbers.[38]

Thus, from the overall reading of the contradictory positions in *Chebrolu Leela Prasad*, it appears that the court does not view Article 16(4) as a facet

---

[31] *M.R. Balaji v State of Mysore* AIR 1963 SC 649 : 1963 Supp (1) SCR 439 ('M.R. Balaji').
[32] See Sangal (n 21).
[33] *Chebrolu Leela Prasad* (n 1) [139].
[34] Bhatia (n 22) 184.
[35] *Chebrolu Leela Prasad* (n 1) [115] – [116].
[36] *Chebrolu Leela Prasad* (n 1) [115].
[37] See Sanghal (n 21).
[38] See Bhatia (n 22).

of equality. This is definitely not in line with the observations in the *N.M. Thomas* that Article 16(4) is an emphatic reaffirmation of Article 16(1). However, a closer reading of the judgment in N.M. Thomas as well as the cases that followed it, including *Indra Sawhney*, reveals that even these judgments did not remove the ceiling of 50% for reservations fixed by *M.R. Balaji*.[39] Therefore, even *N.M. Thomas* and *Indra Sawhney*, in some ways, approached reservations/affirmative action measures with suspicion,[40] and reaffirmed the view that more than 50% reservations in most scenarios will be antithetical to equality. Thus, we believe that *Chebrolu Leela Prasad*, in many ways, is a continuation of *Indra Sawhney* and the judgments that followed it, and its contradictions make apparent the gaps that already exist in the reservations jurisprudence in India.[41]

IV. REVISION OF LISTS: A NOTE OF CAUTION

In *Chebrolu Leela Prasad*, the Supreme Court deals with the question of revision of lists of Scheduled Tribes and Scheduled Castes under Articles 341 and 342, despite such revision not being an issue before the court.[42] It is stated that there is a "cry within the reserved classes" that the benefits of reservations are being dominated by "affluent and socially and economically advanced classes" within the Scheduled Castes/Scheduled Tribes and are not trickling down to the needy.[43]

In this regard, the Supreme Court noted the decision in the *Indra Sawhney*, wherein it was observed that where any commission(s) has been formed for review of the Scheduled Caste/Scheduled Tribe list, State Government should look into the reports(s) and alter or modify the said list(s) with reasonable promptitude if required.[44] The court in *Indra Sawhney* also observed that it is open to the Government of India to act on such reports and modify lists.[45] Further, the court also quoted from the *Rakesh Kumar*,[46] to suggest that there should be periodic review of affirmative action measures in light of changing social as well as economic conditions.[47] On the basis of the aforesaid observations, the constitution bench in *Chebrolu Leela Prasad* called upon the

---

39 M.R. Balaji (n 31).

40 See Sanghal (n 21).

41 It is pertinent to note that a review petition has been filed against the Supreme Court judgment in *Chebrolu Leela Prasad* (Diary No. 13453 of 2020 *Akhil Bharatiya Jan Jati Vikas Sangh v State of A.P.*) . However, this petition is yet to be heard/decided by the Supreme Court.

42 *Chebrolu Leela Prasad* (n 1) [149] – [153].

43 *Chebrolu Leela Prasad* (n 1) [153].

44 *Indra Sawhney* (n 10) [853].

45 ibid.

46 *Union of India v Rakesh Kumar* (2010) 4 SCC 50 ('Rakesh Kumar')

47 ibid [37].

government to undertake the exercise of revising the lists of Scheduled Castes and Scheduled Tribes in the following words:

"The Government is duty bound to undertake such an exercise as observed in Indra Sawhney (supra) and as constitutionally envisaged. The Government to take appropriate steps in this regard."[48] (emphasis supplied)

We believe that the aforesaid direction from the constitution bench to the government is without any basis in law. The relevant provisions in this regard are contained in Articles 341, 342, and 342A of the Indian Constitution. Article 341(2) grants discretion to the Parliament to modify/revise the list of Scheduled Castes as notified by the President under Article 341(1).[49] Similar discretionary power in relation to Scheduled Tribes and socially and educationally backward classes is given to the Parliament through Articles 342 and 342A of the Indian Constitution.[50] What is of particular importance in the said provisions is that the power granted to the Parliament is discretionary and exclusion or inclusion to the lists is a policy decision. Nowhere in the said provisions does the power lie with the courts to either direct the Parliament to revise lists or to oversee such process.[51] The precedents in *Indra Sawhney* and *Rakesh Singh* also do not say that the Parliament is bound to revise lists and merely reiterate the discretionary power of the Parliament.[52] The direction of the court regarding revision of lists is particularly problematic as such revision was not even in question before the court in *Chebrolu Leela Prasad*.[53]

---

48 *Chebrolu Leela Prasad* (n 1) [153].

