
BEYOND RELIGIOUS IDENTITY: CONSTITUTIONAL TENSION BETWEEN MINORITY RIGHTS AND AFFIRMATIVE ACTIONS

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ABSTRACT

Indian Constitution aims to balance the concepts of equality, secularism, social justice and protection of minority rights in a single constitutional framework. This article analyses the conflict between the principles of minority rights and affirmative action in the context of social and educational backwardness of members of religious minorities. Articles 14, 15 and 16 have declared that everyone is equal and that there is no discrimination based on religion, but Articles 15(4), 15(5), 15(6), and 16(4) allow for affirmative action for constitutionally recognised disadvantaged groups. Hence, the study considers whether reservations for religious minorities can be held constitutionally without making it a "religion-based reservation". It discusses the constitutional provisions, judicial interpretation, current issues of the definition of OBCs and the significance of empirical evidence in determining backwardness. The article also discusses the Indian system vis-à-vis the United States, including the Equal Protection Clause and the Supreme Court's interpretation of identity-conscious affirmative action. The study posits that when minority protection and affirmative action are compared, they are two distinct constitutional tools, and there is an overlap only when there is an objective social and educational disadvantage. It ends by recommending the evidence-based classification, transparency of institutions, periodic review, increased judicial supervision, and better collection of socio-economic data to guarantee that affirmative action is in compliance with equality, secularism, and substantive social justice.

Keywords: Minority Rights; Affirmative Action; Religious Minorities; Reservation; Substantive Equality.

INTRODUCTION

The Constitution of India has stated equality and non-discrimination, along with social justice, as the core principles of a democratic society. Articles 14, 15 and 16¹ guarantee equality before the law and protection from discrimination for the socially and educationally backward classes on certain grounds, but the Constitution also provides for affirmative action, which is meant to bring about a situation of equality. At the same time, the constitutional commitment to the protection of diversity while maintaining the secular nature of the State is reflected in the provisions of Articles 29 and 30² which protect the cultural and educational rights of religious and language minorities. This bi-national system clarifies the difference between minority protection and reservation policies, and affirmative action is supposed to correct only social and educational disadvantage, not religious disadvantage. But there is a high degree of overlap between religious communities and backward classes, which has created a lot of debate on the constitution and politics. There has been a controversy recently about the inclusion of some Muslim communities in the list of the Other Backwards Classes (OBCs), which has brought the issue of reservation to a boil again, of backwardness and of the ban on religion-based preferences in the Constitution. These developments pose compelling questions about the interplay of substantive equality, minority rights, and the constitutional imperative of secularism, and continue to be a constitutional matter of concern.

STATEMENT OF RESEARCH PROBLEM

The Constitution allows affirmative action on behalf of the socially and educationally backward classes, but does not allow for discrimination solely based on religion. This poses a constitutional dilemma of whether a religious minority that is disadvantaged can be awarded reservation status while not making the affirmative action program a religion-based reservation.

RESEARCH QUESTIONS

Constitutional balance of equality, affirmative action, backwardness and prohibition on discrimination based on religion while withdrawing the reservation benefits from the

¹ INDIA CONST. arts. 14, 15 & 16.

² INDIA CONST. arts. 29 & 30.

communities of the religious minority?

RESEARCH OBJECTIVES

The study is to analyse the constitutional framework in India, judicial developments, comparative analysis of India and America, challenges of classification, constitutionally consistent reforms with regard to minority rights and reservation and the analysis of the relationship between minority rights and reservation.

RESEARCH METHODOLOGY

The research methodology used is doctrinal, which is based on the analysis of the Constitution and statutes, judicial decisions and comparative law research. It uses secondary sources such as scholarly articles, government documents, law commission documents and academic commentaries.

CONSTITUTION MAKING PROCESS

Equality, secularism and social justice are the core principles of the constitutional system of minority rights and affirmative action in India. Article 14³ is a guarantee of equality before the law and equal protection of the laws, allowing the State to classify as long as it does so reasonably, but not arbitrarily. Under Article 14⁴ There is recognition that differential treatment might be required to promote genuine equality for historically disadvantaged groups. The right to equality under Articles 15(1) and 16(1)⁵ of the Constitution of India is not to be denied based on religion, race, caste, sex and place of birth. But Article 15(4), 15(5), 15(6) and 16(4)⁶ of the Constitution allow the State to take positive measures for socially and educationally backward classes, Scheduled Tribes, Scheduled Castes and others who have been provided for in the Constitution of India.

