INDIAN CONSTITUTION AND MARGINALIZED COMMUNITIES: A CASE STUDY OF AFFIRMATIVE ACTION IN INDIA

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ABSTRACT

In November, 2022 the Constitutional Bench of the Indian Supreme Court upheld the constitutional validity of the 103rd Constitutional (Amendment) Act, 2019 by a thin majority of 3:2. The majority opined that the 103rd Constitutional Amendment Act which provided for reservation in jobs and admission in educational institutions to the Economically Weaker Sections of the society other than those belonging to Scheduled Caste, Scheduled Tribes and Other Backward Classes is constitutionally valid. The majority further ruled that the amendment is in accordance with the basic structure doctrine. Furthermore, in exceptional circumstances the reservation can go beyond 50% and there is no cap in regard to the same.

It is pertinent to note that in India, there are few issues that arouse as much passion as those around reservations. In addition to judicial independence and land redistribution, reservation policies have seen the most conflicts between legislators and courts. These arguments might swing between two extremes. They either invoke impersonal ideals that disguise the fact that reservations are specific policies that have changed the public sphere or they concentrate on the details without considering the bigger picture of the constitution. As a result, a study upon this subject becomes very important.

KEYWORDS- *Constitution, Basic Structure, Reservation*

1. INTRODUCTION

In a complex social structure like India, attaining substantive and actual equality necessitates ongoing efforts to eliminate disparities, wherever they may exist and in whatever shape they may take. It is therefore necessary that state undertakes special measures to uplift the downtrodden and depressed classes. Additionally, compensatory discrimination is a legitimate kind of affirmative action with the primary objective of reducing discrimination and the ultimate objective of eliminating it in order to achieve true and substantial equality. This is what gave rise to reservation policy and affirmative actions in government operations in India.[1]

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[1] *Janhit Abhiyan v Union of India*, WP (C) 55/2019.

However, innumerable debates pertaining to the reservation policy of the government have been going on in India for decades now. The critics to these policies argue that affirmative action is in violation of Article 14 of the Constitution which provides for equality before law. On the other hand, the supporters argue that these policies are constitutionally protected. Afterall the Indian Constitution also provides for equal protection of laws and reservation is constitutionally permissible if we combinedly read Articles 14,15 and 16 which had been framed with an objective to make India an egalitarian society. In the last seven decades there have been innumerable constitutional amendments and constitution bench verdicts on affirmative action. Furthermore, there are multiple dimensions which needs to be looked while analysing reservation policy. As a result, a detailed study upon this subject becomes necessary.

1.1 OBJECTIVES OF STUDY

The authors in this research paper have studied about the legal history behind reservation policy in pre-independence and post-independence India. The authors have then gone through the Constituent Assembly Debates and various other reports pertaining to affirmative action in India. Furthermore, the authors have also analysed the verdicts of the Constitutional Courts. Lastly the authors have looked into the ways to ensure efficient implementation of the policy pertaining to affirmative action in India.

2. RESEARCH METHODOLOGY

The methodology for the present study is descriptive and analytical. The authors have critically analysed the laws on affirmative action and various judgments delivered by the Constitutional Courts in this regard.

3. HISTORICAL PERSPECTIVE OF AFFIRMATIVE ACTION IN INDIA

3.1 POSITION OF AFFIRMATIVE ACTION IN PRE-INDEPENDENCE INDIA

3.1.1 BRITISH GOVERNMENT AND DEPRESSED CLASSES

The term *"depressed classes"* was first used by the British to describe a variety of backward castes or tribes in India that were destitute, ignorant, or untouchable. The Christian priests and missionaries frequently referred to the "depressed classes" in this way. Low caste or marginalized communities in India were referred to as the "depressed classes" by figures like Gopal Krishna Gokhale and Annie Besant. Additionally, Annie Besant made a comparison between the

downtrodden class in India and the submerged tenth in England, which was made up of unskilled laborers, scavengers, sweepers, etc.[2]

