

Reservation Policy in India: Is it Affirmative Action?

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Introduction

The reservation policy in India, which establishes quotas for historically disadvantaged groups in public sector jobs, educational institutions, and legislatures, is frequently described as a form of affirmative action. However, there is ongoing debate about whether this characterization is accurate given the nature and implementation of the policy.

Affirmative action refers to policies aimed at increasing representation of minority or marginalized groups in areas of public life where they are underrepresented. It is generally intended as a temporary measure to address historical injustices. The reservation strategy has similar aims but varies in several major areas.

- Affirmative action and reservation policies are both designed to increase the representation of underprivileged groups, but they differ in several important ways. Regarding affirmative action as specified in the Indian Constitution for underprivileged populations, below are the important provisions:
- Article 15(4) empowers the state to make specific arrangements for the progress of socially and educationally disadvantaged sections, Scheduled Castes (SCs), and Scheduled Tribes (STs).
- Article 16(4): This article provides for the reserve of government posts for backward classes who are underrepresented in state services.
- Article 46: This Directive Principle of State Policy requires the state to support the educational and economic interests of vulnerable groups, notably SCs and STs, and to safeguard them from social injustice and exploitation.

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- Articles 330 and 332 set aside seats for SCs and STs in the Lok Sabha and state legislative assemblies, respectively.
- Article 335: This article relaxes the qualifying standards for admission to educational institutions or promotions for SCs and STs.
- Articles 338 and 338A create the National Commission for Scheduled Castes and Scheduled Tribes, respectively, to monitor and protect the interests of these populations.
- Article 340 establishes a panel to evaluate the status of socially and educationally backward classes and make recommendations for their progress.

These constitutional provisions serve as the foundation for India's affirmative action programs, which include educational and government job reservations, as well as political participation. It's worth mentioning that, while many of these measures were supposed to be temporary, they've been extended several times owing to persistent socioeconomic gaps.

Historical Roots

Reservation in India dates back to the early twentieth century, when the British colonial government established separate electorates and reserved seats for depressed classes. After independence, India adopted reservation to uplift the social and economic status of groups recognized as Scheduled Castes (SCs) and Scheduled Tribes (STs).

Subsequently, the policy was expanded to Other Backward Classes (OBCs) and continued indefinitely with periodic increases in the percentage of quota. The implementation mechanisms have also changed over time. The judiciary has sought to fine tune the scheme through decisions on criteria for reservation eligibility.

The evolution of India's affirmative action policies presents a complex tapestry of legal, social, and political developments. What began as a temporary measure to address historical injustices has transformed into a permanent fixture of the Indian socio-political landscape, continually expanding in scope and complexity.

The implementation of the Mandal Commission's recommendations in 1990 marked a watershed moment, extending 27% reservation to Other Backward Classes (OBCs). This decision, while

controversial, was largely upheld by the Supreme Court in the landmark Indra Sawhney case of 1992. The Court's ruling, which capped total reservations at 50%, became a cornerstone of reservation policy for decades to come.

In recent years, these policies have expanded even further. The 103rd Constitutional Amendment of 2019 imposed a 10 percent quota for Economically Weaker Sections (EWS), adding Articles 15(6) and 16(6) to the Constitution. This policy, which attempted to redress economic disparities regardless of caste, was supported by the Supreme Court in the 2022 **Janhit Abhiyan case**, albeit by a thin 3:2 margin.

Concurrently, the landscape of OBC reservations has grown increasingly complicated. The 102nd Constitutional Amendment of 2018 elevated the National Commission for Backward Classes to a constitutional body, emphasising the measures' long-term relevance. Furthermore, the federal government's decision in 2021 to give states the authority to create their own OBC lists for state-level issues has added another degree of complication to an already complicated system.

These innovations indicate a continuing effort to tailor affirmative action programmes to changing societal conditions. However, they raise important concerns regarding the long-term efficacy and viability of such approaches. As India grapples with these difficulties, the question remains: are these policies effectively resolving past injustices and present disparities, or are they producing new forms of social stratification?