The Constitution also protects the rights of religious and language minorities through Articles 25 and 26⁷, which guarantee freedom of religion and religious management, and Articles 29

³ INDIA CONST. art. 14.

⁴ Ibid.

⁵ INDIA CONST. arts. 15, cl. (1) & 16, cl. (1).

⁶ INDIA CONST. arts. 15, cl. (4), 15, cl. (5), 15, cl. (6) & 16, cl. (4).

⁷ INDIA CONST. arts. 25 & 26.

and 30⁸, which guarantee cultural and educational rights, including the establishment and administration of minority educational institutions. These provisions are intended to maintain the minority identity, not benefit the minority. Thus, minority rights and reservation are two separate guarantees in the Constitution. Their crossover occurs only when individuals from minority communities are socially and educationally backwards and meet the constitutionally recognised criteria of disadvantage, and thus affirmative action is not based solely on minority religion or belief.

THE INDIAN JUDICIAL APPROACH

There is no provision in the Constitution of India for reservation on a religious basis. The Constitution is explicitly secular, with Article 15(1) and 16(2)⁹ expressly prohibiting discrimination on religious grounds. Articles 15(4), 15(5) and 16(4)¹⁰ of the Constitution of India, however, provide for positive discrimination for the socially and educationally backward classes, which means that backwardness and not religion is the constitutional ground for reservation. Accordingly, religious minorities may be captured only under social and educational disadvantage, using objective criteria for the reservation frameworks.

The Supreme Court has always maintained that backwardness should be proved by empirical evidence and not by assumptions based on religious affiliation. Social status, educational deprivation, poor representation in public employment and measurable socio-economic disadvantage are all factors taken into account when judging. The Court has consistently recognised that classification should be based on constitutional grounds of reasonableness and equality, but not be arbitrary.

These principles are reflected in a series of historic decisions. The Supreme Court in *State of Madras v. Champakam Dorairajan*¹¹ declared the religious and caste-based reservations unconstitutional, thus paving the way for the First Constitutional Amendment and the addition of Article 15(4)¹². In *M.R. Balaji v. State of Mysore*¹³, the court ruled that the concept of backwardness cannot be based on caste and/or religion alone, but has to be based on objective

⁸ Supra Pt. 2.

⁹ INDIA CONST. arts. 15, cl. (1) & 16, cl. (2).

¹⁰ Supra Pt. 4.

¹¹ *State of Madras v. Champakam Dorairajan*, 1951 SCC 351.

¹² INDIA CONST. arts. 15, cl. (4).

¹³ *M.R. Balaji v. State of Mysore*, 1962 SCC OnLine SC 147.

assessments. In *Indra Sawhney v. Union of India*¹⁴, it was held that reservation is constitutionally permissible for those classes which are seriously backward as proved by any measurable evidence and introduced the concept of the creamy layer. Later, in *T.M.A. Pai Foundation v. State of Karnataka*¹⁵, the minority educational rights were separated from the reservation policy, and in *Ashoka Kumar Thakur v. Union of India*¹⁶, the constitutional validity of the reservations based on social and educational backwardness was upheld but not those based on religion. Together, these constitute a clear rule that the constitutional validity of affirmative action can only be secured if there is a tangible injustice or backwardness; in other words, reservations can be a tool for substantive equality and not religious preference.

CONTEMPORARY DEVELOPMENTS AND CHALLENGES

In recent years, the discussions about reservations have been focused on the inclusion of other minority communities in the Other Backward Classes (OBC) category, and the OBC classification controversy in West Bengal has been an important case in constitutional development. The issue came up after some communities, including a lot of Muslims, became a part of the State OBC list. In *State of West Bengal v. Anwar Ali Sarkar*¹⁷ the Supreme Court upheld the decision of the Calcutta High Court and ruled that religion cannot be the sole or major criterion for reservation. The Court stressed that backwardness should be determined based on objective and empirical data and suggested that the State Backwards Classes Commission undertake a fresh exercise of the task of reclassifying the communities which would be eligible based on constitutionally permissible criteria.

This controversy points to wider issues surrounding the drawing up and updating of OBC lists. The identification of backward classes is mainly the responsibility of the State Backward Classes Commissions and the respective government, which are supposed to be based on detailed socio-economic and educational data. However, where classifications seem arbitrary, politically motivated or not based on evidence, their validity is open to judicial challenge.