49 The Constitution of India 1950, art 341: "(1) 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

(2) 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."

50 The Constitution of India 1950, arts 342 and 342-A.

51 The Constitution of India 1950, arts 341, 342, 342A.

52 *Indra Sawhney* (n 10) [853]; *Rakesh Kumar* (n 46) [37].

53 See *Chebrolu Leela Prasad* (n 1) [2]. In this case, the questions before the Supreme Court were:

"(1) What is the scope of paragraph 5(1), Schedule V to the Constitution of India?
  (a) Does the provision empower the Governor to make a new law?
  (b) Does the power extend to subordinate legislation?
  (c) Can the exercise of the power conferred therein override fundamental rights guaranteed under Part III?
  (d) Does the exercise of such power override any parallel exercise of power by the President under art 371-D?
(2) Whether 100% reservation is permissible under the Constitution?
(3) Whether the notification merely contemplates a classification under art 16(1) and not reservation under art 16(4)?
(4) Whether the conditions of eligibility (i.e., origin and cut-off date) to avail the benefit of reservation in the notification are reasonable?"

Further, the question that arises based on the approach of the Supreme Court is: is including or excluding caste groups from the said lists the only solution to ensure trickle down of reservation benefits? We believe that the problem of non-trickling down of reservation benefits can be addressed in another, and arguably more effective, way.[54] To address the aforesaid problem of further discrimination and non-trickling down of benefits, we must provide equitable sub-division of reservation provided to the backward classes.[55] To elaborate, for instance there are 60 tribes identified as Scheduled Tribes and provided reservation. Over a certain period of time, it is found that 10 tribes amongst these have not been able to avail the benefits of this reservation. In such a case, these 10 tribes should be provided a separate quota of reservation from the reservation provided to the total 60 Scheduled Tribes, and remaining reservation (after reducing the quota) may be available for those who have benefited disproportionately from such reservation. For this exercise, there is neither a requirement to add nor to delete from the list of Scheduled Tribes.[56]

In this context, the constitutional provisions are clear that the power to declare a community as a Scheduled Caste/Scheduled Tribe is with the President initially, and thereafter with the Parliament.[57] However, no act of legislature is required to give reservations to the communities identified.[58] For the same, the executive and the state legislature have the freedom to provide reservations, within reasonable limits.[59] This freedom shall, by necessary implication, include the power of creating an equitable division of reservation benefits amongst castes/tribes, wherein there is no alteration to the lists.[60]

However, the Supreme Court in the *E.V. Chinnaiah* held that sub-classification of Scheduled Castes is unconstitutional as it violates Article 14 of the Indian Constitution.[61] In the said case, the State of Andhra Pradesh, based on the report of Justice Ramachandra Raju (Retd.) Commission, sub-classified the Scheduled Castes into four groups and apportioned the benefits of reservation equitably based on the degree of backwardness.[62] The court in this case had stated that Article 341 bars disturbance, rearrangement, or reclassification of castes in the list.[63] The sub-division permitted in *Indira Sawhney* was

---

54 See K. Balagopal, 'Justice for Dalits among Dalits: All the Ghosts Resurface' (2005) 40(29) Economic and Political Weekly 3128, 3130.

55 See ibid; It is pertinent to note that if art 16(4) is read as a facet of art 16(1), then sub-classification to account for disadvantages within groups will be a natural corollary; Bhatia (n 22) 184.

56 See Balagopal (n 54).

57 The Constitution of India 1950, arts 341, 342, 342-A.

58 *Indra Sawhney* (n 10) [738].

59 ibid.

60 Unless the same is explicitly barred, which it is not, anywhere in the Constitution of India; Balagopal (n 54) 3130.

61 *E.V. Chinnaiah v State of A.P.* (2005) 1 SCC 394 ('E.V. Chinnaiah').

62 ibid [2].

63 *E.V. Chinnaiah* (n 61) [104].

limited to Other Backward Classes and could not be extended to Scheduled Castes/Scheduled Tribes. The Supreme Court, thus, treated Scheduled Castes/Scheduled Tribes as a homogenous class.