Untouchables and criminal tribes were considered to be part of the Depressed Classes in a British Government report from 1914. A few years later, the depressed class group was expanded to include illiterate and backward communities. Eventually in the Hutton's Census of 1931 it was decided that only those communities who face the stigma of untouchability will be included in the depressed classes.[3]

The Montagu-Chelmsford Reform of 1919 did provide representatives of the depressed classes to be nominated into the legislative council. But it was not similar to the separate electorate system which was given to the Muslim Community under the Government of India Act of 1909. The Justice Party worked to reserve some seats in the Madras Legislature for non-Brahmins. But they were to be based on a common electorate rather than individual electorates.[4]

However due to continuous efforts of Dr BR Ambedkar the depressed classes were given separate electorate under the communal award of 1932. But, after stiff opposition from Gandhi and the Congress, Ambedkar relentlessly signed Poona Pact which stated that depressed classes won't get separate electorates, but certain seats will be reserved for the candidates hailing from the depressed class community. The seats reserved for them under the new system waws nearly double the number of seats provided in the Communal Award.[5] The Government of India Act, 1935 further stated that the colonial government had a unique obligation to guarantee the protection of minorities' legal interests in positions of public trust. A set number of reservations were made available to members of the Scheduled Caste Communities in 1943. Nevertheless, despite the introduction of reservations, the majority of the seats remained empty. Hence at the eve of independence the depressed class community did manage to get some political representation after years of struggle.[6]

3.1.2 PRINCELY STATES AND AFFIRMATIVE ACTION

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2 Dr. Abhinav Chandrachud, These Seats are Reserved: Caste, Quotas and the Constitution of India at 2 (1st edition, 2023).

3 *Id at 6.*

4 Marc Galanter, Competing Equalities: Law and the Backward Classes in India (1st edition, 1984).

5 Bhagwan Das, 'Moments in a History of Reservations,' Ambedkar (July 17, 2023, 8:00 a.m.), http://www.ambedkar.org/research/Bhagwandas.pdf.

6 Dr. Chandrachud, *supra* note 2, at 32.

In India, reservations were first implemented in the late 19th century in Princely States. Through the support of business and education, some of the progressive States had modernized society. For instance, the Princely States of Mysore, Baroda, and Kolhapur showed a great deal of interest in the uplift and improvement of the socially disadvantaged. Chhatrapati Shahuji Maharaj, the ruler of the princely state of Kolhapur, is credited for introducing affirmative action in 1902 by setting aside a portion of administrative positions for members of the depressed classes after allegedly being influenced by the egalitarian ideas of Jyotirao Phule. Even the Mysore State granted some reservations to the underprivileged classes based on the Miller Committee's recommendations.[7]

3.2 CONSTITUENT ASSEMBLY AND AFFIRMATIVE ACTION

On the grounds that reservation would hinder the effectiveness of the services, some members of the Constituent Assembly rejected reservations in government services. According to Loknath Misra, a quota system in public employment rewards incompetence and sluggishness. Public employment appointments ought to be made entirely on the basis of merit because they are not a fundamental right. Damodar Swarup Seth advanced similar justifications as well. Mahavir Tyagi was against reservation of seats in legislative bodies. He argued that only those members should be elected who can serve the country better.[8]

The most persuasive argument in support of reservations was given by H.J. Khandelkar. He claimed that there should be quotas for those from the Scheduled Caste community to hold political office and work in the public sector. He believed creating reservations would make up for the community's long history of persecution. Second, by offering reservations, India will be protected from a bloody uprising led by Harijan. Thirdly, due to decades of persecution and a lack of resources, the Scheduled Caste Candidates lack merit. Additionally, the hiring procedure is biased, which makes it difficult for applicants from Scheduled Castes to get hired. Therefore, it is essential that reservations be made for them. Most of the members of the Constituent Assembly agreed with this point of view.[9]

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

8 Dr. Chandrachud, *supra* note 2, at 44 & 45.

9 *Id at* 46.

