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BEYOND RESERVATION: SUB-CLASSIFICATION, CREAMY LAYER AND THE FUTURE OF PUBLIC EMPLOYMENT IN HARYANA

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Abstract

The Supreme Court's seven-judge bench ruling in State of Punjab v. Davinder Singh (2024) overturned two decades of precedent set by E.V. Chinnaiah v. State of Andhra Pradesh (2004) by holding that Scheduled Castes and Scheduled Tribes are not homogeneous classes and may be sub-classified by states for the purpose of reservation, subject to empirical justification and application of a creamy-layer-type exclusion. This paper examines the doctrinal foundations of this shift, situates it within Haryana's distinctive reservation architecture — including its Backward Classes (A) and (B) bifurcation, its 2024 sub-classification of Scheduled Castes into Deprived and Other Scheduled Castes, its expanded 27% OBC quota, and its horizontal quota for ex-Agniveers — and evaluates the administrative, statistical, and constitutional challenges that Haryana faces in operationalising sub-classification without violating Article 14. Using representation-gap data, comparative state models, and doctrinal analysis, the paper argues that the future of public employment reservation in Haryana will depend on the state's capacity to generate defensible empirical data, insulate the process from majoritarian capture, and extend a coherent creamy-layer logic across all reserved categories.

1. Introduction

India's constitutional scheme of reservation under Articles 15(4), 16(4) and 16(4A) has, since 1950, treated Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) largely as undifferentiated blocks entitled to a fixed percentage of seats in public employment and education. This approach assumed a rough parity of disadvantage within each reserved category. Empirical research on caste stratification, however, has long shown that reserved categories are internally hierarchical: a small number of castes within the SC and OBC lists tend to capture a disproportionate share of reservation benefits, leaving the most

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marginalised sub-groups persistently under-represented.

The Supreme Court's judgment in State of Punjab v. Davinder Singh (2024 INSC 562) has reopened this question at the highest constitutional level, holding that states may sub-classify SCs and STs to direct benefits toward the most disadvantaged among them. This paper treats Haryana as a case study of a state that has moved unusually fast to operationalise this permission — sub-classifying its SC list into 'Deprived Scheduled Castes' (DSC) and 'Other Scheduled Castes', simultaneously expanding OBC/BC reservation from 15% to 27% in Group A and B posts, revising the OBC creamy-layer income ceiling, and layering a horizontal quota for ex-Agniveers across all these categories.

1.1 Research Questions

- What is the doctrinal basis on which the Supreme Court moved from Chinnaiah's homogeneity thesis to the sub-classification model endorsed in Davinder Singh?
- How has Haryana translated this constitutional permission into concrete administrative categories (DSC/OSC, BC-A/BC-B)?
- Does the current design of Haryana's reservation matrix meet the empirical-justification and creamy-layer conditions the Court attached to sub-classification?
- What risks — political, administrative and constitutional — does fragmentation of reserved categories pose to the stability of public employment in the state?

1.2 Methodology and Scope

This is a doctrinal and policy-analytical paper. It relies on primary legal sources (the Davinder Singh judgment, Chinnaiah, Indra Sawhney), Haryana government notifications and Assembly proceedings, and secondary commentary. Quantitative figures on representation are drawn from statements made by the Haryana government in the Vidhan Sabha and from departmental notifications; where such data is contractual/temporary-cadre data (e.g., Haryana Kaushal Rozgar Nigam Limited, HKRNL) rather than permanent cadre data, this is flagged, since it may not be representative of the regular civil service.

2. Doctrinal Background: From Indra Sawhney to Chinnaiah

The modern law of reservation begins with Indra Sawhney v. Union of India (1992), which upheld OBC reservation subject to exclusion of the 'creamy layer' — relatively advanced members of a backward class who, the Court reasoned, no longer suffer the disadvantage that justifies affirmative action. Critically, the nine-judge bench in Indra Sawhney also observed,

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in passing, that backward classes could be, and in some states already were, sub-divided into more and less backward categories for a more calibrated distribution of the OBC quota.

