
RESERVATION IN INDIA: A CRITICAL ANALYSIS OF EWS RESERVATION WITH REFERENCE TO INDIA, USA AND SOUTH AFRICA

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ABSTRACT

The laws for affirmative action and reservation play an essential role in eliminating past injustices while building a foundation for social justice throughout India. These policies that support SCs STs, and OBCs in Indian society derive from Articles 15(4), 16(4), and 46 of the Constitution. EWS quota implemented through the 103rd Constitutional Amendment has introduced economic considerations as a new primary focus in Indian reservation policies during recent years. This paper will critically analyse the constitutional and judicial aspects of affirmative action in India through the lens of EWS reservations under the 103rd Constitutional Amendment. It evaluates how the policy influences socio-economically disadvantaged groups and questions whether such policy fits into intelligible differentia or the basic structure of the Constitution. Such research will be adding a new dimension to the general topic of justice and equity. It also will go Further, to find out how cultural differences affect affirmative action policies and whether similar approaches could work in India, a comparative analysis of the affirmative action laws in the USA and South Africa will be undertaken.

Keywords: Reservation, EWS, Constitution, Affirmative Action, Social justice.

CHAPTER – 1 : INTRODUCTION

India, well-known for its caste-disadvantageous affirmative action and reservation policies, has extended this system of benefits to privileged groups. This has called into question the previous constitutional pledge to combat persistent marginalization from the established socioeconomic structure. The widespread use of affirmative action starkly contrasts the small percentage of seats available in educational institutions and public employment prospects. A vicious circle of economic suffering brought on by declining agricultural revenues and a lack of high-quality educational possibilities fuels the demand of upper-caste groups for recognition as backward¹.

The concept of social justice is fundamentally basic to any constitutional democracy and central to the philosophy of the Indian Constitution. However, its egalitarian tenets have been diluted by caste politics, colonial ideologies, and hegemonic cultures, which thus perpetuate discrimination and marginalization. Affirmative action policies in India, which were initially framed to address caste disadvantages, have gradually expanded to include economically weaker sections (EWS) of the non-reserved or general category, here, Economically Weaker Section (EWS) refers to individuals or households whose income falls below a specific threshold. Family income is the primary criterion for determining a household or citizen's economic weakness, while there are other economic aspects as well. The preamble of the Indian constitution, which aims for social, economic, and political fairness, acknowledges this idea. Only socioeconomic circumstances are used to justify the current reservations in the fields of employment and education.²

The EWS category primarily includes individuals from historically privileged caste groups, shifting the focus of reservations from caste to economic criteria. This expansion of affirmative action policies has led to considerable social, political, and legal debates. There is an ongoing debate over providing reservations for the general category or groups not covered by the existing quota system. Economic criteria are focused upon rather than the traditional caste framework, bringing into question whether such measures resonate with the constitutional commitment to deal with the deeply ingrained marginalization caused by the caste system. American political philosopher John Rawls, in his “**A Theory of Justice**,” talks about the

¹ WANKHEDE A., AFFIRMATIVE ACTION FOR ECONOMICALLY WEAKER SECTIONS AND UPPER-CASTES IN INDIAN CONSTITUTIONAL LAW, 44–76 (Routledge India 2022).

² Gopalan, K.R. ‘A Study on Reservations in the Educational Sector for the Economically Weaker Sections’. PARISHODH JOURNAL, 6175-6182 (2020).

principles of liberty, fairness, and responsible use of political power in a democracy. According to him, the theory of justice must be 'fair' to structurally eliminate inequalities rather than perpetuate them. Unlike hierarchical social organizations, Rawls's liberalism advocated for an egalitarian society of reciprocity and equal participation³. Similarly, Dr. B.R. Ambedkar, the father of the Indian Constitution, asserted that political and economic equality is shaped by social justice⁴. He cautioned against policies that strengthen obsequiousness and servility among the underprivileged without their substantial empowerment. When affirmative action policies deviate from their original legislative intent and contradict the philosophy of social justice, their effectiveness is significantly compromised.

One such example of this tension is the 103rd Constitutional Amendment, which introduced a 10% reservation for EWS in education and employment. This amendment, while it aims to address economic disadvantage, has been criticized for favouring privileged caste groups over the structurally marginalized. Affirmative action would lose its original purpose because EWS reservations fail to recognize how caste intersects with economic vulnerability. The court decisions from the *Indra Sawhney case* proved that caste-based backwardness runs deeper than economic challenges, The 50% cap, set down by the court in exercising the right of judicial review, ostensibly had been put in place to check over-reliance on affirmative action. However, the introduction of EWS has chafed at these margins, raising questions of constitutionality concerning whether it forms part of the basic structure. Reservation policies have become more politicized due to the inclusion of upper-caste groups in ways that weaken the core goals of affirmative action. The inability to eliminate caste systems prevents the full attainment of equality among people. Conditions for the already-deprived classes remain deteriorating due to economic distress factors such as low agricultural incomes, poor educational access, and restricted employment opportunities. At the same time, these problems fuel demands for status as backward by upper castes, adding a new twist to the issue in the context of reservations.

Ultimately, the term became a label for empowering long-disadvantaged communities. Unfortunately, it does not work that way in today's implementation, so it would take reforms towards equity, inclusivity, and the real targeted marginalized to treat the constitutional promise of social justice once again. Affirmative action, then, is a tool for social transformation, not one to be used politically against its proper intent. Only through such a balanced, principled, and

³ John Rawls, A THEORY OF JUSTICE 4, 73 SAGE JOURNALS (1971).

⁴ DR B.R. AMBEDKAR, ANNIHILATION OF CASTE 32 (Digital Fire 2022).

fair approach can India represent the ideals of fairness, justice, and a true democracy.

LITERATURE REVIEW

Books

1. In the book titled *“Indian Constitutional Law (M.P Jain),”*⁵ the author provides an exhaustive analysis of constitutional provisions, for example, Articles 15(4) and 16(4), and landmark judgments such as *Indra Sawhney v. Union of India* and *Janhit Abhiyan v. Union of India*, which critically analyses the changing role of the judiciary in the interpretation of affirmative action in conjunction with equality and meritocracy. He further analyses the socio-economic effects of reservations and the creation of the EWS quota through the 103rd Amendment.
2. In the book titled *“Introduction to the Constitution of India (D.D. Basu),”*⁶ the author presents an overview of India’s affirmative policies while emphasizing their constitutional foundation, socio-political reasoning, and critical analysis of foundational cases and amendments that bring this foundational crux into broader perspectives. Basu takes into consideration the historical injustices and recommends reforms within the policy for equity and inclusion.
3. In the book titled *“Affirmative Action for Economically Weaker Sections and Upper-Castes in Indian Constitutional Law (Asang Wankhede)”*⁷: Through this work the author examines how the 103rd Constitutional Amendment introduced Economically Weaker Sections (EWS) reservations in India. The text reviews legal and judicial activities surrounding affirmative action and their developments while emphasizing the EWS quota’s impact on equal rights concepts. The study criticizes the blurring of lines between historical discrimination-based reservations and general poverty alleviation measures, towards a shift in communal quotas. The study provides valuable insight into how EWS reservations modify Indian affirmative action policy and how that fits within the constitutional tenets of equality.