4. CONSTITUTIONAL HISTORY OF AFFIRMATIVE ACTION IN POST-INDEPENDENT INDIA

4.1 INITIAL YEARS (1950s-1970s)

Champakam Dorairajan case[10] was the first case in independent India pertaining to reservation policy. In this case, the Apex Court ruled that "*a communal reservation system that set quotas for various communities and castes was unconstitutional*." As a result, Article 15(4) of the Constitution (First Amendment) Act was added. The following significant decision was M.R. Balaji v. State of Mysore,[11] in which the Apex Court ruled that "*reservations cannot only be based upon caste of an individual but must also meet the requirements of social and educational backwardness as stated in the text of the Constitution."* The law declared by the Apex Court in MR Balaji case was subsequently followed in the T. Devadasan case.[12] However Justice Subba Rao in a strong dissent highlighted the connections between Articles 14, 15, and 16, emphasizing that Article 16(4) was a part of Article 16(1).

A few years later the majority of the seven-judge constitution bench accepted the dissenting opinion of Justice Subba Rao (T. Devadasan Case) and upheld the law which exempted the candidates from Scheduled Caste category in appearing in departmental exams for a longer period than other candidates. The Apex Court ruled that *"the fundamental purpose of Articles 14, 15, and 16(1) and 16(4) is to allow creation of equal opportunity for groups that would have been precluded from appointment without them. Therefore, any preference for underprivileged groups could not be unconstitutional. Classification is permitted under Article 16(1), and Article 16(4) does not override this provision. A classification is acceptable if it covers all individuals who are in a similar situation to one another for the purpose in question."*[13]

4.2 THE INDRA SAWHNEY CASE

4.2.1 BACKGROUND OF THE CASE

Under Article 340 of the Indian Constitution, First Backwards Class Commission, also known as the Kaka Kalelkar Commission, was established in the year 1953. However, its report was largely disregarded. The Janata Dal established the Second Backwards Class Commission (Mandal Commission) in January 1979 under the direction of the then Prime Minister Moraji Desai. The commission's final report, which included suggestions for helping the Socially

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

11 *M.R. Balaji v. State of Mysore*, 1963 Supp (1) SCR 439.

12 *T. Devadasan v. Union of India* (1964) 4 SCR 680.

13 *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.

Educationally and Backward Classes (SEBCs) was released in December 1980. The Mandal Commission Report recommended a government quota of 27% for the SEBCs in addition to the existing 22.5 percent reserve for SCs and STs. This was eventually implemented a decade later which resulted in wide scale protests all over the country. Against this reservation policy, Indra Sawhney moved Apex Court.[14]

4.2.2 RULING OF THE COURT

The nine-judge bench decision in Indra Sawhney v. Union of India is the most authoritative ruling on the subject of reservations. The majority judges in this case affirmed Union Government's decision to provide 27 percent reservation to the other backward classes. The court ruled that *"Article 16 (4) alludes to social and educational backwardness when referring to backward classes of citizens. Article 16(4) is not an exception to Article 16(1); rather, it is a feature and element of the latter. A caste can be and frequently is a social class in India, but still caste alone cannot be used to determine social and educational backwardness. Because the indicators of class or group backwardness are social and educational backwardness with regard to the precise language of Articles 15(4) and 16(4), using the economic criterion is not permissible. Apart from that Article 16 (4) prohibits reservations with regard to promotion. Furthermore, to make sure that the most impoverished sectors weren't excluded, the state had to identify the creamy layer or more wealthy sections of other backward groups. Such categories were ineligible to receive the reservation advantage."*[15] The court further permitted sub-classification of castes for the purpose of reservation to the backward classes. Lastly the Apex Court imposed a ceiling of 50 percent which implies that reservation should not exceed the half-mark because then it will violate the principle of equality of opportunity. However, in exceptional circumstances the 50 percent ceiling can be breached.[16]

4.3 DEVELOPMENTS POST INDRA SAWHNEY JUDGEMENT

After the Indra Sawhney judgement in 1992, the concept of reservation in India continued to be implemented across various states and union territories. While the 50 percent cap on reservations has been predominantly adhered to for a considerable time, certain incidents have arisen wherein governments sought to introduce amendments to surpass this limitation. In some instances, specific states faced persistent demands from particular groups seeking greater reservation benefits, arguing that the existing quotas were insufficient in redressing historical

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

15 *Id*.