This logic was not extended to SCs and STs. In E.V. Chinnaiah v. State of Andhra Pradesh (2004), a five-judge bench struck down an Andhra Pradesh law that had sub-divided the SC list into four groups with differentiated quotas. The Court reasoned that the Presidential List under Article 341 constitutes SCs as a single, homogeneous class for constitutional purposes; any legislative attempt to re-group or re-rank castes within that list, the Court held, amounted to 'tinkering' with the List and was therefore outside state legislative competence.

Chinnaiah's homogeneity thesis effectively froze sub-classification of SCs and STs for two decades, even as several states — including Punjab, Tamil Nadu, and Haryana — attempted through executive notification to direct a share of the SC quota toward castes they considered more disadvantaged (e.g., Punjab's preference for Balmikis and Mazhabi Sikhs, and Haryana's 1994 Block A/Block B classification). These attempts were repeatedly struck down by High Courts applying Chinnaiah.

3. State of Punjab v. Davinder Singh (2024): The Doctrinal Shift

The reference that produced Davinder Singh arose from the Punjab and Haryana High Court's invalidation of Section 4(5) of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006, which had granted first preference within the SC quota to Balmikis and Mazhabi Sikhs. A five-judge bench doubted the correctness of Chinnaiah and referred the matter to a seven-judge Constitution Bench.

3.1 The Majority Holding

On 1 August 2024, a seven-judge bench headed by then Chief Justice D.Y. Chandrachud held, by a 6:1 majority, that sub-classification is constitutionally permissible to ensure reservation benefits reach the most backward sections within these communities, expressly overruling Chinnaiah. The Court reasoned that Article 341 fixes only the identity of the castes included in the Presidential List, not a constitutional command that they be treated as a single undifferentiated class for every legislative purpose; states retain the power under Articles 15 and 16 to sub-classify, provided the classification satisfies the ordinary Article 14 test of intelligible differentia and rational nexus.

Three features of the majority's reasoning bear on Haryana's implementation. First, the Court held that sub-classification must be rooted in rational basis indicating social backwardness and cannot be a matter of political expediency or arbitrary executive fiat. Second, it identified two

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permissible models for implementation — a 'preference model' under which a more disadvantaged sub-group is given first preference within the common SC quota, and an 'exclusive model' under which a fixed number of seats is exclusively earmarked for that sub-group. Third, and most significant for this paper, the Court mandated empirical data collection by states showing inadequate representation before any sub-classification is enacted, and held that the creamy-layer principle — until then confined to OBCs — should also apply to SCs and STs, so that the most advanced members of the sub-classified groups do not corner the enhanced benefit.

3.2 The Dissent

Justice Bela Trivedi, dissenting, held that Chinnaiah correctly stated the law and warned that the majority's approach risked fragmenting constitutionally protected communities without clear doctrinal justification for departing from a twenty-year-old precedent. This dissent is significant because it anticipates precisely the risk this paper identifies in Part 5 below: that sub-classification, once authorised, becomes a site of intense intra-category political contestation rather than a purely technocratic exercise in targeting disadvantage.

