



EQUALITY V/S RESERVATIONS: CONSTITUTIONAL ANALYSIS OF AFFIRMATIVE ACTION POLICIES

Manoj^{*}

ABSTRACT

This paper examines the current constitutional assurances of equality and reservation policies in India and affirmative action side by side and discusses their intricate relationships and implementation. This paper discusses and examines the constitutional underpinnings of equality and reservation in India and examines several classic judgements and earlier amendments to the Constitution that have had a major impact on shaping the law. This article lays out a study of the constitutional validity of every reservation under Article 14, Article 15, and Article 16 of the Indian Constitution, and also discusses the judicial interpretations and all policy implications under the above-said Articles in an overall perspective. This paper discusses all the significant issues and controversies involved in the application of reservation policies according to our Indian Constitution, and also discusses issues related to sufficient merit, efficiency, and social justice. The question of balance between equality and affirmative action has been raised from the Constituent Assembly of India to contemporary judicial decisions. The Supreme Court of India has played a very important role in interpreting the Constitution to strike a balance between formal equality and substantive equality. The Judgments of the Hon'ble Supreme Court and the recent cases involving the Constitution Amendment have renewed the debate and raised some questions regarding whether affirmative action, as it currently stands, fulfils its original intention or is contrary to the basic principle of equality. It also raises a critical analysis of the effectiveness of affirmative action in fulfilling all its aims and suggests potential directions towards a fairer and more equitable society. It then determines that the Constitution sees equality as a dynamic and layered principle and attempts to provide an environment of real opportunity and social justice to all, and also to provide space for group-based privilege.

^{*}LLB, FIRST YEAR, LBS LAW COLLEGE, UNIVERSITY OF LUCKNOW.

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INTRODUCTION

All affirmative action measures, more so caste reservation in India, have been a key instrument to correct past discrimination against groups. According to Articles 14 (right to equality), 15 (non-discrimination), and 16 (equality of opportunity in public employment), all such measures are meant to give all people basic equality. This is protected by constitutional law, and all of these later policies completely forbid many types of discrimination while guaranteeing substantive equality to all people under Articles 14, Right of equality, 15 Forbidden discrimination, and 16 Equality of opportunity in public employment. For example, equality before the law is guaranteed by Article 14, and discrimination on the basis of religion, race, caste, sex, or place of birth is prohibited by Article 15.

The Constitution of India also fully acknowledges all of the historical and systemic disadvantages endured by certain communities like the Scheduled Castes (SCs), the Scheduled Tribes (STs), and the Other Backward Classes (OBCs). The Supreme Court of India has been instrumental in interpreting the Constitution to achieve a balance between formal and substantive equality. Reservation policies allow the state to positively impact and promote social justice and inclusivity for historically marginalised groups, and Reservation policies also require the prohibition of illegal discrimination. Since the Constitution's adoption, there has been much discussion and judicial examination of the conflict that exists between the application of reservation policies and the equality principle, and the tension between the concept of equality and the enforcement of reservation policies. This paper discusses constitutional features of affirmative action policies in India, charting history, justiciability, and recent challenges, and gleaned comparative lessons from other jurisdictions.

CONSTITUTIONAL FRAMEWORK OF AFFIRMATIVE ACTION

Equality Provisions in the Indian Constitution: The Indian Constitution guarantees equality in two ways:

Formal Equality (Article 14):¹ Ensures equality before the law and equal protection of laws.

¹ Constitution of India, arts 14–16.

Substantive Equality (Articles 15 and 16):² Permits affirmative action in favour of historically disadvantaged groups.

Articles 14, 15, Articles 14, 15, and 16 collectively guarantee the right of Indians to equality. While Article 14 assures the equality before the law and equal protection of the laws for all persons in the territory of India, Article 15 completely prohibits discrimination on religious grounds, grounds of race, grounds of caste, grounds of sex, or grounds of place of birth.

Article 14 guarantees equality before the law and equal protection of the laws to all human beings. Equality before the Law (EBL) is a negative concept, meaning the absence of privileges, while equal protection of the Law (EPL) is a positive concept, meaning equal treatment under equal circumstances. The Supreme Court of India has consistently held that Article 14 does not prohibit classification but provides that it is based on an intelligible distinction and bears a rational connection to the object sought to be achieved. Example: *State of West Bengal v. Anwar Ali Sarkar*³ (1952).