16 *Id*.

inequalities, whereas in some regions, political considerations played a role in the push for increased reservation.

4.3.1 STATUS QUO OF 50% RULE

The *Indra Sawhney* Judgement prompted the introduction of multiple constitutional amendments aimed at overriding the court's decisions on reservations.[17] The 77th Constitutional Amendment in 1995 was an important change that introduced Article 16(4A), overturning the Indra Sawhney judgement on the point of reservation in promotions. This amendment empowered governments to reserve seats for Schedule Castes and Schedule Tribes in promotional opportunities within government services.

In 2000, the Union Government, by 81st Amendment, inserted Article 16(4B), into the Constitution, that allowed the application of Carry Forward Rule which states that reserved promotion positions for SC/STs that are not filled to be carried over to the following year. Consequently, the government had the option to treat the backlog vacancies of Scheduled Castes and Scheduled Tribes, which were carried forward to future years, as a distinct category of vacancies when calculating the 50 percent reservation rule. This means that these unfilled positions from previous years could be considered separately from the regular vacancies when determining the reservation percentage to ensure compliance with the 50 percent cap. However, the Hon'ble Apex Court, in the Indra Sawhney case, ruled that although seats can be carried forward to subsequent years, the overall number of reserved seats cannot surpass 50 percent of the total available vacancies in any given year.

These amendments were challenged before a 5-judge bench in the case of *M. Nagaraj v Union of India (Nagaraj)*.[18] However, the Court upheld the validity of these amendment by affirming that it does not undermine any of the constitutional requirements. These requirements include the 50% ceiling-limit (quantitative limitation), the concept of creamy layer (qualitative exclusion), and the sub-classification between OBCs, SCs, and STs. The Court upheld Parliament's decision to widen the scope of reservations for SC/STs to encompass promotions. The Court clarified that unfilled vacancies should be treated as a separate category and should not be considered the same as vacancies of the specific year in which they are being filled. This distinction allows the 50% ceiling to be applied without affecting the reservation benefits for the marginalised communities.

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17 77th [Article 16(4A)], 81st [Article 16(4B)], 82nd [Proviso to Article 335], and 85th [Consequential Seniority] Constitutional Amendments.

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

4.3.2 RESERVATION IN PROMOTION

The Indian Constitution, particularly Articles 16(4) and 16(4A), forms the basis for the reservation in promotion policy. However, the Indra Sawhney Judgement initially disallowed reservation in promotion for SC/STs, citing potential adverse effects on service effectiveness. To address this, the 77th Amendment introduced Article 16(B), empowering the state to provide reservation in promotions for SCs and STs to ensure their adequate representation in public services.

In the case of *S. Vinod Kumar v. Union of India in 1996,*[19] the Supreme Court addressed the validity of a government memorandum allowing relaxed evaluation criteria for SC/ST candidates in promotions. The court ruled it violated Article 335, which pertains to maintaining service efficiency. Consequently, the 82nd Amendment added a proviso to Article 335, permitting the government to relax qualifying marks for SC/STs in promotions. However, in *Rohtas Bhankhar v. Union of India,*[20] the Supreme Court held that S. Vinod Kumar's Case is no longer a good law.

To balance affirmative action and seniority, the Supreme Court introduced the 'catch-up rule.' This rule ensures that if a junior SC/ST candidate is promoted above their senior counterpart, the senior employee regains seniority upon reaching the same level. However, the 'catch-up rule' doesn't apply if the junior candidate is promoted to a higher level before the senior candidate.