⁵ 2 M.P. JAIN, INDIAN CONSTITUTIONAL LAW (Lexis Nexis 2024).

⁶ D.D. BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA.: (Lexis Nexis 2022).

⁷ WANKHEDE A., AFFIRMATIVE ACTION FOR ECONOMICALLY WEAKER SECTIONS AND UPPER-CASTES IN INDIAN CONSTITUTIONAL LAW, 44–76 (Routledge India 2022).

Articles

1. In the article titled *“Dividing Equality Destroying Affirmative Justice: Assessing Economically Weaker Sections (EWS) Reservation in India,” Shimla Law Review, Vol. V, 2022* (Mohammad Hussian, Showkat Ahmad Wani & Dhriti Bole)⁸“ the author critiqued the 103rd Constitutional Amendment on EWS, which was “a deviation of social justice” and called this move a deviation because it “turns a blind eye to the casteist divide and gives privileges to the already privileged classes”. As the authors assert, “There is arbitrariness in keeping the ₹8 lacks as a cut-off to determine who could be an EWS. What is lacking here is the concern for regional and social backwardness.”. The study highlights that the policy undermines the foundational ethos of affirmative action, calling for a reassessment to align with constitutional values.
4. In the article titled *“A Study on Reservations in the Educational Sector for the Economically Weaker Sections, Parishodh Journal, 2020* (K.R. Gopalan)⁹“ The author analyzes how the public views the 103rd Constitutional Amendment which established 10% reservation through the Economically Weaker Sections (EWS) program. According to the research findings there exists a knowledge gap regarding the Mandal Commission followed by a lack of economic-based review commission. People maintain uncertainty about how the economic criteria would affect existing caste-based reservation systems. In conclusion the economic criterion demonstrates its commitment to economic justice yet reveals the necessity of better policy development for open goal achievement.
5. In the article titled *“A Study on Reservations for the Economically Weaker Sections in India, Journal of Research in Humanities and Social Science, 2023* (Dr. Pobon Kr. Gogoi and Mr. Himanshu Bora)¹⁰“ the author looks into the historical and contemporary dimensions of reservation politics in India. The paper shows the evolution of constitutional provisions, for example, Articles 15(4), 15(5), and 16(4), that seek to uplift socioeconomically backward communities. A critical analysis of the impact of reservation is also included, where on one hand, it has corrected historical injustices, and on the other,

⁸ Mohammad Hussian, Showkat Ahmad Wani, *Dividing Equality Destroying Affirmative Justice: Assessing Economically Weaker Sections (EWS) Reservation In India*, V HNLU, 237-252 (2022).

⁹ Gopalan, K.R. ‘*A Study on Reservations in the Educational Sector for the Economically Weaker Sections*’. PARISHODH JOURNAL, 6175-6182 (2020).

¹⁰ Dr. Pobon Kr. Gogoi, *Reservation Politics in India: An Analysis of the Indian Reservation System*, 11 JRHSS 74, 75-78 (2023).

it has criticisms of reverse discrimination and administrative inefficiencies. This paper reflects on the balance between affirmative action and meritocracy through the lens of policies such as the SC/ST quotas and the Economically Weaker Sections 10% reservation. It points out the need for reform so that the policy continues to be effective and inclusive.

6. In the article titled *“An Evaluation of the Reservation System in India,” Ijaresm, 2023* (Dr. G. Yoganandham al.)¹¹“ the author explores the multifaceted aspects of the reservation policy in India, especially in the context of caste-based inequities. It recognises the enormous strides made to ensure representation for SC, ST, and OBC. However, it raises concerns regarding the underutilization of the EWS quota due to a lack of awareness and implementation gaps. The paper urges new thinking about a policy’s very framework so it can fit existing socio-economic reality while preserving those ideals of equity and fairness.
7. In the article titled *“Affirmative Action Policy in India: An Analysis* (Neeraj Pant and Dr Chandrima Chaudhuri),¹²“ the author emphasizes the socio-economic impact of affirmative action in terms of literacy, social mobility, and representation for marginalized groups. It also critically evaluates the effectiveness of reservation policies, which has its challenges such as reverse discrimination and debates over meritocracy. The study recommends that affirmative action be extended to the private sector to fill existing gaps and ensure all-inclusive participation.
8. In the article titled *“Two ‘Unequal’ Policies on ‘Equality’ of Opportunity: Comparing USA’s Affirmative Action Policy with the Indian Reservation System,” Oxford Political Review 2023* (Himanshu Srivastava)¹³“ the author compares the affirmative action policies of the USA, mainly based on race, with India’s caste-based reservation system. The Indian system is constitutionally embedded, thus having legal enforceability, whereas the American policy was a statutory measure, recently invalidated by the Supreme Court (Students for Fair Admissions v. Harvard, 2023). The paper observes that the Indian system is more widespread, covering government jobs, education, and political representation. In

¹¹ Dr. G. Yoganandham, *An Evaluation of The Reservation System In India*, 11 IJAERSM 218, 220-228 (2023) https://www.researchgate.net/publication/375866518_An_Evaluation_of_the_Reservation_System_in_India.

¹² Neeraj Pant, *Affirmative action policy in India: an analysis*.6 JJPS, 2601-2612 (2022), <https://journalppw.com/index.php/jjsp/article/view/3718/2429>

¹³ Himanshu Shrivastava, *Two ‘Unequal’ Policies on ‘Equality’ of Opportunity: Comparing USA’s Affirmative Action Policy with the Indian Reservation System*, OXFORD POLITICAL REVIEW (Jan. 07, 2025, 9:29 PM), <https://oxfordpoliticalreview.com/2023/10/22/two-unequal-policies-on-equality-of-opportunity-comparing-usa-affirmative-action-policy-with-the-indian-reservation-system/>.

contrast, affirmative action in the USA targeted higher education and employment diversity. Although both policies have been attacked for undermining meritocracy, a more subtle approach to reform would be necessary.

9. In the article titled “*Affirmative Action and Intersectionality at the Top: Evidence from South Africa, Industrial Relations 2021* (STEPHAN KLASSEN and ANNA MINASYAN)¹⁴” the author sheds light on the policy spillovers of the BEE policy of South Africa in education, wages, and self-employment wherein the share of Black women’s employment in senior roles increased more than that of Black men, White women, and White men. This would show that the policies of affirmative action in post-apartheid South Africa are still very challenging and require complementary measures to address the systemic inequalities of education and employment.

10. In the article titled “*Comparative Frameworks for Affirmative Action in Higher Education: Lessons from India, South Africa, and the USA, Policy Futures in Education, 2021* (Suchitra Gururaj)¹⁵” the author explores the constitutional, historical, and socio-political contexts of affirmative action policies in India, South Africa, and the USA, focusing on their implications for higher education. It underlines the specific contexts that shape each country’s approach: India’s caste-based reservation system, South Africa’s race-focused policies post-apartheid, and the USA’s diversity-oriented affirmative action. Despite their varied histories, there are shared concerns: reverse discrimination accusations, debates over meritocracy, and a lack of proper representation at higher education institutions. Recommendations would focus on the integration of socio-economic indicators as well as localized strategies for effective inclusion.