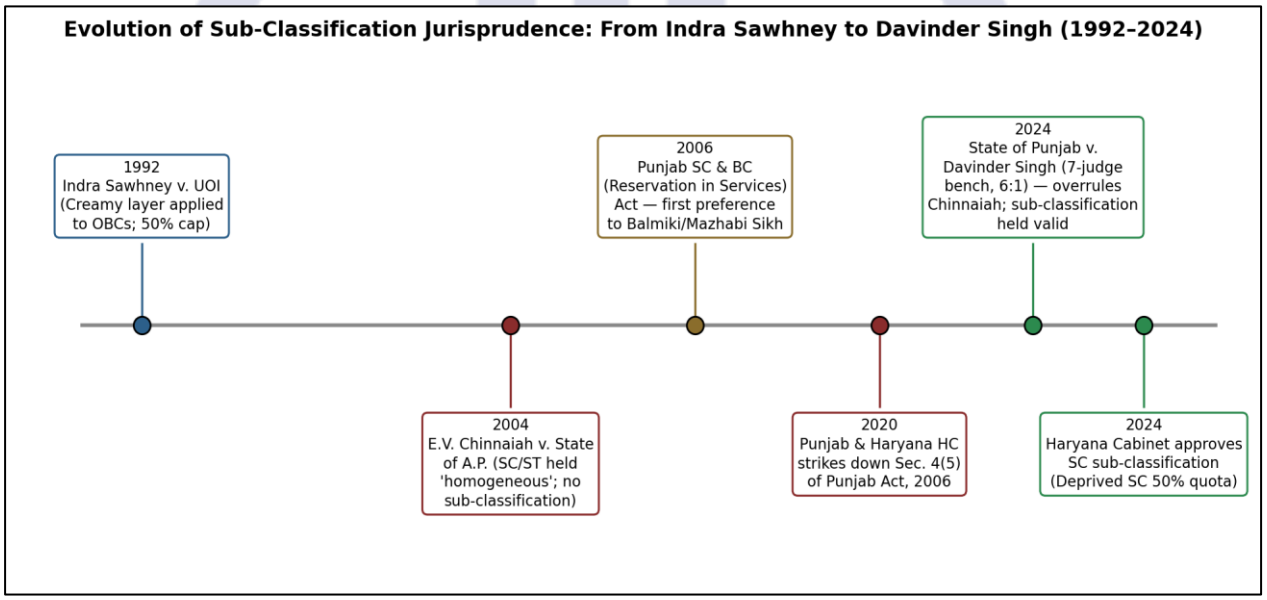

Figure 1. Evolution of sub-classification jurisprudence, 1992–2024. Constructed by author from case law and Haryana government notifications.

4. Haryana's Reservation Architecture: Structure and Recent Changes

Haryana's reservation policy is unusual among Indian states in that it has, since the 1990s, already bifurcated its Backward Classes list into 'Backward Classes (A)' and 'Backward Classes (B)' — a de facto sub-classification of the OBC category that long predates Davinder Singh.

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The table below summarises the current structure of Haryana's principal reservation categories as of 2024–2026.

4.1 Current Reservation Categories

Category	Prescribed Quota	Key 2024–26 Change	Governing/Recent Instrument
Scheduled Castes (SC) — overall	20%	Sub-classified into Deprived SC (DSC, 36 castes) and Other SC; DSC to receive 50% of SC quota	Cabinet decision, Aug. 2024, following Davinder Singh
Backward Classes – A (BC-A)	16%	Largely unchanged; pre-existing sub-classification	Haryana Backward Classes Commission notifications
Backward Classes – B (BC-B)	11%	Extended to Panchayati Raj institutions via 2024 Ordinance	Haryana Panchayati Raj (Amendment) Ordinance, 2024
OBC/BC – Group A & B posts	15% → 27%	Reservation raised to align with central govt. policy	CM announcement, 23 June 2024
OBC Creamy Layer income ceiling	₹6 lakh → ₹8 lakh p.a.	Salary and agricultural income excluded from calculation	Notification, 16 July 2024
Economically Weaker Sections (EWS)	10%	Continues under 103rd Constitutional Amendment	Central + state notifications
Ex-Agniveers (horizontal)	20% (select Gp-C posts); 5% (other Gp-C); 1% (Gp-B)	Consolidated instructions effective 1 Sept. 2026, sub-divided across DSC/OSC/BC-B/EWS/BC-A/UR	Chief Secretary circular, Aug. 2026

Table 1. Summary of Haryana's principal reservation categories and their 2024–2026 revisions.

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4.2 Representation Gaps: What the Data Shows

The clearest empirical justification the Davinder Singh bench asked for is a demonstrated gap between a sub-group's share of the reserved quota and its actual share of appointments. Haryana government data — presented to the Vidhan Sabha in relation to HKRNL contractual manpower — offers a partial picture, summarised in Figure 2.