In *Union of India v. Virpal Singh Chauhan*[21] and *Ajit Singh Januja v. State of Punjab,*[22] the court clarified that the 77th Amendment did not grant 'consequential seniority' to SC/ST candidates despite accelerated promotions. Consequently, the 85th Amendment amended Article 16(4A) to ensure SC/ST candidates receiving 'accelerated promotions' obtained 'consequential seniority.'

Subsequently, the *Nagaraj judgemen*t[23] laid down three essential conditions for providing reservations in promotions for SC/STs: demonstrating their backwardness, underrepresentation in specific positions (requiring quantifiable data), and justifying reservations for administrative efficiency.

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19 *S. Vinod Kumar v. Union of India in 1996, (1996) 6 SCC 580 (para 5,9).*

20 *Rohtas Bhankhar v. Union of India*, (2014) 8 SCC 872

21 *Union of India v. Virpal Singh Chauhan,* (1995) 6 SCC 684.

22 *Ajit Singh Januja v. State of Punjab,* (1996) 2 SCC 715.

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

In *Jarnail Singh v Lacchmi Narain Gupta*,[24] the court modified Nagaraj's 'further backwardness' condition, exempting SC/ST reservations from requiring quantifiable data. However, it introduced the application of the creamy layer exclusion principle to SC/STs, which was previously applicable only to OBCs in reservation matters.

4.3.3 EXCEPTION OF 50% RULE: QUANTIFIABLE DATA OR EXTREME CAUTION

The 50 per cent reservation rule and its exceptions have been the subject of various judicial interpretations in India. In the case of *S.V Joshi v. State of Karnataka,*[25] the Supreme Court seemingly introduced a new exception to the 50 per cent cap, relying on previous judgments like Nagaraj[26] and Ashok Thakur cases.[27] It suggested that a state could exceed the cap if it had quantifiable data to support its decision. However, it's worth noting that both Nagaraj and Ashok Thakur cases did not directly address the issue of surpassing the 50 per cent cap on quotas, nor did they explicitly provide support for this interpretation.

The Bombay High Court, relying on the S.V. Joshi judgment, upheld Maharashtra's decision to exceed the 50 per cent limit for the Maratha community. However, the Supreme Court, on appeal, reversed this decision and clarified that the S.V Joshi judgement does not permit governments to breach the 50 per cent cap based solely on quantifiable data. It emphasised that the 50 per cent cap on reservations can only be breached in exceptional situations, following the principles laid down in the landmark Indra Sawhney judgement. In the case of Marathas, as they were found to be adequately represented, their reservations beyond the 50 per cent cap were not allowed.[28]

In the case of *Chebrolu Leela Prasad Rao v. State of AP*,[29] the Supreme Court allowed for some breach of the 50 per cent reservation rule, but with extreme caution. It acknowledged that in special cases, there may be exceptions to the 50 per cent cap. However, it ruled that the Andhra Pradesh government's decision to implement 100 per cent reservations for Scheduled Tribes in teaching positions in scheduled areas was unreasonable and unfair, even though the government justified it by citing high teacher absenteeism.

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24 *Jarnail Singh v Lacchmi Narain Gupta*, (2018) 10 SCC 396.

25 *S.V Joshi V. State of Karnataka,* (2012) 7 SCC 41.

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

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

28 *Jaishri Laxmanrao Patil v Chief Minister, Maharashtra*, Civil Appeal No.3123 of 2020.

29 *Chebrolu Leela Prasad Rao v. State of AP*, Civil Appeal No. 3609 of 2002, judgement dated 22 April 2020.

Moreover, in the same case, the Supreme Court directed the exclusion of affluent groups within Scheduled Castes and Scheduled Tribes from the reservation lists. This move aimed to ensure that the benefits of reservation policies reach those who genuinely need them and prevent any misuse of reservation quotas by the more privileged members within these communities.

4.3.4. RESERVATION IN PRIVATE SECTOR

The 93rd Constitutional Amendment Act of 2005 added clause (5) to Article 15 of the Indian Constitution, giving the government the authority to make special provisions for the development of backward classes, Scheduled Castes, and Scheduled Tribes in matters related to their enrolment in educational institutions, including private ones.