The answers to these concerns will most certainly influence the future of affirmative action in India, as politicians and jurists strive to strike a delicate balance between social justice and meritocracy.

A few parts of Indian policy align with the notion of affirmative action applied in other nations. Reservation works to strengthen the representation of impoverished communities in education, employment, and governance. It acknowledges that formal equality under the law does not automatically reverse historical inequality. Quotas aim to establish a fair playing field for disadvantaged groups.³

³ Standard, B. (2021) *India's ever-increasing reservations*, *Business Standard*. Available at: https://www.business-standard.com/article/opinion/india-s-ever-increasing-reservations-121032201479_1.html

Constitutional Provisions:

Article 15(4) - This article allows the state to make special provisions for the advancement of any socially and educationally backward classes of citizens, including Scheduled Castes and Tribes.

The 81st Amendment to the Constitution, ratified in 2000, added Article 16(4B), which allows the government to carry forward unfilled reserved vacancies for Scheduled Castes (SCs) and Scheduled Tribes (STs) from one year to the next. This effectively removes the 50% on total reservations in a given year, if there are backlogged vacancies to be filled from previous years.

Article 16(4) - The state may reserve appointments or posts for any backward class of citizens who are underrepresented in state services. This enables reservation in public sector jobs and services for backward classes.

Articles 330 and 332 allow for the reservation of seats for Scheduled Castes and Tribes in the House of the People (Lok Sabha) and state legislative assemblies. This enables political representation for SCs and STs through reserved constituencies.

Article 335 states that SCs and STs should be given special consideration for reservations in public employment while maintaining administrative efficiency. This allows for employment reservations while also underlining the importance of maintaining administrative standards.

Article 243D of the Constitution requires the reservation of seats for SCs and STs in every Panchayat or local village council elected through the decentralized governance system. This attempts to strengthen political representation and voice for underprivileged populations at the grassroots level.

Article 243T establishes reserved seats for SCs and STs in every municipality or urban local body. This extends the principle of affirmative action to urban local governance.⁴

The principle of affirmative action, originally conceived for national and state-level institutions, has indeed been extended to urban local governance. This expansion reflects a recognition that representation at the grassroots level is crucial for comprehensive social justice. The 73rd and 74th

⁴ *Reservation in India* (no date b) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: https://www.legalserviceindia.com/legal/article-7730-reservation-in-india.html#google_vignette

Constitutional Amendments in 1992 mandated reservations for Scheduled Castes (SCs), Scheduled Tribes (STs), and women in local self-government institutions, including municipalities and panchayats.

Key case laws have played a pivotal role in shaping and refining India's reservation policies:

- 1. Indra Sawhney v. Union of India (1992):** Often referred to as the "Mandal Commission case," this important verdict affirmed the 27 percent quota for Other Backward Classes (OBCs). It created a 50% reservation limit and prohibited the "creamy layer" from reservation advantages. The Court also found that restrictions should only apply to initial appointments, not promotions.
- 2. M. Nagaraj v. Union of India (2006):** This lawsuit addressed reservations in promotions for SCs and STs. The Court established several grounds for granting such reservations, including the need to show backwardness, inadequate representation, and overall administrative efficiency.
- 3. Jarnail Singh v. Lachhmi Narain Gupta (2018):** This decision overturned the M. Nagaraj decision and removed the obligation to acquire measurable evidence to indicate backwardness for SCs and STs, since their backwardness was implied.
- 4. K. Krishna Murthy v. Union of India (2010):** This lawsuit was specifically on reservations in local bodies. The Supreme Court affirmed the constitutionality of reserves for OBCs in local self-government, but highlighted the importance of empirical facts to establish such restrictions.
- 5. Janhit Abhiyan v. Union of India (2022):** This recent decision maintained the constitutional legality of the 103rd Amendment, which included 10% reserve for Economically Weaker Sections. The Court's 3:2 decision upheld economic grounds as a foundation for reservations, independent from caste-based concerns.
- 6. State of Madras vs Champakam Dorairajan (1951) -** The Supreme Court upheld caste-based reservation as being consistent with the constitutional right to equality under **Article 15(4)**. This established the constitutionality of reservation policies.
- 7. Balaji vs State of Mysore (1963) -** The SC restricted reservation only to initial appointments and not to promotions within public employment. This prevented indefinite carry over of reservation benefits.

