



Bridging historical Injustices: The role of affirmative action in realizing social justice for SCs and STs in India

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Abstract

Affirmative action is a strategic policy mechanism aimed at addressing historical and systemic inequalities by ensuring equitable access to education, employment, and social welfare for marginalized communities. In the Indian context, affirmative action is primarily implemented through reservation policies targeted at Scheduled Castes (SCs) and Scheduled Tribes (STs), communities historically oppressed under the rigid social hierarchy of the caste system. These policies seek to promote social justice by enabling SCs and STs to participate more fully in public life, thereby enhancing their social, economic, and political status. Social justice is a concept that seeks to establish a fair and equitable society by ensuring equal rights, opportunities, and social status for all individuals, irrespective of their background. It aims to eliminate social hierarchies, economic disparities, and discrimination, promoting a just social order where every individual can achieve their potential with dignity and respect. In India, social justice is not just a moral ideal but a constitutional mandate embedded in the Preamble, Fundamental Rights (Articles 14-18), and Directive Principles of State Policy (Articles 38, 39, 46) of the Indian Constitution. Affirmative action is not merely a compensatory measure but a transformative policy aimed at dismantling historical hierarchies and achieving social justice. It aligns with Rawls' Theory of Justice, which advocates for policies that benefit the least advantaged sections of society. In the Indian context, affirmative action for SCs and STs seeks to create a level playing field by addressing historical injustices, promoting social integration, and empowering marginalized communities.

Keywords: Affirmative action, reservation policy, social justice, Scheduled Castes (SCs), Scheduled Tribes (STs), Indian Constitution

Introduction

The formation of the Advisory Committee within the Constituent Assembly on January 29, 1947, was a significant milestone in India's pursuit of inclusive governance. Pandit Govind Ballabh Pant underscored the importance of elevating the Depressed Classes, Scheduled Castes, and Backward Classes, asserting that bridging the gap between these groups and the general populace was vital for national unity and strength. He compared the nation to a chain, emphasizing that its strength is determined by its weakest link, and until every link is revitalized, the body politic cannot be considered healthy^[1].

The Draft Constitution, prepared by the constitutional advisor in October 1947, laid the foundation for a secular and democratic India. It prohibited discrimination based on religion, race, caste, or sex, ensuring equal access to public facilities and reserving posts for classes that were underrepresented in state services. This approach aimed to rectify historical injustices and promote social equity. B.R. Dr. B R Ambedkar's role in the Constituent Assembly was both pivotal and transformative. As Chairman of the Drafting Committee, his influence permeated the Indian Constitution's approach to social justice, minority protection, and structural equality.

Constituent Assembly vis-à-vis Reservation Policy

The Dual Approach to Minority Protection

The Constituent Assembly adopted a balanced approach to minority protection, addressing both the potential volatility of minority unrest and the inclusive ideals of a democratic state. Dr. B R Ambedkar and other members were acutely

aware of the dangers posed by marginalizing minorities. As stated in the debates, "minorities are explosive forces," and their inclusion was seen as essential for national integrity. Consequently, the Assembly granted certain safeguards—though limited—to Scheduled Castes while moving away from communal reservations in favor of more universal protections through Fundamental Rights.

Redefining the Concept of Minorities

The debates saw a shift from a narrow, political definition of minorities to a broader, cultural and linguistic one. Dr. B R Ambedkar clarified that the term "minority" in Articles 29 and 30 was meant not only for religious groups but for any community with distinct language, culture, or script. This inclusive interpretation aimed at preserving India's pluralistic identity, extending protection to all vulnerable communities, including internal migrants.

Abandoning Communal Reservations

To maintain national unity and prevent further division, the Constituent Assembly rejected the idea of separate electorates and reserved cabinet seats for minorities. Instead, minority interests were safeguarded through:

- Fundamental Rights such as freedom of religion and cultural expression.
- Specific provisions outside the Fundamental Rights framework, such as representation in legislatures and civil services.