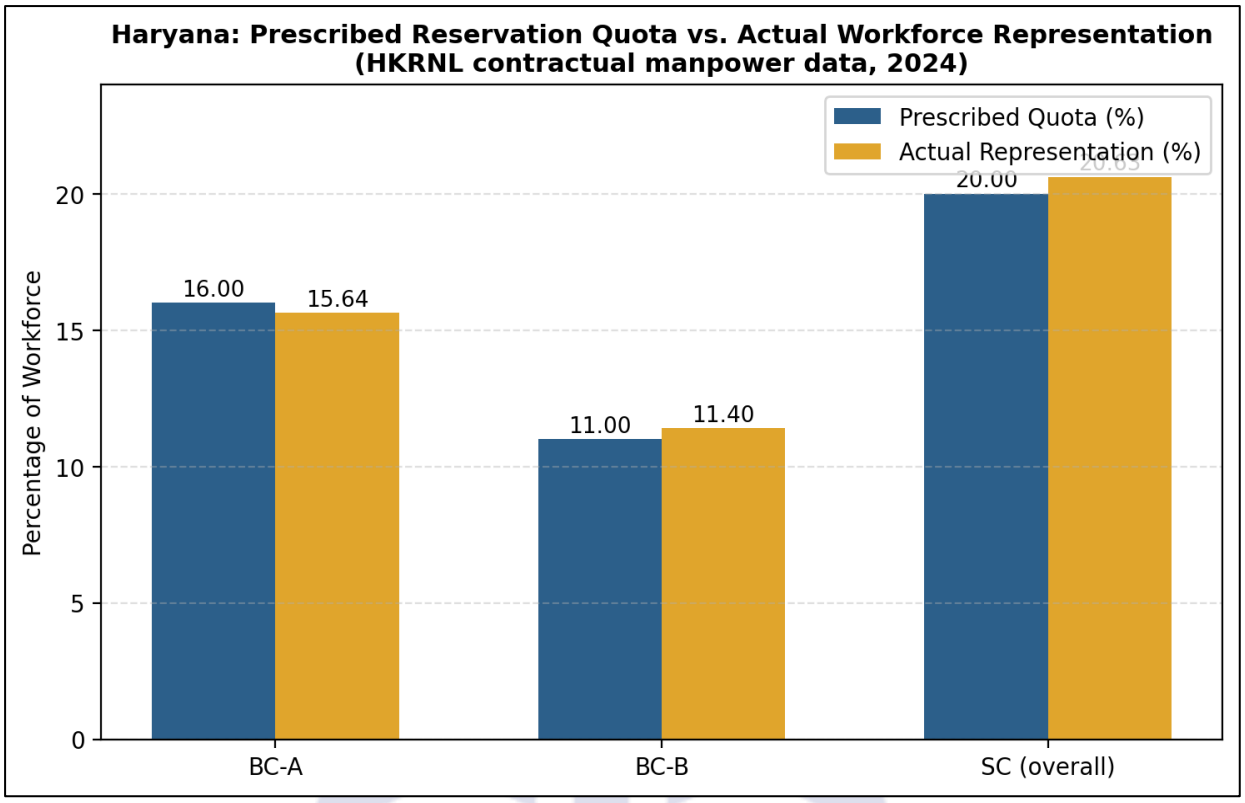

Figure 2. Prescribed quota versus actual workforce representation for BC-A, BC-B and overall SC categories in HKRNL contractual manpower (2024). Source: statement by Chief Minister Manohar Lal Khattar, Haryana Vidhan Sabha Budget Session, Feb. 2024.

On its face, this data suggests that BC-A and BC-B representation in HKRNL's contractual cadre is close to, or marginally below, the prescribed quota, while overall SC representation slightly exceeds it. Two caveats are essential for a rigorous reading of this data. First, HKRNL figures describe temporary/contractual outsourced manpower, not the permanent civil service cadre where under-representation of the most disadvantaged sub-groups is more commonly alleged; a defensible empirical record for DSC/OSC sub-classification would require disaggregated data on regular Group A–D recruitment, ideally at the department level. Second, an aggregate 'SC' figure of 20.63% conceals — rather than reveals — any internal disparity between Deprived Scheduled Castes and Other Scheduled Castes, which is precisely the disparity sub-classification is meant to address. Haryana's own justification for sub-classifying

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SCs into DSC and OSC therefore currently rests more on legislative/commission recommendation than on the kind of granular representation data the Court in Davinder Singh treated as a precondition.