The issues bring out some of the underlying practical problems, such as a lack of uniformity and consistency of criteria across States, no regular review of backwardness, a slow pace of such reviews, and the possible influence of political agendas on reservation decisions. This

¹⁴ *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

¹⁵ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

¹⁶ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1.

¹⁷ *State of W.B. v. Anwar Ali Sarkar*, (1952) 1 SCC 1.

leads to affirmative action being jeopardised.

In terms of the legal profession, conflicts with regard to reservations often revolve around constitutional issues on the validity of OBC lists, the process of the expert commissions, and the lack of empirical evidence. Thus, courts have critical supervisory functions to examine the procedures for classification, review the evidentiary requirements, and make sure that social and educational backwardness is established in line with equality and non-arbitrariness principles found in the Constitution.

COMPARATIVE ANALYSIS: INDIA V. THE UNITED STATES

A. Constitutional Foundations

The Constitution of India and the United States have different concepts of equality and affirmative action, based on their historical and social backgrounds. Articles 14, 15 and 16¹⁸ together form a framework of substantive equality in India, since it allows for affirmative action for socially and educationally backward classes, for SCs and STs. The Constitution specifically provides for measures to correct past discrimination and to secure substantive equality. Whereas, the United States has a different concept of equality jurisprudence, based on a requirement of the Equal Protection Clause of the Fourteenth Amendment¹⁹ that generally bars differential treatment by the State and imposes heightened judicial scrutiny on classifications based on identity.

B. Nature of Affirmative Actions

The main thrust of affirmative action in India is in redressing social and educational backwardness. Caste and, in small, certain cases, community identity can be part of the backwardness matrix, and reservation can be given on a religious basis only if it meets constitutional requirements. By contrast, the American concept of affirmative action traditionally has centred on race-conscious admissions and hiring practices that sought to correct the legacy of discrimination. The U.S. Constitution, however, does not have any explicit reference to a reservation system; courts, on the other hand, have become more cautious in using racial classifications and have conducted more and more

¹⁸ Supra Pt. 1.

¹⁹ U.S. CONST. amend. XIV, § 1.

rigorous examination of the U.S. Constitution.²⁰

C. Gender and Sexuality

In both jurisdictions, minority status does not give rise to a constitutional right to affirmative action. It is important to note that religious minorities are given certain cultural and educational safeguards in India, under articles 29 and 30, and that reservation is based on a criterion of social and educational backwardness, and not upon any religious considerations. As in the United States, the constitutional right to enjoy all the privileges of citizenship does not require a preference for minorities, but only a prohibition on showing any prejudice against them. Thus, although both constitutional systems seek to promote equality, they distinguish minority protection from affirmative action based on objective constitutional criteria.

D. Judicial Scrutiny

Indian courts have used the principles of reasonable classification, substantive equality and the identification of backward classes on empirical facts to look at reservation policies. Judicial review is directed at how affirmative action achieves constitutional purposes without infringing upon guarantees of equality or going beyond limits. By contrast, the courts reject race-conscious government actions on a doctrine of strict scrutiny, imposing the burden on the government to establish a "compelling governmental interest" and to show that its action is "narrowly tailored" to achieve that interest. This is a greater degree of constitutional sensitivity to classifications based on identity.

E. Recent U.S. Jurisprudence

In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*²¹ The decision had a great impact on the evolution of American affirmative action law. The U.S. Supreme Court ruled that race-conscious admissions policies used by universities were unconstitutional because they were not strict scrutiny compliant. The ruling significantly narrowed the scope of racial consideration in the context of higher

²⁰ Guy-Uriel E. Charles & Luis Fuentes-Rohwer, *The Constitution of Difference*, 137 Harv. L. Rev. F. 133 (2024).

²¹ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 2023 SCC OnLine US SC 33

education admissions, and confirmed that the general rule of constitutional equality is to make decisions without taking race into account.