Only the Scheduled Castes received constitutional reservation in public services, reflecting their unique socio-

economic disadvantage and the need for state intervention to redress historical injustices.

Dr. B R Ambedkar's Vision of Social and Political Equality

Dr. B R Ambedkar warned against the coexistence of political equality with social and economic inequality. He argued that such a contradiction would eventually destabilize the democratic framework. For him, Fundamental Rights were not ending in themselves but instruments to transform an unequal society into a just and inclusive one^[2].

He emphasized the necessity of adult franchise and access to education for the Scheduled Castes to ensure their political empowerment and eventual social mobility.

Citizenship and Uniform Identity

One of Dr. B R Ambedkar's major contributions was advocating for a uniform concept of Indian citizenship. He opposed dual or differentiated citizenship as seen in some federal systems and insisted on a single, national identity. This was a decisive step in promoting unity and equal status among all Indian citizens.

Drafting Clarity and Judicial Interpretations of Reservation provisions.

Dr. B R Ambedkar's legal expertise was instrumental in ensuring clarity in constitutional language. For example, his precise definitions during debates such as interpreting "shop" and "tanks" in Article 15 laid the groundwork for consistent judicial interpretations. He also supported amendments that anticipated future misuse, such as the inclusion of "place of birth" as a prohibited ground of discrimination.

Protective Discrimination and Debates on affirmative action policy

The idea of protective discrimination emerged as a means to equalize opportunities for historically marginalized communities. While the Constitution did not explicitly prescribe a timeline for reservations, many members including Dr. B R Ambedkar understood them to be transitional measures^[3].

There were also concerns about casteism and favoritism. Some members, like Damodar Das Seth, argued for limiting reservations to education and leaving job appointments to merit. Nevertheless, Dr. B R Ambedkar insisted that social justice could not be achieved without addressing structural inequities through affirmative action.

National Unity through Social Integration

Dr. B R Ambedkar showed optimism during the Assembly debates, he acknowledged India's diversity but firmly believed in the possibility of national unity through social reform and inclusive policies. He viewed the preferential treatment of Scheduled Castes as a necessary step towards building a unified and equitable nation.

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vital for national unity and strength. He compared the nation to a chain, emphasizing that its strength is determined by its weakest link, and until every link is revitalized, the body politic cannot be considered healthy^[4].

Constitutional Assembly Debates

The Constituent Assembly was formed in December 1946, but its creation was not without challenges. Initially, it did not have full sovereignty, but it gradually took on sovereign powers. A scholar, comparing India's Constituent Assembly with the Philadelphia Convention of 1787 in the U.S. and the French States-General of 1789, pointed out that while the American and French bodies had only a broad vision, India's political landscape was already shaped by strong political parties by the time the Assembly convened. These parties helped consolidate the socio-economic forces of the nation^[5].

Over the next three years, the Assembly worked diligently to draft what would become the world's lengthiest constitution. The ideals promoted during the Freedom Movement had to be put into concrete constitutional terms. One of the key concerns was protecting the rights of socially disadvantaged groups. The goal of building an equal society was passionately advocated by leaders like Nehru. At the time, reservation policies were discussed, justified, and incorporated in the spirit of national unity, aiming to bring historically marginalized groups into the mainstream. Nehru emphasized that these communities needed special support in education, economics, and politics until they became self-reliant.

When Nehru introduced the "Aims and Objectives" resolution (which later inspired the Preamble), most members supported it, but Dr. B R Ambedkar expressed disappointment. He expected a more progressive stance from Nehru and criticized the resolution as being repetitive and lacking in practical remedies, comparing it to the French Declaration of the Rights of Man. He felt that these principles were already universally accepted and that simply restating them was unnecessary^[6].