4.3 The Ex-Agniveer Horizontal Quota: A Case Study in Layered Reservation

Haryana's August 2026 consolidated instructions on ex-Agniveer reservation illustrate how horizontal (cross-cutting) reservations interact with the vertical sub-classified categories discussed above. Rather than creating a separate, additive quota, the ex-Agniveer reservation is itself internally distributed across DSC, OSC, BC-A, BC-B, EWS and unreserved categories, as shown in Figure 3.

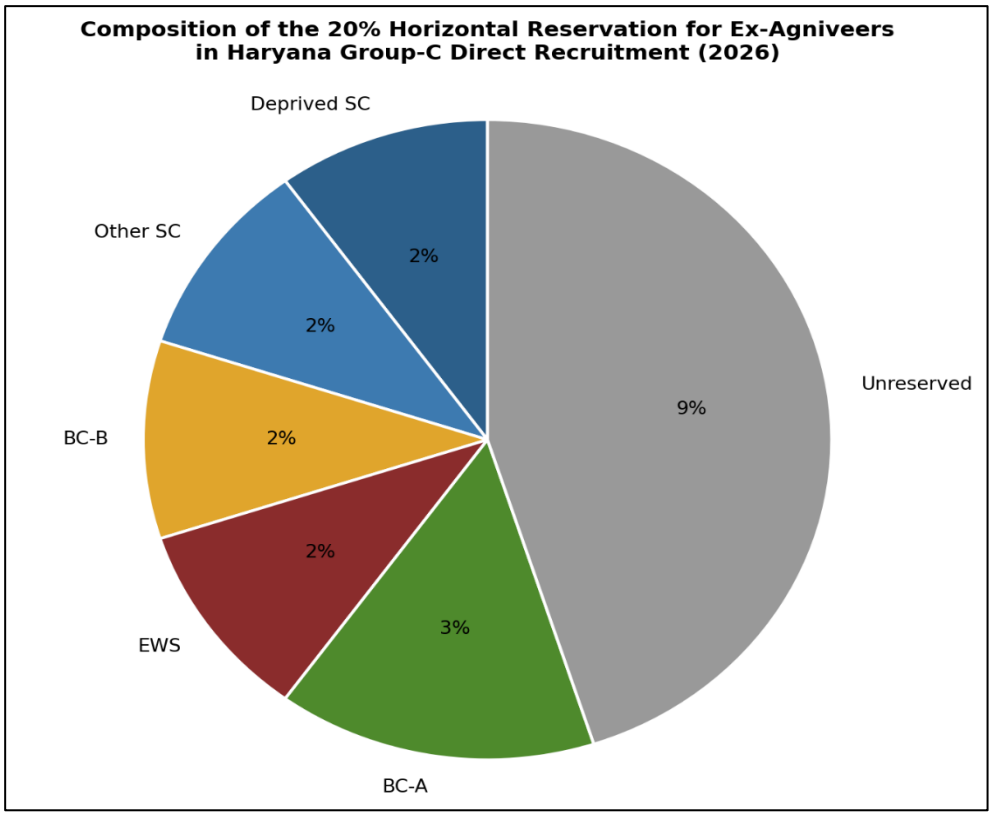

Figure 3. Composition of the 20% horizontal reservation for ex-Agniveers in specified Haryana Group-C posts (Police Constable, Forest Guard, and allied categories), effective 1 September 2026.

This design is analytically important: it shows Haryana explicitly using the DSC/OSC sub-classification as a building block for other reservation schemes, embedding the new sub-categories into the state's administrative machinery well beyond the original SC recruitment context in which Davinder Singh arose. Any future legal challenge to the DSC/OSC classification would therefore have cascading effects on horizontal quotas layered on top of it.

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4.4 The OBC Expansion and Creamy Layer Revision

Simultaneously with its SC sub-classification, Haryana raised OBC/BC reservation in Group A and B posts from 15% to 27% and raised the OBC creamy-layer income ceiling from ₹6 lakh to ₹8 lakh per annum, while excluding salary and agricultural income from the calculation. Figure 4 visualises both changes.