The Supreme Court of our country fully enforced the reservation and hence introduced its First Constitutional Amendment.⁴ including Article 15(4) in *State of Madras v. Champakam Dorairajan*⁵ (1951). Both Articles 15(4) and 16(4) explicitly allow the State to make special provision for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

Article 15(5) came into being in 2005 via the 93rd Amendment to the Indian Constitution,⁶ which allows the State to provide special provisions for educational and social advancement of citizens belonging to the Scheduled Castes and the Scheduled Tribes, as well as Backwards Classes, for admission to educational institutions such as minority educational institutions and private unaided institutions.

Article 16(4) explicitly allows reservations for backward classes that are not adequately represented in the state services. Added Article 16(4A) by the 77th Amendment,⁷ which allows reservation in promotions for Scheduled Castes and Scheduled Tribes.

² D D Basu, *Introduction to the Constitution of India* (24th edn, LexisNexis 2020).

³ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

⁴ The Constitution (First Amendment) Act 1951.

⁵ *State of Madras v Champakam Dorairajan* AIR 1951 SC 226.

⁶ The Constitution (Ninety-Third Amendment) Act, 2005, s 2 (inserting art 15(5)).

⁷ The Constitution (Seventy-Seventh Amendment) Act, 1995, s 2 (inserting art 16(4A)).

The Preamble promises social, economic, and political justice. The Directive Principles under Articles 38 and 46 of the Constitution mandate the state to promote public welfare and protect the interests of all weaker sections. That is why reservation is not an exception to equality but a perfect means of realising the constitutional mandate of social justice.

Judicial Interpretation of Reservations: The judiciary has sharpened reservation policies in the nation by way of some seminal judgments:

Balaji v State of Mysore (1963):⁸ The Court decided and concluded that caste cannot be the sole criterion for determining backwardness and suggested a maximum cap of 50% on reservation.

Indra Sawhney v. Union of India (1992):⁹ The landmark Mandal Commission case upheld 27% reservation for OBCs but excluded the regular "creamy layer". Mandates a 50% limit on reservations and denies the "creamy layer" of OBC benefits. The entire criteria for determining the creamy layer have been a subject of heated debate and judicial interpretation over the years.

M. Nagaraj v. Union of India (2006):¹⁰ Requires that the reservation in promotions should satisfy the test of "presence of backwardness", "absolute inadequacy of representation", and "measure of administrative efficiency".

Janhit Abhiyan v. Union of India (2022):¹¹ Upholds 10% EWS quota, but is concerned about exclusion of SCs/STs/OBCs from its purview.

Ashok Kumar Thakur v. Union of India (2008):¹² Upholds the constitutional validity of the reservation of OBCs in educational institutions in India.

The Hon'ble Court made it clear that the expression "backward classes" in Article 16(4) of the Indian Constitution denotes both socially and educationally backward classes, and caste can also be an appropriate factor to consider for determining backwardness.

⁸ Balaji v State of Mysore AIR 1963 SC 649.

⁹ Indra Sawhney v Union of India AIR 1993 SC 477.

¹⁰ M Nagaraj v Union of India (2006) 8 SCC 212.

¹¹ Janhit Abhiyan v Union of India (2022) 10 SCC 1.

¹² Ashok Kumar Thakur v Union of India (2008) 6 SCC 1.

DEBATES ON EQUALITY V/S RESERVATIONS

Caste-Based Reservations vs. Economic Criteria: Reservation policies today in India are essentially caste-oriented. These are Scheduled Castes, Scheduled Tribes, and Other Backward Classes reservations. Economic criteria can be accorded more importance in our country to decide eligibility for reservations because poverty and economic deprivations exist in numerous families, irrespective of caste, and may prove to be a major hindrance to social mobility. However, others counter that discrimination based on caste in society is a special kind of social injustice that cannot be suitably redressed by economic standards only. Some argue that economic criteria should be given greater weight in determining eligibility for reservation, as poverty and economic backwardness, regardless of caste, can be significant barriers to social mobility. Others also argue that caste-based discrimination constitutes a unique form of social injustice and cannot be adequately addressed by any economic criteria alone.