CHAPTER 2: HISTORY OF AFFIRMATIVE ACTION

- **POSITION OF AFFIRMATIVE ACTION IN PRE-INDEPENDENCE INDIA**

- a) **British Policies and the Depressed Classes**

The British created the expression “depressed classes” to describe different groups of

¹⁴ Stephan Klasen, *Affirmative action and intersectionality at the top: Evidence from South Africa*, ECONSTOR (Jan. 10, 2025, 10:04 AM) <https://www.econstor.eu/bitstream/10419/213568/1/GLO-DP-0467.pdf>.

¹⁵ Gururaj, S., Somers, P., Fry, J., Watson, D., Cicero, F., Morosini, M. and Zamora, J., *Affirmative action policy: Inclusion, exclusion, and the global public good*. 19 *Policy Futures in Education*, 63-83(2021).

underprivileged communities in India among those who lacked education and were considered destitute or untouchable along with various caste and tribal communities. The phrase “depressed classes” was commonly used by both British Christian missionaries and priests alongside leading Indian figures Gopal Krishna Gokhale and Annie Besant to describe marginalized communities within India. Annie Besant established parallels between the impoverished population of India with the “submerged tenth” that included English labourers, street cleaners and scavengers¹⁶.

The British Government issued a 1914 report defining both untouchables and criminal tribes as members of the depressed classes. Beyond the initial classification phase, several more years passed before illiterate and socially backward communities received inclusion. According to the 1931 ‘Hutton Census’ only communities who faced exclusion as untouchables qualified for depressed class status. The ‘Montagu-Chelmsford Reforms of 1919’ let depressed class groups send representatives to the legislative council as nominees but they received different treatment from the independent voting rights given to Muslims through the ‘Government of India Act 1909’. The Justice Party in Madras attempted to establish special voting positions for non-Brahmins as part of a single electoral system instead of a separate electoral structure¹⁷.

The persistent efforts of Dr. B.R. Ambedkar led to the ‘Communal Award of 1932’ establishing a separate voting system for depressed classes. A significant level of opposition by Mahatma Gandhi and the Indian National Congress resulted in Dr. B.R. Ambedkar agreeing to sign the Poona Pact. Through the Poona Pact, the depressed class candidates obtained reserved seats instead of separate electorates which resulted in nearly double the seats initially designated by the Communal Award.¹⁸ The ‘Government of India Act of 1935’ further declared that the British colonial government would not only defend the legal rights of minorities but also protect the legal rights in public offices. Specific reservations for Scheduled Caste communities were also initiated in 1943, though many seats were still not filled. As the time came when India would attain independence, this depressed class community had some sort of representation at the

¹⁶ Raj Krishna, Saurabh Kumar, ‘Indian Constitution And Marginalized Communities: A Case Study Of Affirmative Action In India’, 2 MAGLAW, (2023), <https://maglaw.puchd.ac.in/index.php/maglaw/article/view/115/20>.

¹⁷ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, 63 Wash. U. L. Rev. 565, 565-575, (1985).

¹⁸ Bhagwan Das, *Moments in a History of Reservations*, 35 JSTOR, 3831-3834 (2000), <https://www.jstor.org/stable/4409890>.

political level after several years of protest¹⁹. While the Princely States were the first to adopt these reservations in the late 19th century, it was progressive rulers that adopted measures of social upliftment by way of education and job creation. States like Mysore, Baroda and Kolhapur were favourable to the advancement of the rights of the marginalised communities.

The man who set a significant milestone in affirmative action was Chhatrapati Shahu Maharaj, ruler of Kolhapur in 1902, who reserved a certain part of the administrative positions for the depressed classes. Jyotirao Phule strongly influenced his politics, which were based on egalitarian principles. The Mysore State also followed the recommendations of the Miller Committee and followed reservations in favour of the underprivileged communities.²⁰

- **POSITION OF AFFIRMATIVE ACTION IN POST-INDEPENDENT INDIA**

- a) **Constituent Assembly Debate on Affirmative Action**

The Constituent Assembly (1946-1950) made sure to establish political representation for communities that had been omitted from the system. The Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas supported legislative reservations for SCs and STs in August 1947 and reaffirmed it in May 1949.²¹ **S. Nagappa**, a prominent legislator from Madras, argued that Scheduled Castes were disadvantaged in economic, political, and social terms and required reservations for representation. He proposed abolishing caste-based reservations if every Harijan family was given land, free university education, and guaranteed representation in key government positions. **Mohan Lal Gautam** countered that Brahmins would willingly trade places with Harijans if they received such benefits, but **Nagappa** emphasized that untouchability and caste-based stigma were lifelong disadvantages that economic upliftment alone could not erase. Some members opposed caste-based reservations but agreed that affirmative action was necessary. **H.C. Mookerjee**, chair of the Minorities Sub-Committee, believed that the right solution was economic upliftment, not political safeguards. **Mahavir Tyagi and Jerome D'Souza** proposed class-based reservations, arguing that landless labourers and those in low-paying occupations—cobblers, washermen, and daily wage

¹⁹ DR. ABHINAV CHANDRACHUD, *These Seats are Reserved: Caste, Quotas and the Constitution of India*, (India Viking 2023).

²⁰ Janhit Abhiyan v Union of India, WP (C) 55/2019.

²¹ Rochana Bajpai, *Minority rights in the Indian Constituent Assembly debates, 1946-1949* OXFORD DEPARTMENT OF INTERNATIONAL DEVELOPMENT, (Feb. 04, 2025, 9:29 PM), <https://www.qeh.ox.ac.uk/publications/minority-rights-indian-constituent-assembly-debates-1946-1950>.

earners—should receive reservations instead of caste-based groups.²² However, the majority of the Constituent Assembly ultimately supported reservations based on social disadvantage rather than economic status alone. This led to the inclusion of Articles 15(4), 16(4), and 330-342 in the Constitution, securing reservations for SCs, STs, and Other Backward Classes

b) Evolution of EWS in India

During the early years after Indian independence, the country focused its social policies on supporting communities that had endured historical marginalization. People from all castes faced economic difficulties, which proved to be a substantial obstacle for social advancement. Economic-based reservations remained absent from India's constitutional framework throughout the first years of independence. Then-Prime Minister V.P. Singh introduced a suggested constitutional amendment in 1990 that proposed to establish 5% to 10% reservations for financially disadvantaged individuals irrespective of their caste membership. The proposal for economic reservation failed to gain sufficient political backing, so it remained untouched. The government under Prime Minister P.V. Narasimha Rao sought to establish 10% employment reservations for economically challenged people who did not benefit from existing reservation systems in 1991. The Supreme Court ruled against the provision through its decision in the Indra Sawhney Case (1992) because it decided that reservation policies should focus on social and educational backwardness rather than economic background only. The Mandal Commission Report (1980) introduced the foundation for economic-based reservations, which led to OBCs obtaining 27% reserved slots in government institutions during 1992. Although the approach initially targeted social and educational shortcomings, it became the initial step towards discussing economic inequalities²³.

The SR Sinho Commission operated under Prime Minister Manmohan Singh during his government to research the economic status of weaker sections within forward caste groups. The commission submitted its report in 2010. EWS special provisions received Commission-endorsed recommendations in 2010, including education and employment-based reservations. EWS reservations became prominent following the PM Modi, B.J.P government

²² Malavika Prasad, *From the Constituent Assembly to the Indra Sawhney case, tracing the debate on economic reservations*, THE CARAVAN, (Feb. 04, 2025, 10:32 PM) <https://caravanmagazine.in/law/economic-reservations-constituent-assembly-debates>.