8. **Mandal Commission case (1992)** - SC established the 50% reservation limit, specified exclusion of affluent persons/sections or 'creamy layer' from backward classes eligible for reservation.
9. **Maratha Reservation case (2021)** - SC struck down the Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act, 2018 as it exceeded the 50% quota.⁵

These court rulings have collectively developed a sophisticated framework for reservations, combining the necessity of social justice with considerations of quality and efficiency. The application of these principles to urban local governance demonstrates the pervasiveness of India's affirmative action policies, which reflect an effort to ensure representation at all levels of government.

As India continues to battle with issues of social justice and representation, these legal precedents provide a platform for continuing policy deliberations and potential future reforms in the field of affirmative action.

The Indian approach diverges from affirmative action programs:

1. Reservation is an open-ended policy with no sunset clauses, as opposed to affirmative action plans that aim for temporary upliftment.
2. The quotas are along rigid caste-based lines rather than based on ethnicity, income or disadvantage.
3. The 50% quotas dilutes the equality of opportunity for those outside reserved categories, unlike soft affirmative action approaches.
4. The strategy is focused more towards assured results in terms of quantitative representation rather than equality of opportunity.
5. Reservation is heavily skewed towards higher education rather than foundational schooling levels.

⁵ *Reservation in India* (no date b) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: https://www.legalserviceindia.com/legal/article-7730-reservation-in-india.html#google_vignette

6. The identification of backward groups is not supported by extensive data-driven research into economic, educational, and social backwardness.
7. There is no periodic review of policy coverage based on current empirical evidence.
8. Reservation has evolved into an electoral tool for attracting vote banks rather than a social justice instrument.

"Assessment of Positive Outcomes and Recommendations for Reform"

Positive outcomes include increased representation in public institutions and the mainstreaming of marginalized identities in public life. But the policy has arguably not achieved substantial transformation of their socioeconomic and educational conditions after seven decades of implementation.

Let's look at some recent National Statistical Office (NSO) data to get a clearer picture:

The 75th round of the National Sample Survey (2017-18) provides some revealing insights:

1. **Education:** While there's been progress, disparities persist. The literacy rate for SCs was 73.0% and for STs 71.6%, compared to 86.9% for others. In higher education, the Gross Attendance Ratio for SCs was 23.0% and for STs 17.2%, while for others it was 30.7%.
2. **Employment:** The unemployment rate for SCs was 6.3% and for STs 4.3%, compared to 6.0% for others. However, the quality of employment varies significantly. SCs and STs are overrepresented in casual labor and underrepresented in regular salaried jobs.
3. **Income:** The average monthly per capita expenditure (a proxy for income) for SC households was Rs. 1,570 and for ST households Rs. 1,515, compared to Rs. 2,282 for others in rural areas. In urban areas, it was Rs. 2,588 for SCs, Rs. 2,989 for STs, and Rs. 3,642 for others.
4. **Poverty:** According to the Tendulkar Committee methodology, 29.5% of SCs and 23.0% of STs were below the poverty line in 2011-12, compared to 12.4% for others.

These statistics paint a nuanced picture. On one hand, there's clear evidence of increased representation in public institutions. Reservations have indeed mainstreamed marginalized identities in public life to some extent. The presence of SC, ST, and OBC individuals in

government jobs, educational institutions, and political bodies has increased significantly since independence.

However, the data also supports the argument that substantial transformation of socioeconomic and educational conditions remains elusive. The persistent gaps in literacy rates, higher education attendance, quality of employment, and income levels indicate that while progress has been made, it has been slower than hoped.