The reason for the amendment was the ruling of the Supreme Court in the case of *P.A. Inamdar v. State of Maharashtra*,[30] where it was stated that reservations could not be applied to private non-minority educational institutions that did not receive any financial aid from the government.

The purpose of the amendment was to increase access to quality education, especially in professional courses, for students from disadvantaged backgrounds. It aimed to promote educational and economic interests and safeguard the socially and educationally backward classes of people from social inequality. However, the amendment was challenged in court, with arguments both for and against its constitutionality.

Eventually the Supreme Court upheld the validity of the amendment and reasoned that the classification of socially and economically backward classes was not solely based on caste, and therefore, it did not violate Article 15(1) of the Constitution.[31] The Court recognized Article 15(5) as an empowering clause aligned with the objectives of socialism and the directive principles of state policy. Despite the criticism, the 93rd Amendment Act continued to be in effect, allowing reservation of seats for Scheduled Castes, Scheduled Tribes, and Other Backward Classes in central educational institutions.

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30 *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537 (Para. 124,125, 128-130)

31 *Indian Medical Association v. Union of India*, (2011) 7 SCC 179; *Pramati Education and Cultural Trust v. Union of India*, (2014) 8 SCC 1 (para 38).

5. RESERVATION FOR ECONOMICALLY WEAKER SECTION: A CONCEPTUAL DISCUSSION

The Constitution (One Hundred and Third Amendment) Act, 2019,[32] passed by the Parliament of India, marked a pivotal moment in the country's reservation policy. The amendment aimed to introduce reservations for economically weaker sections (EWS) in higher education and public employment. It amended Articles 15 and 16 of the Indian Constitution by inserting 15(6) and 16(6), respectively, thereby enabling the State to make provisions for the advancement of economically disadvantaged citizens, regardless of their social background.

The main objective of the amendment was to provide reservations to economically weaker sections of citizens who did not fall under the categories of Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). EWS communities would be identified based on specified economic criteria, such as a gross annual income below Rs 8 lakh and the absence of certain property holdings.

The amendment authorised the State to reserve seats for EWS in all educational institutions, including private institutions, both aided and unaided. However, minority educational covered under Article 30(1) of the Constitution were exempt from this provision. Article 16(6) of the Constitution, introduced by the amendment, allowed the State to make provisions for reservations in government jobs for the EWS category. This provision was subject to the same 10% ceiling limit as the reservations in educational institutions.

The introduction of the Constitution (One Hundred and Third Amendment) Act, 2019, faced significant challenges in the Supreme Court. More than institutions 20 petitions were filed challenging the constitutional validity of the amendment on various grounds:

- *Violation of Article 14 (Right to Equality)*: Petitioners argued that reservations based solely on economic criteria violated the fundamental right to equality, as the Supreme Court's previous judgments in cases like *Indra Sawhney v. Union of India (1992)* had emphasised the importance of social backwardness as a criterion for reservations.
- *Exclusion of SCs, STs, and OBCs*: Critics contended that excluding SCs, STs, and OBCs from the scope of EWS reservations resulted in a form of upper-caste reservation. They argued that this departure from the traditional reservation system was inconsistent with the principles of equality and social justice.

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[32] The Amendment came into force on 14 January, 2019.

- *Breach of 50% Reservation Limit*: The amendment allowed for an additional 10% reservation for EWS, which led to concerns that it exceeded the 50% reservation limit established by earlier Supreme Court judgments, such as *M.R. Balaji's case*.[33]

On November 7th, 2022, the five-judge bench delivered its verdict with a 3:2 split. Justices Maheshwari, Trivedi, and Pardiwala wrote separate concurring opinions upholding the constitutionality of the amendment and EWS reservations. However, Justice Bhat, along with Chief Justice U.U. Lalit, dissented from the majority, expressing their disagreement with the validity of the amendment.[34]

The 103rd Constitutional Amendment has marked a significant shift in India's reservation policy. The departure from traditional system of reservations based on social backwardness raised debates and concerns about its effectiveness and potential impact on existing reserved categories. The amendment aimed to address economic disparities and uplift economically weaker sections, but it has also sparked discussions on the intricacies of India's affirmative action policy and the delicate balance between addressing economic inequality and social representation.