²³ Archis Mohan, *10% quota for poor in general category: Rao failed, will modi succeed?*, BUSINESS STANDARD. (Feb. 04, 2025, 9:29 PM), https://www.business-standard.com/article/economy-policy/10-quota-for-poor-in-general-category-rao-failed-will-modi-succeed-119010800052_1.html.

implementation of the 103rd Constitutional Amendment Act in 2019. Through the 103rd Constitutional Amendment Act, the Indian Constitution received Articles 15(6) and 16(6), which established a 10% reservation system for the economically weaker sections of society alongside previous reservation categories. Income became the central factor in EWS eligibility because the government established an annual income threshold of ₹8 lakh per annum for benefit recipients. The EWS reservation system encountered legal opposition because its implementation allegedly broke social justice principles by granting benefits to affluent groups. A Supreme Court hearing occurred in November 2022 when **Janhit Abhiyan v. Union of India** was heard. A five-judge panel of the Union of India ruled above a 3:2 minority to verify the constitutional legitimacy of the amendment clause which established WPE as an independent affirmative action category.²⁴

CHAPTER 3: CONSTITUTIONAL FRAMEWORKS AND JUDICIAL INTERPRETATION ON EWS RESERVATION

• CONSTITUTIONAL FRAMEWORK

Affirmative action laws have experienced multiple advancements through legal modifications and judicial decisions over the years. The First Amendment Act of 1951 introduced Article 15(4) through its provisions, while the Mandal Commission Report of 1980 established the basis for OBC reservations. The primary goal of reservation provisions under the Indian Constitution is social equality and historical rectification, for which marginalized groups are granted certain preferential treatments. Such provisions aim to bring about more participation and representation from historically disadvantaged groups in domains like governance, employment, and education.²⁵

a) Preamble

The ‘Preamble of the Indian Constitution’²⁶ embodies three elements of justice: social, economic, and political. Broadly speaking, justice makes sure that the common good is served

²⁴ Dr. Anuj Sinha, *New Era for Affirmative Action: Indian Supreme Court's perspective on reservation*, LIBRARY PROGRESS INTERNATIONAL. (Feb. 04, 2025, 11:23 PM)
<https://bpasjournals.com/libraryscience/index.php/journal/article/view/2438>

²⁵ Dr. A. Ranjithkumar, *Social Justice through Affirmative Action: A Study of Reservation Policy with Special Reference to Scheduled Castes in Tamilnadu* (Feb. 05, 2025, 09:23 PM)
https://www.researchgate.net/publication/352101167_Social_Justice_through_Affirmative_Action_A_Study_of_Reservation_Policy_with_Special_Reference_to_Scheduled_Castes_in_Tamilnadu.

²⁶ INDIA CONST. PREAMBLE.

by bringing an equal application of the law for every citizen.

1. Social justice aims at breaking up social man-made barriers and discrimination.
2. Economic justice supports economic equality, whereby resources are allocated equally and appropriately.
3. Political justice guarantees free and fair participation in the political process through universal adult suffrage above 18 years in India.

Under Part III of the Constitution Fundamental Rights protect the entire citizenship and operate as protection against all forms of discrimination. Every citizen can request judicial intervention from the High Courts or Supreme Court to protect their rights, if violated.

b) Article 14

Article 14 establishes that “the state shall not deny any person equality before the law or the equal protection of the laws within the territory of India.”²⁷ The article works to establish equal status together with equal opportunities for all people while reinforcing the principles found in the Preamble. Article 14 establishes equality while permitting reasonable grounds to create classifications as long as these grounds avoid arbitrary or evasive categorizations. Supreme Court also confirmed that Article 14 states “equal to be treated equally, while unequal can be treated differently”. Rational criteria allow differential treatment that upholds equality in its actual form. The EWS (Economically Weaker Sections) reservation policy follows the equality standards set by Article 14 by establishing fair access to opportunities among various social categories. The policy implements reasonable classification standards and non-arbitrary discrimination practices to give necessary support to economically challenged groups within a constitutional environment

c) Articles 15 and 16

Affirmative action within India finds its base in Articles 15 and 16. Article 15 explicitly forbids religious, racial, caste, sexual and place of birth discrimination yet Articles 15(4) and 15(5) enable the state to implement special provisions that benefit socially and educationally

²⁷ INDIA CONST. art. 14

backward populations including SCs, STs and OBCs.²⁸ Article 16 establishes public employment equality, while Article 16(4) provides exemptions to make special provisions for backward classes when they lack sufficient presence in public service.²⁹ Affirmative action in India benefits from the constant support of Supreme Court rulings as well as constitutional amendments that have solidified these policies through time. The introduction of reservations for EWS is a significant shift in affirmative action policy, giving priority to economic disadvantage over caste. The EWS reservation seeks to address economic distress among those from the general category who are excluded from caste-based reservations.

This policy was developed through a long process of discussion with political parties, social organizations, and the public. Based on the detailed recommendations of committees, the 103rd Constitutional Amendment Act of 2019 was enacted, which introduces two important provisions:

- Article 15(6)³⁰: It gives special provisions for EWS by the government, not included in clauses (4) and (5). This also gives reservations to EWS in educational institutions including private institutions except the minority institutions.
- Article 16(6)³¹: It provides for up to 10% reservation for EWS in central and state government jobs, over and above the existing caste-based reservations.

d) Article 46

Article 46, part of the Directive Principles of State Policy, mandates the promotion of the educational and economic interests of SCs, STs, and weaker sections. The arrangement upholds what the Constitution framers planned during India's post-independence period to bring social justice. The mention of weaker sections within the text aims to stop the continuing effect of socio-economic disadvantages. The protections marked by Article 46 give Parliament power to defend subordinate sections not named in traditional caste-based affirmative action policies, which led to the creation of EWS reservations³². The 103rd Amendment introduces economic evaluation in the reservation system, which brings substantial changes to India's social

²⁸ INDIA CONST. art. 15

²⁹ INDIA CONST. art. 16

³⁰ INDIA CONST. art. 15(6), *amended by* The Constitution (One Hundred and Third Amendment) Act, 2019

³¹ INDIA CONST. art. 16(6), *amended by* The Constitution (One Hundred and Third Amendment) Act, 2019

³² INDIA CONST. art. 46

inclusion programs. The Policies remain in continual assessment for judicial examination, but through Article 46, Parliament can augment protection for socio-economically marginalized groups. This development strengthens both constitutional aims for social justice and fairness and welfare³³.

• JUDICIAL INTERPRETATION OF EWS

Since 1951 the Supreme Court of India has used key judicial decisions to determine how reservation programs are applied to backward classes nationwide. Through these decisions the court established directions regarding both the criteria needed for affirmative action reservations plus the established boundaries alongside the relationship between fairness and social equality.