We believe that this expansive reading of Article 341 is erroneous as this article only provides specific powers to the President and the Parliament regarding the list of Scheduled Castes, and bars amending of those lists by state legislatures – it does nothing more.[64] Further, this reading is also incorrect as it fails to take into account the fact that right to equality of opportunity is an individual right.[65] The Constitution takes into account groups, as membership of certain groups can be a source of discrimination for certain individuals in India.[66] However, that does not mean that internal differences amongst these castes/tribes, which are collectively termed as Scheduled Castes/Scheduled Tribes, cannot be accounted for. If backward classes are continued to be treated as a homogenous group and efforts of states to equitably grant reservations based on degree of backwardness are throttled, benefits of reservations may not trickle down to those who need them the most.[67] It may be argued that revision of lists will effectively deal with non-trickling down of benefits. However, we believe that there may be a situation where certain classes are availing reservation benefits to a certain extent and other classes are completely unable to, without the former group being "affluent" or "socially advanced". In such a case, exclusion of the former group, while being sensitive to further discrimination of the latter group, may amount to providing benefits to the latter at the cost of former group.[68] This is because even the groups currently availing reservation benefits (former group) are in need of such benefits and excluding them would only deprive them of these much-needed benefits.[69] Thus, to remedy such situations, we believe that the best way forward is to allow for equitable distribution of benefits of reservations based on the degree of backwardness, which has to be factually determined by the State.

In this regard, it is pertinent to note that a five-judge bench of the Supreme Court in *Davinder Singh* has taken a *prima facie* view that sub-classification of castes is permissible and the view taken in *E.V. Chinnaiah* is incorrect.[70] In this case, the constitution bench was to decide the constitutionality of Section 4(5) of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006, which sub-classifies Scheduled Castes in Punjab.[71] The

---

64 The Constitution of India 1950, art 341; See also Balagopal (n 54).

65 Bhatia (n 22) 180.

66 Bhatia (n 22) 180-1.

67 See Balagopal (n 54).

68 Balagopal (n 54) 3129.

69 ibid.

70 *State of Punjab v Davinder Singh* (2020) 8 SCC 1 ('Davinder Singh').

71 This provision provides that 50% of vacancies of quota reserved for Scheduled Castes in direct recruitment shall be offered to Balmiki and Mazhibi Sikhs (if available) as a first preference amongst the Scheduled Castes.

five-judge bench headed by Justice Arun Mishra observed that *E.V. Chinnaiah* did not correctly interpret the holding in *Indira Sawhney* and merely giving preference in quota to specific castes within the Scheduled Castes does not tinker with the Presidential list of Scheduled Castes under Article 341. However, since the ruling it had to reconsider (*E.V. Chinnaiah*) was of a co-ordinate bench of five judges, the bench referred the question of sub-classification to a larger bench (seven judges or more).[72] We hope that the Supreme Court, in this case, revises its ruling in *E.V. Chinnaiah* and allows for equitable distribution of reservation benefits.

After *Davinder Singh*, the court might take a stance that the recognition of a community as backward under Article 342A of the Constitution will absolve the states from necessarily relying on the data and that backwardness will be presumed.[73] It must be pointed out, however, as a note of caution that granting State Governments a blanket power of sub-classification can result in politicisation of the process of Scheduled Caste/Scheduled Tribe reservations. To exemplify, caste groups with a nominal vote share or influence may face the brunt of sub-classification at the hands of the State Government *vis-a-vis* more powerful caste groups. In fact, Dr B.R. Ambedkar had stated that the rationale behind Article 341 is to prevent "political factors having a play in the matter of disturbance in the schedule so published".[74] Further, as held in *Mukesh Kumar v State of Uttarakhand*,[75] what states make out of their 'subjective satisfaction' is inherently not uniform. Thus, while we agree that *E.V. Chinnaiah* must be reconsidered, the power of sub-classification must be granted with the qualifier that, in each case, it is based on 'requisite quantifiable data' about the relative backwardness and inadequacy of representation of the caste group that is being given preferential treatment within the Scheduled Castes/Scheduled Tribes. This kind of qualifier would not be a new phenomenon as a similar process has been envisaged for reservations in promotions as well.[76] It was held that in order to grant reservations in promotions for Scheduled Castes/Scheduled Tribes, the State has to satisfy the court that the same became necessary on account of inadequacy of representation of Scheduled Castes/Scheduled Tribes.