Efficiency and Productivity Criteria: Another concern raised by many critics of reservation policies is their potential impact on both efficiency and productivity. Those critics argue that reservations may lead to the easy selection of less qualified candidates, which may hurt the quality of services and the overall performance of organisations. Supporters also argue that diversity in the workforce may enhance creativity, innovation, and problem-solving abilities. They also point out that several studies have not consistently shown any negative relationship between reservations and organisational performance.

Criticisms of Reservations: Fears regarding meritocracy in most institutions and tests: Reservations are said to decrease the effectiveness of public institutions (T. Sowell, 2004).¹³

Issues Related to Permanent Caste Divisions: Most critics believe that reservations based on caste perpetuate caste-based identities instead of eradicating them.

Creamy Layer Debate: Should economically forward people from reserved classes still receive advantages?

¹³ Thomas Sowell, *Affirmative Action Around the World: An Empirical Study* (Yale University Press 2004).

ARGUMENTS

Arguments against reservation: Existence of merit-based concerns: Many critics argue that the existing reservation system undermines a number of efficiency and compromises on several key parameters, leading to poor performance. Reservation also hurts merit; many candidates from reserved categories get preference due to reservation if they are less qualified than the general category candidates.

Perpetuation of Caste Identities in Society: Instead of promoting a casteless society, reservation directly reinforces caste divisions in society, thereby highlighting caste identities.

Gradual Expansion: Expansion to many more groups and many sectors completely undermines the original objective.

Political Exploitation Challenge: Reservation policies are often motivated by electoral considerations for many political parties.

Arguments in favour of reservation: Reformative Justice Process: The reservation adequately addresses the problem of historical discrimination and marginalisation.

Promoting Substantive Equality: The Reservation seeks to ensure equal opportunity by giving some recognition to unequal initial conditions.

Promotes Social Integration: The Reservation seeks to ensure representation of various marginalised groups in decision-making processes.

Constitutional Mandate: To enshrine in the Preamble to the Constitution and the Directive Principles of its State Policy.

One of the main arguments against reservation policies is the contrast between merit and social justice, and reservations have been perceived as necessary to guarantee equal opportunities and make sure that every marginalised group possesses an equal chance to compete for opportunities.

RECENT DEVELOPMENTS AND CHALLENGES

Economic Reservations (103rd Amendment, 2019): In India, the introduction of a 10% quota for the Economically Weaker Sections¹⁴ (EWS) has seen a shift from caste-based reservations to economic criteria. For some reason, critics argue that this further weakens the original purpose of caste-based affirmative action.

Judicial Scrutiny and Future Directions: The changing stance of the Supreme Court suggests a need for empirical evidence to justify reservations in *Jarnail Singh v. Lachhmi Narain Gupta*,¹⁵ 2018. Others suggest sunset clauses for phasing out reservations once parity is achieved.

CONTEMPORARY CHALLENGES IN INDIA

Challenges of Economic Criteria vs Caste Criteria: Reservation for Economically Backward Classes (EWS) in India has fuelled the debate on economic backwardness vs social backwardness.

Maintaining Judicial Balance: The 50% ceiling decision reinstated in the *Indra Sawhney* case is facing challenges due to demands for higher quotas by other states. For example: Bihar and Maharashtra.

Existence of Creamy Layer Dispute: Whether the exclusion of the creamy layer should be extended to the Scheduled Castes and the Scheduled Tribes arises from the August 2024 decision last year and is yet to be settled.

CONCLUSION

The Indian constitutional system, as it stands now, does not support a simplistic idea of absolute equality but takes the shape of dynamic equality under which it would depend to a large extent on policies of affirmative action, like reservations, to close any gaps that have developed as a result of historical injustice and ongoing exclusion. Reservation is not an exception but a means to realise the transformative promise of equality. Its continued expansion without any careful checks can also pose a threat to its legitimacy. The Supreme Court of India has played a vital

¹⁴ The Constitution (One Hundred and Third Amendment) Act 2019.

¹⁵ *Jarnail Singh v Lachhmi Narain Gupta* (2018) 10 SCC 396.

role in shaping many of the legal frameworks for reservation policies, balancing the competing interests of the right to equality, maintaining social justice in society, and merit.

The Hon'ble Supreme Court has moulded most of the available legal paradigms for reservation policies, upholding the right to equality, performing a critical function in reconciling the competing interests of social justice and merit.