The **State of Madras v. Champakam Dorairajan**³⁴ case marked the beginning of important legal proceedings about this matter. In *Champakam Dorairajan* (1951), the Supreme Court determined that educational institutions violated fundamental equality rights through caste-based reservations as outlined in Article 15(1). The judicial decision resulted in the First Amendment to the Constitution (1951) that added Clause (4) to Article 15, thereby permitting the state to establish special provisions for socially and educationally backward classes together with Scheduled Castes (SCs) and Scheduled Tribes (STs). The constitutional amendment created a basis that later shaped future affirmative action measures.

In **M.R. Balaji v. State of Mysore**³⁵ The Supreme Court issued its definitive criteria by establishing that the total percentage of reserved seats should not be more than 50%. The court also stated that the 50% limit could be crossed but only under extraordinary circumstances. According to the decision of the court, caste could not function as a solitary marker to establish social backwardness since economic disadvantage actively helped in creating backwardness. According to the examination of the court, social backwardness arises primarily from extensive poverty. The case has been very important in shifting judicial thought regarding the interplay of caste and the priority of economic hardship in determining backwardness.

³³ INDIA CONST., The Constitution (One Hundred and Third Amendment) act, 2019

³⁴ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

³⁵ *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649

However, in **Indra Sawhney v. Union of India**³⁶ The Supreme Court established refined criteria for affirmative action through its decision by stating that economic backwardness required additional factors to qualify for reservations. According to the Supreme Court's decision, the Constitution does not authorize reserving positions based solely on poverty status because it ignores documented historical discrimination evidence. Social and educational backwardness remains the core basis for reservations according to this ruling, although economic conditions can serve as an additional consideration. The basic consequence of the judgment in *Indra Sawhney* was the creamy layer concept, where relatively richer sections within the backward classes were excluded from availing of reservation benefits. This principle was meant to ensure that only the most backward benefit from affirmative action policies. Regarding reservation limits, the Supreme Court also kept the cap at 50%. The reasoning for this decision was as follows: "Reservation in all cases must be confined to a minority of available posts or seats so as not to unduly sacrifice merit, The seats or posts reserved under Article 15 or Article 16 must, at all times, continue below 50% of the total number of seats or posts." Emphasizing the facts, the Court pointed out that affirmative action was doubtless necessary to correct historical injustices, but excessive reservations could undermine efficiency and meritocracy in public employment and education. The *Indra Sawhney* judgment was important as it explained the scope of the term "weaker sections" under Article 46, and these were held to be greater in scope than "backward classes". It was also acknowledged that persons who became vulnerable to calamities due to natural causes or similar physical disabilities could also become part of the weaker sections, and thus, social justice would not be narrowly confined to considerations of caste.³⁷

The recent judgement of **Janhit Abhiyaan vs. Union of India**³⁸ A majority ruling of 3:2 majority from the Supreme Court endorsed the legitimacy of the 103rd Amendment by dismissing arguments that stated it violated the constitutional basic structure. The Supreme Court confirmed reservations for different economic groups do not violate the equal justice and basic equality provisions included within the Constitution. Through majority judgment, the Court declared reservation serves as an affirmative action mechanism to develop an egalitarian society by using measures to counteract disadvantages experienced by both backward socially

³⁶ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

³⁷ Aparna Mahishi, *Economic reservations: A constitutional challenge*, *Constitutional & Administrative Law – India* MODAQ (Feb. 05, 2025, 11:40 PM), <https://www.mondaq.com/india/constitutional-administrative-law/791818/economic-reservations-a-constitutional-challenge>

³⁷ *Janhit Abhiyan v. Union of India*, 2022 SCC OnLine SC 15

³⁸ *Janhit Abhiyan v. Union of India*, 2022 SCC OnLine SC 15

educationally disadvantaged classes and economically weaker sections. The personnel from SC, ST, and OBC communities can continue receiving affirmative action privileges under Articles 15(4), 15(5), and 16(4) since the amendment procedure does not impact the Constitutional equality guarantees. In a majority opinion, Justice Dinesh Maheshwari concluded that economic criteria reservations do not break constitutional core principles or destroy the institutional framework of the Constitution. Justice Arijit Pasayat presented his rationale by explaining that reservations limited to 50% exist only under the specific articles 15(4), 15(5) and 16(4) without establishing an overarching restriction. Justice Bela M. Trivedi joined the decision, stating that the legislative branch holds the power to evaluate social needs through appropriate affirmative actions. She highlighted that we require a review of the reservation system after seventy-five years of independence because it will help us establish a society without caste or social class. Justice J.B. Pardiwala opined that the necessity of affirmative action requires periodic review sessions which will prevent reservation policies from becoming instruments for vested groups instead of true social upliftment initiatives³⁹.

CHAPTER 4: SOCIO-ECONOMIC IMPACT ANALYSIS

4.1 SOCIAL IMPACT ANALYSIS

4.1.1 Inclusivity and Equity

EWS reservation extends affirmative action programs outside caste restrictions to recognize economic disadvantage as an important barrier against social progress. This system provides government support to economically disadvantaged individuals from the general category, thus decreasing feelings of exclusion among high-ranked castes. An independent economic disadvantage eligibility basis in affirmative action originates from EWS reservations, which work to transform the reservation system into a representation of actual socio-economic conditions.

The implementation of affirmative action through EWS reservations faces criticism because people believe caste-based discrimination continues to exist alongside the inadequacy of economic disadvantage as proof of historical oppression. EWS beneficiaries have not

³⁹ Prachi Bhardwaj, *Constitutionality of 10% quota for EWS upheld in 3:2 verdict: Key takeaways from majority ruling including suggestion for prescribing time limit for reservation*, SCC TIMES (Feb. 05, 2025, 11:40 PM), <https://www.scconline.com/blog/post/2022/11/08/10-percent-quota-ews-economically-weaker-sections-constitutional-supreme-court-constitution-bench-32-verdict-legal-research-updates-law-news/>.

encountered the kind of societal discrimination experienced by SC/ST/OBC groups in educational, employment or public representation areas.⁴⁰ Some scholars feel that although economic problems are quite vast, caste continues to dominate, which hinders the availability of opportunities; thereby, economic-based reservations are half-hearted solutions. Also, another controversy concerning EWS reservation is about the criteria. According to critics, an income limit of ₹8 lakh per annum is too high, and it will only help to include a decently-off citizen and not benefit the worst⁴¹.

The social bond between people has become substantially more strained because of this policy change. This new reservation system attempts to combine economic standards with affirmative action as an approach to create common ground between those who got caste-based reservations and other underprivileged individuals denied previous benefits. The growth of reservations has sparked fresh social conflicts when communities argue over the distribution of different educational and job opportunities.⁴²

4.1.2. Meritocracy vs. Social Justice

Critics maintain that increasing reservation areas weakens the system of selecting people based on their merits when it comes to public sector employment and competitive testing. According to the Supreme Court in *Indira Sawhney v. Union of India*⁴³, all reservation regulations need to protect administrative efficiency. Obtaining EWS reservations through reservation policies without adding new seats can produce enhanced competition together with resentment among unreserved candidates.

The supporters of EWS reservation maintain that monetary difficulties act as barriers to high-quality education and employment access, so the state must use affirmative action policies. Studies show that financial deprivation can have serious impacts on the performance in schools, access to resources, and skill development that necessitate the policy intervention which addresses economic constraints.⁴⁴

⁴⁰ Aryan Garg, *Ews Reservations: A Boon For The Unreserved Class?*, 1 ILE LEX SPECULUM 323, 324-326 (2023).