It's worth noting that these outcomes are influenced by a complex interplay of factors beyond just reservation policies. Historical disadvantages, social discrimination, and broader economic trends all play a role.

The data suggests that while reservation policies have been successful in increasing representation, they haven't been a magic bullet for broader socioeconomic transformation. This underscores the need for a multifaceted approach to addressing inequality, combining reservations with targeted educational programs, skill development initiatives, and measures to combat social discrimination.

As we interpret this data, it's crucial to remember that change in deeply entrenched social structures is often slow and generational. While the progress may seem modest after seven decades, it represents significant movement from where these communities started. The challenge now is to build on these gains and accelerate the pace of change.

Experts have suggested policy reforms such as means-tested eligibility rather than caste-based quotas, periodic reviews of group coverage, increased primary education access, and diversity incentives to supplement quotas. There are additional recommendations for transitioning from restricted outcomes to equality of opportunity by replacing quotas with preferential treatment in assessments.

Experts have indeed proposed several policy reforms:

1. **Means-tested eligibility:** This approach would prioritize economic status over caste, potentially addressing criticisms that the current system benefits the "creamy layer" within reserved categories.
2. **Periodic reviews:** Regular assessments of which groups need reservation could make the system more responsive to changing social dynamics.

3. Focus on primary education: Improving access and quality of primary education could address root causes of inequality more effectively than quotas in higher education and employment.
4. Diversity incentives: Supplementing quotas with incentives for institutions to promote diversity could create a more holistic approach to representation.
5. Equality of opportunity: The shift from guaranteed outcomes (quotas) to preferential treatment in assessments aims to balance merit with social justice.

Now, let's discuss the crucial distinction between vertical and horizontal reservations, which the EWS quota brought into sharp focus:

Vertical Reservations:

- These are the traditional caste-based quotas for SCs, STs, and OBCs.
- They're mutually exclusive - a seat filled by an SC candidate can't be filled by an ST or OBC candidate.
- These reservations can exceed 50% in certain cases, as seen in some states.

Horizontal Reservations:

- These cut across vertical categories and include quotas for women, persons with disabilities, ex-servicemen, and now, EWS.
- They can overlap with vertical reservations. For example, a woman from an SC background could qualify under both SC and women's quotas.
- The EWS quota is unique as it's a horizontal reservation that doesn't overlap with vertical categories, as EWS only applies to those not covered by other reservations.

The EWS reservation, introduced by the 103rd Constitutional Amendment, represents a significant shift. It's the first-time economic criteria alone, irrespective of caste, have been used for reservations at the national level. This aligns with some expert suggestions for means-tested eligibility.

"Challenges and Critiques of India's Reservation System"

- One significant criticism of seeing reservation as genuine affirmative action is that it is designed as permanent proportionate representation rather than temporary compensating justice. Most democracies have affirmative action measures that are time-bound and try to address representation disparities caused by prior prejudice. However, India's reservation system provides a long-term entitlement to representation in school and work based on caste identity.
- This promotes the preservation of caste identities rather than the destruction of social inequality. It also freezes quotas based on century-old caste demographics, which may not accurately reflect current disadvantaged. For example, the state of West Bengal has passed legislation requiring a 10% quota for economically disadvantaged upper caste members. This suggests that marginalization crosses caste lines in a rapidly changing society.

The preservation of caste identities through reservation policies is indeed a significant concern. Critics argue that by institutionalizing caste-based quotas, we're inadvertently reinforcing the very social divisions we aim to eliminate. This paradox has been acknowledged in several legal judgments:

1. In *Indra Sawhney v. Union of India* (1992), Justice Kuldip Singh noted: "Reservation, as an affirmative action, is required only for a limited period to bring about equality, but it has been made a permanent feature of our polity."
2. The Supreme Court in *M. Nagaraj v. Union of India* (2006) observed: "It is the equality which is the governing principle of a social democracy. Equality has two facets - 'equality of opportunity' and 'equality of results'." This judgment highlighted the tension between these two concepts in the context of reservations.