The Congress leadership spoke strongly in favor of protecting the rights of the Depressed Classes and offering them appropriate safeguards. However, there were doubts about how effective these measures would be. A member from Madras opposed the idea of separate electorates for Scheduled Castes, arguing that as long as these communities remained economically dependent, elections would be meaningless since other parties could easily manipulate them. He was against any kind of reservation, believing it would not bring true empowerment.

In contrast, a Harijan member named Nagappa firmly supported reservation. He highlighted the historical exploitation of Scheduled Castes and emphasized the need for their inclusion through reserved seats. Unlike the Scheduled Caste representatives, the Scheduled Tribes voiced different concerns. Jaipal Singh from Bihar argued that Adivasis, the original inhabitants of India, had suffered centuries of neglect. He accused newer populations of driving them from the Indus Valley into forests. He stressed that Adivasis were inherently democratic and didn't need to be taught democracy. What they needed was protection from the political system and fair treatment, including better representation for both men and women from their communities^[7].

Some members also expressed frustration. H. J. Kandekar, for example, pointed out the injustice under the Poona Pact, citing how the Scheduled Castes in Central Provinces were underrepresented despite making up 25% of the population. He demanded representation based on population size.

The clause in the draft Constitution banning untouchability was widely welcomed. Over time, the right against discrimination was shaped into what we now understand as protective discrimination, or affirmative action. Scholar Nesiah noted that unlike Martin Luther King Jr., Dr. B R Ambedkar held significant authority as Chairman of the Drafting Committee and as Law Minister allowing him to directly influence policies for Dalit rights. While some believed his cabinet position symbolized a change in attitude among caste Hindus, others viewed it as a strategic political move by the Congress, which merely utilized Dr. B R Ambedkar's legal skills without giving him real power^[8].

The discussions on minority rights, which Sardar Patel led, focused on ensuring legislative representation and allowing minorities to contest general seats. While some groups, like the Muslim League and sections of the Scheduled Castes, demanded a minimum vote percentage for candidates, this proposal was eventually rejected by the majority.

P.S. Deshmukh found the report acceptable but raised concerns about the so-called majority being marginalized. He argued that while minority rights were being secured, the needs of rural and neglected populations were still being overlooked, even under Congress leadership. He urged that power should be shared fairly among all communities.

Members like Nagappa and Jaipal Singh continued to demand representation in proportion to their populations and inclusion in cabinet positions. Initially, the Constitution proposed a ten-year limit for reservations in legislatures. Although Scheduled Caste members were not satisfied with this, they accepted it after Nehru convinced them it was in their best interest. They believed Parliament could revisit the issue later if necessary.

Still, there were dissenting voices. Mahvir Tyaggi, for example, criticized the idea of reservation, arguing that it would not genuinely help the Scheduled Castes. Despite ongoing debates, Parliament has periodically extended reservation provisions beyond the original ten-year term.

B.R. Dr. B R Ambedkar and the Constituent Assembly Debates

B.R. Dr. B R Ambedkar, though unsuccessful in securing a seat from Bombay, was elected to the Constituent Assembly through the support of the West Bengal Legislative Assembly. He was subsequently appointed as a member of the Drafting Committee and later chosen as its Chairman. The Assembly first convened on December 9, 1946, and attained sovereign status on August 15, 1947. The first draft of the Constitution was introduced on November 4, 1948, and the final version was adopted on November 26, 1949.

Dr. B R Ambedkar's principal mission within the Constituent Assembly was the protection and advancement of the Scheduled Castes. He famously clarified that he had no personal ambition to draft the Constitution. In response to criticisms that the draft resembled the Government of India Act, 1935, Dr. B R Ambedkar argued that borrowing sound principles from existing frameworks was pragmatic, not shameful. He emphasized that the task of the Assembly was not to reinvent governance from scratch, but to modernize and adapt pre-existing structures to suit the

aspirations of an independent India particularly by addressing communal divisions.