⁴¹ Dr. Anuj Sinha, *New Era for Affirmative Action: Indian Supreme Court's perspective on reservation*, *Library Progress International*. 44 BPAS 13713, 13717-13721 (2024).

⁴² *Indira Sawhney v. Union of India*, AIR 1993 SC 477

⁴⁴ Dr. Anuj Sinha, *Supra* note 41 at 19.

Another debate remains open, that of whether reservation must be on an economic or social basis. Many feel that it would undermine the very base for affirmative action, which was intended to redress historical discrimination and not financial insecurity. On the other hand, others believe that widening the ambit of reservation is necessary to reach out to the needy without any caste-based discrimination.⁴⁵

4.1.3. Legal and Political Reactions

EWS reservation has encountered constitutional litigation because opponents maintain that economic background-based quotas break the “basic structure” provisions of the Constitution. However, in **Janhit Abhiyan case**⁴⁶ The Supreme Court validated the EWS reservation by ruling that the government has the authority to establish EWS as an independent group that needs affirmative action policies. Politically, it has been seen that the policy received bipartisan support from parties looking to represent middle-class people, but some social groups have expressed concerns that this takes attention from the issues of caste inequality. The political rhetoric of EWS reservations continues with a need to keep evaluating whether this policy tool can be made to work toward social justice without jeopardizing the affirmative action system in place.⁴⁷ Additionally, political analysts suggest that the EWS reservation was initiated to win over the middle class, who felt overlooked in affirmative actions. The step has also witnessed rising demands for the reformation of current reservation policies. Different groups demand either being included or enjoying greater benefits under reservation policies⁴⁸.

4.2.ECONOMIC IMPACT ANALYSIS

4.2.1. Access to Higher Education and Employment

EWS reservation opens up more access to top educational institutions such as IITs, IIMs, and central universities. However, the ₹8 lakh income limit has been criticized by many as being too high and including relatively well-off families. This raises questions about whether the policy actually benefits the poorest. There being very few seats available in higher education institutions and the reservation of further seats also raised questions of increased competition

⁴⁵ Wankhede, *Supra* note 7 at 6.

⁴⁶ *Janhit Abhiyan v. Union of India*, 2022 SCC OnLine SC 1540

⁴⁷ Alok Prasanna, *Charity, Not Parity*, 57 EPW 8 (2022)

⁴⁸ Sampurna Basu, *An economic analysis of the reservation policy in India*, Research Gate (Mar. 01, 2025, 07:47 AM), <https://pdfs.semanticscholar.org/392b/831f308420c1dadca7d6bbcf4497d258fa11.pdf>.

and lesser access to general-category students.⁴⁹ The availability of reserved positions in employment ensures representation but does not directly create preferential opportunities for such position holders. EWS reservation does not reach the private sector, and these organizations generally base their hiring on merit and skill qualifications. The sustainable improvement of data skills needs to include better skill training programs that expand financial support services to benefit economically disadvantaged students beyond quota reservation benefits.⁵⁰

4.2.2. Fiscal and Economic Consequences

An expansion of reservations combined with insufficient job creation creates conditions that produce both underemployment of job seekers and inefficient public service operations. The expanded reservations system causes states to allocate more funds for both EWS beneficiary subsidies and welfare schemes. Measuring the performance of EWS reservation programs requires a comprehensive evaluation of economic gap reduction and its future consequences on the financial stability of Public Institutions. The distribution of government resources stands as an economic concern among other matters. Reservation policies need both financial support and infrastructure funding, so budgetary reallocation of resources for EWS reservations might minimize other welfare schemes that promote economic growth for all society members.⁵¹

4.2.3. Private Sector and Economic Growth

There is an ongoing public discussion about expanding EWS reservation coverage from public institutions to private sector organizations. Implementing EWS reservations in private institutions would create employee selection challenges and elevate regulatory expenses with worldwide market considerations. The United States and other countries offering economic-based affirmative action policies mostly provide benefits through scholarships and financial aid instead of creating job reservations.⁵²

⁴⁹ Aryan Garg, *Ews Reservations: A Boon For The Unreserved Class?*, 1 ILE LEX SPECULUM 323, 324-326 (2023).

⁵⁰ Dr. Anuj Sinha, *Supra* note 44 at 20.

⁵¹ Sampurna Basu, *Supra* note 48 at 21.

⁵² Raj Krishna, *Supra* note 16 at 10.

CHAPTER 5 : COMPARATIVE ANALYSIS OF INDIA'S EWS POLICY WITH THE USA AND SOUTH AFRICA

5.1 ANALYSIS OF AFFIRMATIVE ACTION IN THE UNITED STATES

Through its historical policies, the United States implemented affirmative action measures which targeted African Americans together with other discriminated groups. The Indian reservation policy addresses economic and social marginalization by including new low-income class sections under the Economically Weaker Sections (EWS) reservation program initiated in 2019. This section examines U.S. affirmative action by studying legal documentation together with judicial interpretations and their societal impacts and public responses, along with an assessment of its corresponding Indian system.

5.1.1 Historical Background of Affirmative Action in the United States

Federal contractors were required to perform affirmative action under President John F. Kennedy's Executive Order of 1961 because it required equal treatment and employment of applicants regardless of their race, creed, colour, or national origin. The Civil Rights Movement in the 1950s and 1960s worked to establish affirmative action because racial discrimination against Black Americans had persisted for numerous generations.⁵³

The executive order issued by President Lyndon B. Johnson in 1965 created the initial official affirmative action program that imposed minority employment opportunities requirements on federal contractors as part of the Civil Rights Act of 1964. Despite lacking an executive order on affirmative action in 1969, President Richard Nixon strengthened such policies by implementing the Philadelphia Plan that set minority worker hiring quotas in federal contracts. The Equal Opportunity Act of 1972 enabled the Equal Employment Opportunity Commission (EEOC) to obtain more power to fight workplace discrimination through expanded enforcement authority.⁵⁴

The judiciary played an essential role in developing affirmative action policies, which led to

⁵³ Himanshu Shrivastava, *Two 'Unequal' Policies on 'Equality' of Opportunity: Comparing USA's Affirmative Action Policy with the Indian Reservation System*, OXFORD POLITICAL REVIEW (Jan. 07, 2025, 9:29 PM), <https://oxfordpoliticalreview.com/2023/10/22/two-unequal-policies-on-equality-of-opportunity-comparing-usas-affirmative-action-policy-with-the-indian-reservation-system/>.

⁵⁴ Sangram Jadhav, *The Promise of Equality: A Comparison of India's Reservation Policy with Affirmative Action of the United States*, 5 Int'l JL Mgmt. & Human 21, 21-33 (2022).

Regents of the University of **California v. Bakke**⁵⁵ becoming one of the earliest critical cases where the U.S. Supreme Court established that race-conscious admissions techniques remain lawful toward promoting campus diversity. The legal landscape shifted with the additional rulings starting from **Grutter v. Bollinger**⁵⁶ through **Gratz v. Bollinger**⁵⁷, where it was held by the U.S. Supreme Court that colleges could consider using race as an admissions factor while it banned point systems based on race. More recently, in **Students for Fair Admissions v. Harvard**,⁵⁸ the U.S. Supreme Court delivered a decision opposing affirmative action in college admissions because race-based admissions preferences broke the Equal Protection Clause of the 14th Amendment.