The issue of outdated demographic data determining quotas is another valid concern. The Rohini Commission, established in 2017 to sub-categorize OBCs, grappled with this very problem. The lack of recent caste census data has made it challenging to accurately assess the current status of various communities.

The West Bengal example you mentioned (The West Bengal Economically Weaker Sections Reservation Act, 2022) illustrates how states are trying to address economic disadvantage across caste lines. This aligns with the broader EWS quota introduced at the national level, which was upheld in *Janhit Abhiyan v. Union of India* (2022).

Some key case laws that touch on these issues include:

1. **E.V. Chinnaiah v. State of Andhra Pradesh (2004):** The Supreme Court struck down Andhra Pradesh's attempt to sub-categorize Scheduled Castes, emphasizing the need for empirical data to justify such classifications.
2. **Ashoka Kumar Thakur v. Union of India (2008):** While upholding OBC reservations in educational institutions, the Court emphasized the need for periodic review of reservation policies.
3. **Chebrolu Leela Prasad Rao v. State of A.P. (2020):** The Court struck down 100% ST reservation for teacher posts in Scheduled Areas, reiterating the 50% cap and the need for proportionality in reservation policies.

These judgments reflect the judiciary's struggle to balance social justice with the need for a merit-based system and the goal of eventually transcending caste divisions.

The introduction of economic criteria in reservations, as seen in West Bengal and the national EWS quota, represents an attempt to address marginalization that crosses caste lines. However, it also adds another layer of complexity to an already intricate system.

The challenge moving forward is to design policies that address current socio-economic realities without perpetuating historical divisions. This might involve:

1. Regular reviews and updates of reservation categories based on current data.
2. Gradually shifting focus from caste to economic and educational indicators.
3. Implementing strong measures to improve primary and secondary education for disadvantaged groups.
4. Developing more nuanced criteria that consider multiple factors of disadvantage.

As India's society continues to evolve rapidly, its affirmative action policies will need to adapt to ensure they serve their intended purpose of promoting equality and social justice, rather than inadvertently reinforcing the very divisions they seek to overcome.

- Another important component is that reserves are protected as a constitutional right for specific people. This makes policy adjustments or modifications far more difficult, even if implementation difficulties exist. The constitutional mandate for reserve was supposed to be an unprecedented, temporary measure, but it has now become a permanent characteristic that determines access to public resources.

"Critical Examination of Reservation Implementation and Impact"

- The designation of backward classes for reservation has been called into doubt due to a lack of strong standards and data-driven analyses of disadvantage by commissions such as **Mandal**. This raises questions about whether the most deserving individuals benefit.
- Reservation is only applicable in the public sector. For comprehensive affirmative action, fair representation incentives should be extended to the private sector, which provides significant development prospects.
- There are no mandated diversity disclosures or inclusion incentives for corporations across industries. Reservations alone do not solve systematic prejudice.
- Implementation issues, such as bogus claims, have undermined the purpose of strengthening underserved populations. Reforms are necessary for the eligibility verification and grievance processes.
- Discrimination exists even in reservation regions, demonstrating that allocated seats alone are insufficient to encourage integration.
- Inadequate basic education, healthcare, and connection in remote locations reduce disadvantaged populations' capacity to compete for restricted seats. Investments are required to establish capabilities.

Conclusion

The Indian reserve policy is based on a progressive commitment to affirmative action; nevertheless, its evolution and execution over the last seven decades have called into question its ability to achieve meaningful social justice and equality.

The policy's permanent constitutional standing, limits in execution, and lack of concomitant activities have shifted it away from the ethos of affirmative action ideas. However, the original objectives were ethically sound, serving as a response to historical marginalization of specific people.

Changing and enhancing the policy's structures might assist realign it with affirmative action goals. Some proposals for a more progressive and successful reservation system include implementing strong periodic reviews, verification methods, time restrictions, inclusion incentives, and substantial investment in skill development.



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