Dr. B R Ambedkar was deeply concerned about the contradiction between political equality and the pervasive social and economic inequalities in Indian society. He warned that unless these disparities were resolved, the promise of democracy could collapse under the weight of systemic injustice. According to him, real democracy required not only legal and political rights but also substantial social reform.

On the issue of citizenship, Dr. B R Ambedkar highlighted a crucial feature of the Indian Constitution: the establishment of a single, uniform citizenship for the entire nation, unlike the dual citizenship systems prevalent in some federal countries. He clarified that residents from dominion countries in India would not be regarded as aliens but would also not be entitled to full Indian citizenship rights.

Dr. B R Ambedkar also addressed concerns regarding minority rights, particularly in relation to Articles 29 and 30 of the Constitution. He explained that the term "minority" in these provisions was used not in a political but a cultural and linguistic context. The objective was to safeguard cultural identity and linguistic rights, including script and educational institutions, for all communities not just politically designated minorities. He believed that the advancement of Scheduled Castes through education and equal treatment would eventually dissolve the stigma of untouchability. In his view, fundamental rights were meaningful only if they promoted genuine social equality.

The Assembly was united in its broader vision: to craft a Constitution that would serve as an instrument of social revolution. Leaders like Jawaharlal Nehru stressed that constitutional formalities were futile unless they brought transformative change to the lives of ordinary Indians. As Devendranath Samanta remarked, the sacrifices made during the independence movement demanded that the Constitution be directed towards the welfare of the masses.

The "Objective Resolution," a foundational document passed by the Constituent Assembly, encapsulated the vision of justice- social, economic, and political alongside the values of liberty, equality, and fraternity. It committed the nation to the protection of minorities, backward communities, and tribal groups.

A significant moment in the Assembly came on November 29, 1948, when Syed Abdul Rauf proposed an amendment to include "place of birth" in the list of prohibited grounds for discrimination in Article 15. He warned that local biases could be used to undermine national unity and advocated this addition as a safeguard. Dr. B R Ambedkar accepted the amendment, and it was incorporated into the Constitution.

Dr. B R Ambedkar also clarified the scope of various terms in the Constitution. For instance, the word "shops" in Article 15 included commercial establishments like barbershops, but not laundry services. Similarly, "tanks" referred to public ponds, and "places of public resort" included cemeteries and cremation grounds maintained by public funds.

Another important amendment replacing the term "revenues of the state" with "state funds" in Article 15, was introduced by Dr. B R Ambedkar himself to simplify and clarify the provision^[9].

Concerns were raised by Assembly members like Damodar Das Seth about the potential misuse of reservation policies, fearing they could foster casteism and favoritism. Although

the Constitution uses the term “backward classes” rather than “castes,” the risk of caste-based interpretations was recognized. Some members, acknowledging the deep historical deprivation of backward communities, even suggested that reservations might need to continue for as long as 150 years to compensate for centuries of exclusion. Damodar DasSeth advocated for improving access to education and opportunities for backward groups but insisted that public appointments should be based solely on merit, with no concessions.

K.M. Munshi emphasized that “backward classes” should refer to any group—regardless of label that is so socio-economically disadvantaged that state support is essential for their inclusion in public life^[10].

While Dr. B R Ambedkar remained a firm advocate for the Scheduled Castes, his tone during the debates also reflected pragmatism and hope. He acknowledged the fragmented and unequal nature of Indian society but expressed confidence that, with time, India would evolve into a unified nation. He viewed the temporary need for preferential treatment not as a permanent fixture, but as a necessary step towards building a cohesive, egalitarian society.

The Concept of Reservation

The Draft Constitution, prepared by the constitutional advisor in October 1947, laid the foundation for a secular and democratic India. It prohibited discrimination based on religion, race, caste, or sex, ensuring equal access to public facilities and reserving posts for classes that were underrepresented in state services. This approach aimed to rectify historical injustices and promote social equity.