5.1.2 Constitutional Framework and Judicial Interpretations

The U.S. affirmative action policies derive from the Equal Protection Clause of the 14th Amendment, which protects all citizens from discriminatory treatment (U.S. Constitution, 14th Amendment). U.S. courts have established the strict scrutiny approach for evaluating affirmative action policies, which must demonstrate significant state purposes while remaining focused and specific. Affirmative action policies were dismantled after the Supreme Court decision promoting race-neutral strategies, including socio-economic affirmative action.⁵⁹

India ensures the presence of affirmative action via its constitutional structure. The Indian Constitution, through Articles 15 and 16, allows social and educational status-based reservations. The Indian Supreme Court maintained the continuous operation of reservation policies through its judgment, which supported both caste-based strategies and economic-based groups for affirmative action. Affirmative action policies in India maintain legal enforcement through constitutionally protected measures, while the U.S. has experienced persistent challenges to affirmative action through legal processes.

5.1.3 Objections and Criticism of Affirmative Action

Reverse discrimination has been among the criticisms given to affirmative action in the United States, primarily against white and Asian-American applicants. The reasoning is that such

⁵⁵ Regents of the University of California v. Bakke, 438 U.S. 265 (1978)

⁵⁶ Grutter v. Bollinger, 539 U.S. 306 (2003)

⁵⁷ Gratz v. Bollinger, 539 U.S. 244 (2003).

⁵⁸ Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023).

⁵⁹ Sangram Jadhav, *Supra* note 54 at 24.

policies undermine the basis of selection based on merit and disadvantage non-marginalized students. The concerns were brought up in several lawsuits against **Harvard University**.⁶⁰ and the **University of North Carolina case**⁶¹ Are very valid, pointing out how race-based policies in admissions negatively affected Asian-American applicants.

In a ruling that found the court's decision to favour the plaintiffs, the U.S. Supreme Court said that race-based admissions infringe upon the Equal Protection Clause under the 14th Amendment. **Chief Justice John Roberts** emphasized individual achievement rather than racial considerations, according to the majority opinion, whereas **Justice Clarence Thomas** concurred and claimed affirmative action keeps races separate instead of reconciling them. However, dissenting justices **Sonia Sotomayor** and **Ketanji Brown Jackson** argued that the decision ignores systemic inequalities and undermines the efforts to promote diversity in higher education⁶².

In India, the system of reservation has been criticized for spreading beyond its initial purpose. While initially intended to counteract caste-based discrimination, reservation policies have been extended to more and more groups over time, thereby giving a call for inclusion made by politically dominant caste groups. The Supreme Court of India has put a 50% cap on reservations under the **Indira Sawhney case**.⁶³, though states like Tamil Nadu have exceeded this limit through legislative means. Another criticism is that reservations are not effective in the upliftment of the marginalized community because the benefits do not reach the most deprived due to the "creamy layer" issue.⁶⁴.

5.1.4 What India Can Learn from the U.S. Affirmative Action System

The one important thing that India learnt from the US experiences is that it needed a balanced proportion between social criteria and economic requirements. India concentrated mainly on castes for a reservation system in its case; however, the US focused more or less on a racial basis, which, under the current moves, has near total exclusion in legal scrutiny. India would do well to adopt a more proactive approach toward reservations so that they target those who need them the most, rather than increasing quotas ad infinitum. The U.S. approach of strict

⁶⁰ Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023).

⁶¹ Regents of the University of California v. Bakke, 438 U.S. 265 (1978).

⁶² Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023)

⁶³ Indira Sawhney v. Union of India, AIR 1993 SC 477

⁶⁴ Sangram Jadhav, *Supra* note 59 at 25.

scrutiny and periodic review of affirmative action policies ensures that such measures are relevant and not permanent entitlements.⁶⁵ Another advantage that the India policy would require is a better implementation mechanism than that of the U.S. Equal Employment Opportunity Commission, which enforces affirmative action in employment (EEOC Official Website). This will ensure that benefits under reservation are more meaningfully targeted towards genuinely disadvantaged groups in India.⁶⁶ It can be inferred that Affirmative action in the U.S. has been an important tool in fostering diversity, and at the same time raises legal and political challenges of gigantic proportions. The Indian reservation system is slowly but surely changing course towards an economic-based model with EWS reservations. U.S. experience has a flip side to its race-based affirmative action, which provides valuable insights for implementing mechanisms India could look to. To ensure long-term effectiveness, India should refine its reservation policies through periodic reviews, balance economic criteria with social justice objectives, and strengthen enforcement mechanisms to prevent the misuse of affirmative action provisions.⁶⁷

5.2 ANALYSIS OF AFFIRMATIVE ACTION IN SOUTH AFRICA

The ancestral roots of South Africa's affirmative action approach can be traced to both the apartheid resistance movement and post-apartheid remedial work. Shaping racial equality stands at the core of South African affirmative action programs since they target discrimination that existed during apartheid,⁶⁸ Whereas Indian reservations stem from caste membership. The post-apartheid administration created multiple laws, beginning with the Employment Equity Act of 1998 and continuing with the Broad-Based Black Economic Empowerment (B-BBEE) Act for economic development and inclusion purposes. This section analyses affirmative action in South Africa through an examination of the legal treaties alongside judicial understanding in addition to its social and economic results and public criticism while considering its parallel system in India.

5.2.1 Historical Background of Affirmative Action in South Africa

Affirmative action in South Africa began as a result of centuries of institutionalized racial discrimination under the apartheid regime. During the apartheid period from 1948 to 1994, the

⁶⁵ Himanshu Shrivastava, *Supra* note 13 at 8.

⁶⁶ Sangram Jadhav, *Supra* note 59 at 25.

⁶⁷ Himanshu Shrivastava, *Supra* note 13 at 8.

⁶⁸ Arpita Sarkar, Reservation on an Economic Basis: Some Issues and Challenges, 15 NSLR 131(2021)

South African government implemented the Population Registration Act in 1950 and the Group Areas Act in 1950 to enforce racial segregation, which denied non-white citizens opportunities for quality education and employment.⁶⁹ After apartheid ended in 1994, South Africa's newly elected African National Congress government used affirmative action as a means to correct the persistent racial inequalities. The 1996 adoption of the South African Constitution established non-racialism together with equality and social justice as foundational principles of the nation. The Constitution of 1996 allows affirmative action under Section 9(2) to aid in correcting past discriminatory practices.⁷⁰

5.2.2 Constitutional Framework and Judicial Interpretation

Affirmative action policies receive their foundation from the South African Constitution. Key provisions include Section 9(1), which guarantees equality before the law. Section 9(2) allows South Africa to put specific solutions into effect that both repair historical disadvantages and advance meaningful equality. Sections 9(3) and 9(4) within the South African Constitution protect against unfair discrimination while maintaining a balanced and equitable approach to affirmative action.⁷¹

Landmark judicial decisions have supported and shaped affirmative action policies in South Africa. Cases such as the *Minister of Finance v. Van Heerden* (2004)⁷² decided that substantive equality could only be achieved through the implementation of affirmative action, but that it is not in itself discriminatory. In *Solidarity v. Department of Correctional Services*⁷³ in 2016, it further clarified the extent of affirmative action as rational and fair. The case of *Dudley v. City of Cape Town*⁷⁴ in 2008 revealed the challenges in enforcement by holding that employers are obliged but not legally required to appoint affirmative action candidates if they are unsuitable. These judgments affirm that affirmative action is a constitutional imperative but must be administered in a manner that does not create new exclusionary practices.