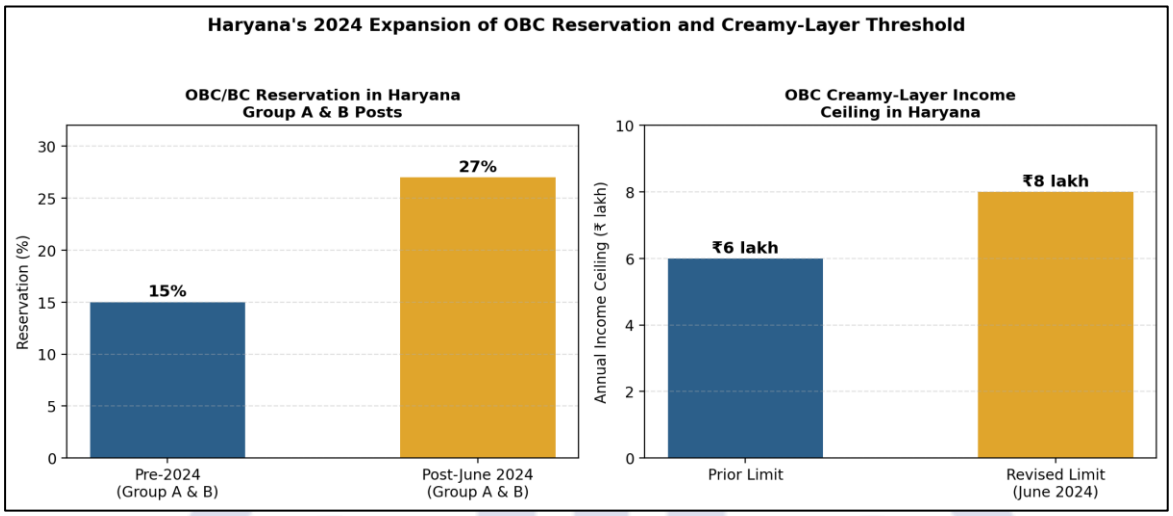

Figure 4. Haryana's 2024 OBC reservation increase (Group A & B posts) and revised creamy-layer income ceiling.

The timing of these announcements — made in June 2024, shortly before the Haryana Assembly elections and shortly after the Lok Sabha results — is noted by several commentators as significant, and raises the central tension this paper explores: whether sub-classification and creamy-layer recalibration in Haryana are being driven primarily by the empirical, backwardness-oriented logic Davinder Singh demands, or by electoral considerations that the Court's dissent anticipated as a structural risk of permitting sub-classification at all.

5. Analysis: Does Haryana's Model Satisfy the Davinder Singh Conditions?

5.1 The Empirical Data Requirement

Davinder Singh's majority opinion is unambiguous that sub-classification must rest on 'quantifiable and demonstrable' data of inadequate representation, collected through a mechanism resembling the exercise undertaken for identifying backward classes under Indra Sawhney. Haryana's DSC/OSC classification originates from a recommendation of the Haryana State Commission for Scheduled Castes rather than from a fresh, department-wise

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representation survey conducted after the 2024 judgment. This is not necessarily fatal — the Commission's recommendation could itself embed historical representation data — but the absence of a published, granular dataset showing DSC under-representation across specific cadres leaves the classification more vulnerable to future judicial review than a scheme built on contemporaneous survey data would be.

5.2 The Creamy Layer Extension

The Court's direction that a creamy-layer-type exclusion be applied within SC/ST sub-classification has, as of this writing, no clear operational counterpart in Haryana's DSC/OSC scheme; the creamy-layer revision Haryana undertook in 2024 was confined to the pre-existing OBC creamy layer, not extended to SCs. This creates an asymmetry: Haryana has recalibrated (and liberalised) the creamy-layer threshold for OBCs while leaving the newer SC sub-classification without an analogous exclusion mechanism, even though Davinder Singh treats such an exclusion as integral to the constitutional validity of any SC sub-classification scheme, not merely a best practice.

5.3 Political Economy and the Risk of Fragmentation

Justice Trivedi's dissent warned that sub-classification could fragment SC solidarity and become a vehicle for intra-category political competition rather than a targeted anti-poverty measure. Haryana's near-simultaneous SC sub-classification, sharp OBC quota increase, and creamy-layer liberalisation — all initiated in the months immediately preceding a state election — illustrate this risk in a very literal sense. Where multiple reserved categories are being adjusted together and on a compressed timeline, it becomes harder for external observers (and courts) to disentangle backwardness-driven design from electoral coalition-building, even where individual measures may be independently defensible.

