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Balancing Equity and Efficiency: The Evolution of Judicial Review over Affirmative Action in India

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ABSTRACT

Affirmative action in India, implemented principally through reservations, is one of the most complex socioeconomic experiments in modern constitutional history. Designed as a temporary mechanism to redress historical caste-based exclusion, it has evolved into an expansive and largely permanent feature of State policy. This article examines the role of the Indian judiciary in regulating that mechanism. Exercising the power of judicial review, the Supreme Court of India functions as both an arbiter of social justice and a check against political populism, navigating the equilibrium between substantive equality and administrative efficiency.

Keywords: *historical disadvantage, reservation policy, substantive equality, constitutional mandate, social justice, judicial review*

I. INTRODUCTION: THE ENABLING PARADOX

Unlike jurisdictions where affirmative action is entirely a product of legislative or executive policy, the Indian model is explicitly anchored within the constitutional text. Articles 15(4) and 16(4) of the Constitution operate as "enabling provisions," granting the State the power to make special provisions for the advancement of socially and educationally backward classes.¹

These enabling clauses are, however, nested within Part III (Fundamental Rights), creating an inherent structural tension with the individual rights to equality before the law (Article 14) and non-discrimination (Articles 15(1) and 16(1)). This tension sets the stage for judicial review. Because the State exercises subjective executive discretion to define "backwardness," the judiciary intervenes to prevent these enabling clauses from swallowing the primary guarantees of individual equality.

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¹ MARC GALANTER, COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA 121-24 (1984).

II. ARTICLES 15 AND 16: A COMPARISON

A. Article 15: prohibition of discrimination

Article 15 secures social equality by prohibiting discrimination based on religion, race, caste, sex, or place of birth. Clauses 15(1) and 15(2) restrict discrimination by the State and in access to public places, while clauses 15(3) to 15(6) enable special provisions for women, children, and educationally backward classes (Scheduled Castes, Scheduled Tribes, and Other Backward Classes), including the ten per cent reservation for the Economically Weaker Sections introduced by the Constitution (One Hundred and Third Amendment) Act, 2019.²

B. Article 16: equality of opportunity in public employment

Article 16 guarantees equal opportunity in State employment, prohibiting discrimination on seven grounds: religion, race, caste, sex, descent, place of birth, and residence. Clauses 16(4) and 16(4A) enable reservations and promotion quotas for underrepresented backward classes, while clauses 16(4B) and 16(6) permit the carrying forward of vacancies and introduce the ten per cent reservation for the Economically Weaker Sections in public employment respectively.

C. Key differences and judicial interpretation

In scope, Article 15 addresses the broader domain of civic life, whereas Article 16 is confined to public employment. The judicial interpretation of both provisions has been shaped by successive landmark decisions. In *State of Madras v. Champakam Dorairajan* (1951), the communal quota in education was struck down, which prompted the First Amendment;³ *Indra Sawhney v. Union of India* (1992) upheld the twenty-seven per cent reservation for Other Backward Classes and established the fifty per cent ceiling;⁴ and *Janhit Abhiyan v. Union of India* (2022) upheld the ten per cent reservation for the Economically Weaker Sections.⁵

III. THE ARCHITECTURE OF RESTRAINT: JUDICIAL DOCTRINES

Through decades of jurisprudence, the Supreme Court has transformed vague constitutional clauses into a highly structured, data-driven legal framework. This architecture rests on four core judicial doctrines.

² The Constitution (One Hundred and Third Amendment) Act, 2019.

³ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

⁵ *Janhit Abhiyan v. Union of India*, (2023) 5 SCC 1.

A. The compelling quantitative ceiling (the 50% rule)

In *Indra Sawhney v. Union of India* (1992), the Court held that total vertical reservations cannot ordinarily exceed fifty per cent in a given year.⁶ This numerical ceiling ensures that general merit remains a viable pathway, preserving the foundational character of open competition.

B. The principle of intra-class exclusion (the creamy layer)

First applied to Other Backward Classes and extended conceptually in later decisions, this doctrine requires the State to identify and exclude individuals who have attained significant socioeconomic advancement. It ensures that the benefits of affirmative action reach the genuinely marginalised, rather than being monopolised by a privileged elite within a backward class.

C. The efficiency mandate (Article 335)

Affirmative action cannot be pursued in a vacuum. The Supreme Court routinely reads Article 16(4) alongside Article 335, which expressly commands that the claims of backward classes be balanced with the maintenance of the "efficiency of administration."

D. The requirement of quantifiable data

In *M. Nagaraj v. Union of India* (2006), the Court withdrew from the executive the latitude to make arbitrary assumptions about backwardness.⁷ Any State policy altering reservation dynamics must be supported by empirical, verifiable data establishing two matters: the backwardness of the class and its inadequate representation in public employment.

IV. THE MODERN FRONTIER: FROM CASTE TO SOCIO-ECONOMIC GRANULARITY

In recent years, judicial review has shifted from macroscopic, caste-focused generalities to targeted evaluations. This evolution is defined by two watershed developments.

A. Sub-classification and the end of the monolith

For decades, Scheduled Castes and Scheduled Tribes were treated as homogenous, indivisible legal blocks. This approach allowed relatively advanced subgroups to corner the majority of reservation benefits, leaving the most destitute communities underrepresented. The Supreme Court dismantled this rigid structure in *State of Punjab v. Davinder Singh* (2024).⁸ In a seven-judge bench ruling, the Court held that States are constitutionally permitted to sub-classify

⁶ *Indra Sawhney* (n 4).

⁷ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

⁸ *State of Punjab v. Davinder Singh*, 2024 INSC 562, (2024) 10 SCC 1.

Scheduled Castes and Scheduled Tribes to create targeted "quotas within quotas." The Court did not, however, grant unfettered power to regional governments: it fortified this power with strict judicial review, requiring that any sub-classification be justified by empirical data regarding intra-class underrepresentation rather than political expedience.

B. The shift to pure economic criteria

The judicial validation of the Constitution (One Hundred and Third Amendment) Act, 2019 in *Janhit Abhiyan v. Union of India* (2022) marked a significant philosophical shift.⁹ By upholding a ten per cent quota for the Economically Weaker Sections of society, independent of caste status, the Court recognised that economic destitution is a standalone form of vulnerability. The decision established that affirmative action can constitutionally transition from an instrument designed to remedy historical social stigma into a mechanism for contemporary poverty alleviation.

V. CONCLUSION: THE GUARDIAN OF SUBSTANTIVE EQUALITY

Judicial review over affirmative action in India is neither purely activist nor entirely deferential. It operates as a constitutional thermostat. Left unchecked, the executive and legislative branches face considerable political pressure to expand quotas continually, threatening to turn the exception into the rule. By demanding quantifiable data, enforcing the fifty per cent ceiling, and mandating the exclusion of the creamy layer, the judiciary seeks to ensure that affirmative action remains a precise instrument of social engineering rather than a blunt instrument of identity politics. The success of Indian constitutional democracy depends substantially on the Court's continued capacity to protect the margins of society while preserving the overarching framework of public merit and administrative integrity.

⁹ *Janhit Abhiyan* (n 5).