⁶⁹ JL Pretorius, *Fairness In Transformation: A Critique of The Constitutional Court's Affirmative Action Jurisprudence*, 26(3) SAJHR 536, 536-570 (2010).

⁷⁰ *Minister of Finance v. Van Heerden*, 2004 (6) SA 121 (CC).

⁷¹ Constitution of the Republic of South Africa, 1996, s.9

⁷² *Minister of Finance v. Van Heerden*, 2004 (6) SA 121 (CC)

⁷³ *Solidarity v. Dep't of Corr. Servs.* 2016 (10) BCLR 1349 (CC) (S. Afr.)

⁷⁴ *Dudley v. City of Cape Town* 2008 (6) BCLR 563 (CC) (S. Afr.).

5.2.3 Legislative Instruments

Affirmative action implementation in South Africa comes through multiple laws that serve essential purposes toward workplace diversity needs and economic inclusion along with skills development. The *Employment Equity Act* from 1998 forces organizations to implement affirmative action methods to ensure underprivileged groups maintain fair participation in their workforce. The *Broad-Based Black Economic Empowerment (B-BBEE) Act* (2003) works to advance the economic empowerment of black communities through business ownership and control while using procurement incentives to meet its objectives. The *Skills Development Act (1998)* works through training initiatives for enhancing the employment prospects of disadvantaged people by resolving the challenges they face in education and employment systems.⁷⁵ The Preferential *Procurement Policy Framework Act* of 2000 mandates that public contracts must be granted exclusively to businesses that support affirmative action measures for economic transformation purposes.⁷⁶ Together, these legislative instruments form the foundation of South Africa's affirmative action framework, aiming to correct historical injustices and build a more inclusive society.

5.2.4 Objections and Criticism of Affirmative Action

Affirmative action programs in South Africa continue to receive major criticism despite their demonstrated achievements. The principal objection to affirmative action arises from white South Africans who maintain employment discrimination through these policies⁷⁷. The main drawback of affirmative action exists when exclusion benefits only a limited number of powerful, connected elites who do not represent the total number of disadvantaged people. BEE programs face criticism because they distribute most of their advantages to existing affluent Black citizens rather than improving conditions among poorer population groups⁷⁸. The challenge of deficient skills persists among other problems. The implementation of affirmative action has resulted in efficiency problems across both private and public sectors because qualified personnel terms are often not met by beneficiaries of this program. Organizations

⁷⁵ Arpita Sarkar, *Supra* note 68 at 28.

⁷⁶ Abhijeet B., *Affirmative Action In India, And South Africa – A View Through The Human Rights Lens*, 4 VU LAW JOURNAL 1, 1–10 (2024).

⁷⁷ Minister of Finance v. Van Heerden, 2004 (6) SA 121 (CC).

⁷⁸ Abhijit B., *Affirmative Action in the United States, India, and South Africa – Evolution and Foundational Principles*, 9 INDIAN POLITICS & LAW REVIEWS 53, 53–69 (2024).

identify obstacles in fulfilling racial requirements because they struggle to balance production needs with business excellence.⁷⁹

5.2.5 What India Can Learn from South Africa

Multiple educational tactics of affirmative action programs from South Africa can help India improve the way it implements its reservation system. The B-BBEE economic transformation policy provides comprehensive affirmative action strategies that exceed workforce and educational limits. The country should introduce economic empowerment initiatives that provide incentives for businesses to fund marginal communities. Affirmative action in South Africa uses goals instead of enforcing strict quotas for its implementation. The flexible approach enables the achievement of diversity aims without causing substantial damage to merit-based standards. Such an adaptable target-based approach would help India because it enables organizations to establish diverse goals depending on their unique circumstances.⁸⁰ Through judicial monitoring, South Africa, through different judgements and legislative instruments, has protected the rational balance of affirmative action to stop it from being abused as a vehicle for political benefit. India should enhance its judicial examination system as a method to establish fair and accountable reservation policy practices. The third key transformation element in South Africa is that the process comes from skills development programs that operate as part of affirmative action initiatives. India can enhance its affirmative action program through educational development programs and professional training because this approach would better prepare beneficiaries for future achievements.⁸¹

The strategic implementation of these lessons will enable India to improve its reservation policies so they achieve better results while meeting societal economic requirements for inclusion. The South African policy shows how affirmative action programs can fulfil their mission through economic participation in addition to quota-based job restrictions that generate a comprehensive approach to social justice and equality.

⁷⁹ Nomfundo Ramalekana, *A duty to implement affirmative action/reservations for India and South Africa?*, OXFORD HUMAN RIGHTS HUB, (Mar. 03, 2025, 4:18 PM), <https://ohrh.law.ox.ac.uk/a-duty-to-implement-affirmative-action-reservations-for-india-and-south-africa/>.

⁸⁰ Arpita Sarkar, *Supra* note 68 at 28.

⁸¹ Nomfundo Ramalekana, *A duty to implement affirmative action/reservations for India and South Africa?*, OXFORD HUMAN RIGHTS HUB, (Mar. 03, 2025, 4:18 PM), <https://ohrh.law.ox.ac.uk/a-duty-to-implement-affirmative-action-reservations-for-india-and-south-africa/>.

CHAPTER 6: CONCLUSION AND RECCOMENDATIONS

In this Article, I critically analysed the EWS reservation policy and brought out the nuance of challenges and benefits of this affirmative action policy. While the EWS reservation attempts to address economic disadvantage, there are implementation gaps, income ceiling problems, and the exclusion of certain communities that raise serious doubts about its effectiveness. The study reveals that though reservations in EWS have unlocked the gates of education and jobs for economically weaker sections, problems of meritocracy, fairness, and policy effectiveness remain. The income criterion continues to retain its ad-hoc nature in the present day, thus failing to capture appropriate regional differentials adequately. Additionally, the absence of strong verification measures has led to abuse, and demands for greater regulatory oversight are in order.

The exclusion of traditionally marginalized groups from EWS has also raised concerns on whether economic criteria should form the only criterion for affirmative action. The study also learns lessons from international affirmative action models, particularly from the USA and South Africa, that demonstrate that efficient affirmative action policy integrates economic as well as historical disadvantages without undermining meritocracy and social justice. India can learn from these lessons by refining the EWS policy with stricter eligibility criteria, an active review system, and complementary socio-economic empowerment schemes.

In summary, the EWS reservation policy is a paradigm shift towards economically based affirmative action in India. Appearing as a promising tool for socio-economic advancement, the EWS reservation policy requires sustained growth along with quantitative evidence and public consensus as well as legal oversight. The policy emerges as a powerful tool to advance fair opportunities but only if limitations are addressed properly and disadvantaged groups receive the intended benefits. This would make it an important driver of equitable chance.