6. RECOMMENDATIONS

a. *Data-driven Policies*: Reservation policies should be formulated based on accurate and up-to-date data that reflects the actual backwardness and need for representation in different communities. Regular data collection and analysis will ensure the policies' effectiveness and relevance.

b. *Periodic Evaluation:* Regular evaluations of reservation policies are essential to assess their impact and make necessary adjustments. Policymakers must monitor the outcomes and address any shortcomings to enhance the policies' efficacy.

c. *Merit and Skill Development:* Alongside reservations, emphasis should be placed on skill development and quality education for historically marginalised communities. Providing equal opportunities for education and training will empower individuals to compete on merit and uplift their socio-economic status.

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

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

d. *Inclusive Consultation:* While formulating and amending reservation policies, inclusive consultations with representatives from marginalised communities, experts, and academics are vital. This will ensure that the policies address the diverse needs and perspectives of the affected groups.

e. *Transparency and Accountability:* Implementing agencies must be held accountable for the proper implementation of reservation policies. Transparency in the allocation of reserved seats will prevent misuse and discrimination.

f. *Horizontal Reservations:* Implementing horizontal reservations effectively will ensure adequate representation for women, differently-abled individuals, and other marginalised groups in various sectors.

g. *Public Awareness:* Creating awareness about the importance of affirmative action and reservation policies in promoting social justice will help reduce resistance and misconceptions surrounding these policies.

Affirmative action and reservation policies have been instrumental in addressing historical disadvantages and promoting social justice in India. By adhering to the principle of "adequate representation" and implementing the above recommendations, India can move forward as a progressive and inclusive society, empowering all its citizens to contribute to the nation's development on an equal and merit-based footing.

7. CONCLUSION AND SUGGESTIONS

"We cannot have equality because in trying to attain equality we come up against some principles of equality."

\- Pandit Jawaharlal Nehru

The history of affirmative action and reservation policies in India reflects the nation's unwavering commitment to promoting social justice and addressing historical inequalities. The framers of the Indian Constitution envisioned a society where every citizen would have equal opportunities and access to resources, regardless of their background. The introduction of reservation was intended to provide adequate representation to historically marginalised and oppressed communities, allowing them to compete on an equal footing based on merit while also promoting social justice.

The use of the term "adequate" in Article 16(4) of the Constitution signifies the intent to strike a balance between social justice and meritocracy. This choice of

terminology harks back to Dr. B.R. Ambedkar's speech, where he advocated that reservations should be limited to a minority of seats. This approach ensures that reservation policies empower the underprivileged without compromising the efficiency and effectiveness of public services. The framers recognized that while reservations are crucial to rectify historical injustices, they should not dominate the entire system or lead to an imbalance in the functioning of government institutions.[35]

The observation made by the Hon'ble Supreme Court in various judgements, stating that reservation is not an exception to the right to equality of opportunity but an integral part of the right to equality, highlights the significance of affirmative action in promoting social justice and inclusivity. However, it is important to note that this does not imply proportional reservation, where the reservation percentage would be directly linked to the population of specific communities. Such an approach would indeed lead to a never-ending cycle of increasing reservation quotas as the population grows, which is not practical or sustainable in the long run. Instead, the essence of reservation lies in the principle of "adequate representation," which empowers historically marginalised communities to participate in various spheres of public life based on their merit and capabilities.

While reservation policies have played a significant role in promoting inclusivity, they should not be utilised solely as a political tool to appease vote banks. Implementing reservations without considering the actual backwardness and need for representation may lead to undeserving candidates benefiting while compromising the quality of services and perpetuating inequality.

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[35] Dr. Abhinav Chandrachud, these seats are reserved: Caste, Quotas and the Constitution of India at 37 (1st edition, 2023).