This was to be expected and may be compared with the reservation system in India, but the two constitutional systems are quite distinct. The American model does not have a corresponding constitutional backing for affirmative action to promote reservation for the purpose of redressing social and educational disadvantage as is explicitly provided in the Indian Constitution. Further, race cannot be equated with caste or religion in the United States because they both have different historical experiences and constitutional intentions. But the American approach is a sign of a growing judicial demand for strict accountability of identity-conscious measures. This obviously raises an important comparative question of whether Indian courts should take a more searching approach to community-based reservation while at the same time continuing to honour the constitutional commitment to substantive equality and protection of genuinely backward classes.²²

CRITICAL ANALYSIS

A. Purpose of Religion-Neutral Reservation

The Constitution of India is against any religious reservation, and affirmative action must be based on social and educational backwardness. This seems like a religion-neutral way to work, but may be more complicated in practice. Some religious minority communities may be represented in disproportionate numbers as backwards based on past discrimination, their economic hardship and lack of educational opportunities. As a result, a backwardness-based classification can help benefit specific minority groups, while not being a religion-based reservation. The issue before the Constitution is, therefore, not one of religion but whether there is objective, empirical evidence of backwardness to support their inclusion. The constitutionally valid framework of a religion-neutral approach is valid as long as it is actually evidence-based and not an indirect way of assigning religious preferences.²³

²² Jayna Kothari & Disha Chaudhari eds., *Why Caste Matters: Court Decisions on Caste Discrimination in India* (Centre for Law & Policy Research 2025).

²³ Aditi, *Reservation for OBCs Is Religion-Neutral: Delhi High Court, BAR & BENCH* (June 21, 2019) <https://www.barandbench.com/news/reservation-obc-religion-neutral-delhi-hc>.

B. Judicial Oversight versus Government Discretion

Preparations and revisions of reservation lists have significant discretion on the part of the government, especially in the context of the State Backwards Classes Commissions. But if it's left in the hands of the executive, there's a risk of arbitrary classification and politics. The power of judicial review thus serves an important constitutional purpose by reviewing the basis on reliable empirical evidence, whether it is constitutional and whether it meets the tests of reasonableness and non-arbitrariness. Only the policy-making bodies should be replaced by courts, and the policy-making should also be constitutionally accountable and transparent.²⁴

C. Lessons from the United States

In recent years, in the United States, tribunals have begun to place greater weight on strict enforcement of identity-based affirmative action. The constitutional framework in India is quite different, as reservation is explicitly authorised to address social disadvantage from an historical perspective; some lessons that can be learned from institutions in other countries are nonetheless applicable. India can improve its reservation system by gathering more detailed empirical data, reevaluating backward classes periodically, and increasing the transparency of the operations of Backward Classes Commissions and raising the bar for including or excluding backward classes. However, the American model is not easily replicable in India. While the United States, for the most part, tackles the problem of race-based discrimination by means of equal protection doctrine²⁵ India's reservation system is an effort to alleviate the problem based on the country's particular history of caste-based exclusion and its constitutional mandate for substantive equality. Any reform must, therefore, maintain the constitutional goals of India, but also boost the fairness, accountability, and evidence-based implementation of affirmative action.

PROPOSED REFORMS

1. Improve Possibility of Evidence-Based Classification: Reservation policies need to

²⁴ Utkarsh Pandey & Mansi, *Judicial Oversight of Administrative Discretion: Balancing the Scales of Authority*, 2(16) Int'l J.L. Mgmt. & Hum. (Jan. 2024).

²⁵ National Constitution Center, *The Equal Protection Clause*, NAT'L CONST. CTR., <https://constitutioncenter.org/the-constitution/articles/amendment-xiv/clauses/702>.

be made based on reliable and periodically updated socio-economic and educational data so that only those communities which are actually backward can benefit from reservation policies.

2. **Improve Institutional Transparency:** Backward Classes Commissions need to be more independent and transparent in their methodology and share the empirical evidence of inclusion/exclusion in the reservation list.
3. **Separate Religion from Backwardness:** Religious identity should not be used as a stand-alone factor for reserving seats in educational institutions; what is required is that social and educational backwardness is demonstrated.
4. **Periodic Review and Stronger Judicial Oversight:** Reservation lists should be periodically reviewed; the courts should provide appropriate evidence and constitutional safeguards for governmental reservations.
5. Enhance mechanisms for collecting socio-economic data and the procedures and safeguards available to affected communities to challenge arbitrary inclusion or exclusion in the design of reservation systems.

CONCLUSION

The Constitution of India does not necessitate a trade-off between safeguarding minority communities and maintaining the secular nature of affirmative action. On the contrary, it requires a principled separation between religion as identity and social and educational backwardness as the constitutional foundation for any reservations. It is legitimate to give a place of advantage to disadvantaged members of religious minorities, but this has to be based on objective and empirical evidence rather than on religion. The current debates about reservations highlight the need for enhanced transparency, time-boundness, and sound judicial oversight, so that affirmative action continues to be constitutional, evidence-based, and in tune with the principles of equality, secularism, and social justice.