5.4 Interaction with the 50% Ceiling

Indra Sawhney's 50% ceiling on aggregate reservation (subject to extraordinary circumstances) remains formally intact after Davinder Singh, which addressed intra-category sub-classification rather than the aggregate ceiling. However, Haryana's layering of SC (20%), BC-A (16%), BC-B (11%), EWS (10%), and horizontal ex-Agniveer quotas cutting across all of these approaches or exceeds this ceiling in cumulative terms once EWS — which formally sits outside the Indra Sawhney ceiling under the 103rd Amendment — is included. This paper does not take a position on whether Haryana's cumulative reservation percentage is unconstitutional,

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since horizontal reservations are conventionally treated as operating within, not additional to, vertical quotas; but the increasing granularity of categories increases the administrative complexity of verifying that this distinction is correctly applied at the point of actual recruitment and appointment.

6. Comparative Perspective

Haryana is not alone in moving quickly after Davinder Singh. Bihar's 2023–24 caste survey and subsequent legislative proposals to raise SC, EBC and OBC quotas substantially — including a proposed increase in the SC quota alongside a reduction in the ST quota reflecting demographic realities post-bifurcation — illustrate a second model, in which quantitative caste survey data (rather than a state Backward Classes Commission recommendation) forms the empirical basis for revision. Bihar's approach, whatever its own subsequent judicial fate, arguably comes closer to satisfying Davinder Singh's empirical-data requirement than Haryana's Commission-recommendation-based approach, because it is grounded in a comprehensive, published enumeration exercise rather than an internal administrative recommendation.

Tamil Nadu and Andhra Pradesh, the states most directly implicated in the original Chinnaiah litigation, are likely to be closely watched test cases for how sub-classification is implemented where caste-based sub-group data has historically been the most granular and contested. A future comparative study — beyond the scope of this paper — could usefully track implementation across these states using a common representation-gap metric.

7. Recommendations

- Haryana should commission and publish a department-wise, cadre-wise representation survey specifically comparing Deprived Scheduled Castes and Other Scheduled Castes in permanent (not contractual/outsourced) recruitment, to build the empirical record Davinder Singh requires.
- A creamy-layer exclusion mechanism should be designed and notified for the DSC/OSC classification, parallel to the OBC creamy layer, to avoid leaving the SC sub-classification scheme without the safeguard the Court treated as constitutionally necessary.
- The state should adopt a standing, non-political data-collection mechanism (e.g., a permanent statistical cell within the Haryana State Commission for Scheduled Castes) so

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that future adjustments to sub-classification are less vulnerable to the charge of electoral timing.

- Cumulative reservation percentages, including horizontal quotas, should be published in a single consolidated table for each recruitment cycle, so that compliance with the 50% ceiling (as modified by the EWS amendment) can be independently verified by courts and citizens.
- Haryana could consider a sunset/review clause requiring re-validation of the DSC/OSC classification against updated representation data at fixed intervals (e.g., every Census or every ten years), consistent with the evolving nature of intra-category disadvantage.

8. Conclusion

State of Punjab v. Davinder Singh gives states a doctrinally sound but administratively demanding tool: the power to sub-classify SCs and STs, conditioned on rigorous empirical justification and a creamy-layer safeguard. Haryana's rapid deployment of this tool — alongside a pre-existing BC-A/BC-B structure, an expanded OBC quota, a revised creamy-layer ceiling, and a newly layered ex-Agniveer horizontal quota — makes it a valuable early case study of how the judgment translates into administrative practice. The evidence reviewed here suggests that Haryana's substantive commitment to redistributing reservation benefits toward the most disadvantaged is genuine but that its evidentiary foundation, and its creamy-layer architecture for SCs specifically, remain underdeveloped relative to what the Supreme Court's conditions contemplate. The durability of Haryana's model — and by extension its usefulness to other states considering similar reforms — will depend substantially on whether these gaps are closed before, rather than after, the scheme faces its first serious constitutional challenge.

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