V. CONCLUSION

The aim of this article was to analyse the judgment in *Chebrolu Leela Prasad* to highlight how the same contains contradictory observations, lacks clarity, and makes apparent the gaps in the reservations jurisprudence in India.

---

[72] *Davinder Singh* (n 70) [58].

[73] Abhinav Chandrachud, 'Sub-Classification in Reservations – II' (*Indian Constitutional Law and Philosophy Blog*, 4 September 2020) <https://indconlawphil.wordpress.com/2020/09/04/guest-post-sub-classification-in-reservations-ii/> accessed 6 November 2020.

[74] *Davinder Singh* (n 70) [13.1].

[75] *Mukesh Kumar v State of Uttarakhand* (2020) 3 SCC 1.

[76] *M. Nagaraj v Union of India* (2006) 8 SCC 212 : AIR 2007 SC 71.

We have argued that this judgment of the Supreme Court lacks clarity on the relationship of Article 16(4) and Article 16(1) of the Indian Constitution. At one point, the court states that Article 16(4) is an exception to Article 16(1), and at another, it states that Article 16(4) is a facet of Article 16(1). Since only one of the aforementioned statements can be correct, we analyse whether the approach of the court aligns more with the former or the latter.

We believe that the Supreme Court's approach in *Chebrolu Leela Prasad* treats Article 16(4) more as an exception than as an affirmation of Article 16(1). This is because if Article 16(4) is treated as an affirmation of Article 16(1), then Article 16(4) does not remain the exclusive source for reservation and Article 16(1) is opened up to several group affirmative action measures. However, the reluctance of the court to see it as an affirmation is evident from the below-mentioned observations. The court states that since Scheduled Tribes are provided benefits under Article 16(4), they cannot be granted benefits of classification under Article 16(1). Further, the court observes, at several points, that 50% is the ceiling for reservations for backward classes under Article 16(4) and only in exceptional circumstances can the same be breached, viewing reservation crossing this 50% ceiling as antithetical to equality. This is not to suggest that courts in other cases after *N.M. Thomas* have been able to understand the transformative scope of the ruling, but only that the judgement in *Chebrolu Leela Prasad* makes the existing gaps in reservations jurisprudence more apparent.

Further, we have argued that the court's direction in *Chebrolu Leela Prasad* to the State calling them to revise the lists of backward classes is not only uncalled for as the same was not in issue before the court, but also without any basis in law. The power to revise lists of backward classes is a discretionary power with the Parliament as per Articles 341, 342, and 342A of the Indian Constitution. There is no power with courts to oversee the revision of lists or to direct the Parliament or government to do the same. Moreover, before revising the lists, it may be noted that while the same may be sensitive to the smaller group within the castes/tribes facing further disadvantages, it may not be able to account for historical disadvantages faced by the group as a whole. Further, certain advancements made by certain people belonging to some backward classes may not be sufficient to call them "affluent" and "advanced". We agree with Balagopal when he argues that revision of lists in response to non-trickling down of benefits may be equivalent to beating the parent group of the beneficiaries (castes/tribes which are not able to receive benefits) with a stick while accounting for the disadvantages of the sub-groups. Therefore, the right way forward is to allow for sub-classification of Scheduled Castes and Scheduled Tribes to ensure that benefits of reservations are apportioned equitably, based on the degree of backwardness. In line with Balagopal's reading of Article 341, we also argue that the Supreme Court was wrong in reading too much into Article 341 and other provisions of the Indian Constitution in

E.V. Chinnaiah to conclude that sub-classification of backward classes is not allowed as it would amount to disturbing the lists. We propose that sub-classification of backward classes should be permitted with the qualifier that in each case the State Government has to satisfy the court about the relative backwardness of caste groups that are being given preferential treatment within the Scheduled Castes/Scheduled Tribes based on quantifiable data.

In this regard, we believe that after the decision in *Chebrolu Leela Prasad*, the Supreme Court in *Davinder Singh* has correctly observed that the view in *E.V. Chinnaiah* appears to be incorrect. Since the bench in *Davinder Singh* was a bench of co-ordinate strength, it has referred the question of sub-classification of Scheduled Castes/Scheduled Tribes to a larger bench having seven or more judges. The Court now has a golden opportunity to correct the incorrect position of law in *E.V. Chinnaiah* and ensure equitable apportionment of benefits of reservation by way of allowing sub-classification of backward classes. Unlike the direction to revise lists, this is in line with reading Article 16(4) as an affirmation of Article 16(1) of the Indian Constitution.