A significant debate ensued regarding the reservation of seats for minorities. On December 30, 1941, the Advisory Committee moved a resolution to abolish such reservations, aiming to curb the rise of communalism. However, on May 25, 1949, the Constituent Assembly decided to retain seat reservations for Scheduled Castes and Scheduled Tribes. Jawaharlal Nehru hailed this decision as a historic turning point for the nation. K.T. Shah, another prominent figure, argued that special provisions were necessary for certain societal classes that, due to historical disadvantages, required affirmative action to achieve real equality^[11].

The struggle of Intermediate and Backward caste groups to gain political influence and secure adequate representation within the Congress party and the government intensified following India's independence. This pursuit highlighted the ongoing commitment to social justice and the upliftment of marginalized communities.

The emancipation of depressed castes began during British rule, with leaders like Dr. B R Ambedkar and Mahatma Gandhiji advocating for their rights. The real constitutional provisions for their protection materialized post-independence, with the Constitution serving as a tool for social, economic, and political transformation. The Preamble envisions India as a Sovereign, Socialist, Secular, Democratic Republic, dedicated to securing justice social, economic, and political—for all its citizens^[12].

Articles 37 and 39 of the Directive Principles of State Policy further emphasize the state's role in promoting the welfare of the people, striving to minimize economic inequalities, and ensuring equitable distribution of resources. Article 16(4) specifically addresses employment under the state, allowing for reservations to promote equality. This includes preferences in promotions within services, ensuring that

marginalized communities have fair representation in public offices.

Part XVI of the Constitution introduces special provisions for certain classes, notably Scheduled Castes, Scheduled Tribes, and Socially and Educationally Backward Classes (OBCs). Initially, reservations in legislative bodies were based on population proportions, intended for a decade but extended through subsequent amendments. For OBCs, the Constitution under Article 340 mandates the establishment of a Commission to investigate their conditions and recommend measures for their advancement.

The First Backward Classes Commission, led by Kaka Saheb Kelkar in 1953, identified 2,399 castes as socially and educationally backward and recommended various welfare measures, including reservations. However, the government did not implement these recommendations due to concerns about the criteria used. A more comprehensive approach was adopted with the Second Backward Classes Commission, known as the Mandal Commission, appointed in 1978 under B.P. Mandal. Its 1980 report led to significant policy shifts, including the recommendation for 27% reservations for OBCs in government jobs^[13].

The implementation of the Mandal Commission's recommendations in 1990 sparked widespread reactions, including protests and debates about merit and social justice. The Supreme Court upheld the reservations but mandated that they be implemented with strict adherence to constitutional provisions. Subsequent governments introduced measures like the 10% reservation for economically weaker sections among the forward castes, adding complexity to the affirmative action landscape.

Constitutional Framework for Affirmative Actions in India

By 1947, the foundations of affirmative action in India had already been laid, but the extent and scope of these policies have expanded significantly since then arguably beyond what even Dr. B R Ambedkar could have envisioned. The Indian Constitution of 1950 serves as the cornerstone for affirmative action policies that developed throughout the latter half of the twentieth century. Several constitutional provisions form the legal framework underpinning these measures.

The Preamble and Foundational Values

The Preamble of the Indian Constitution articulates fundamental values of justice, liberty, equality, and fraternity. These values are deeply aligned with the objectives of affirmative action, especially in promoting the welfare of disadvantaged groups. Dr. B R Ambedkar emphasized that these principles liberty, equality, and fraternity are not isolated ideals but a cohesive trinity. Separating one from the other undermines the very essence of democracy.

Provisions on Equality: Articles 15 and 16

Articles 15 and 16 prohibit discrimination on grounds such as religion, race, caste, sex, or place of birth. However, to reconcile the need for social justice with these guarantees of formal equality, specific clauses were incorporated. Article 16(4) of Indian Constitution authorizes the State to make provisions for the reservation in appointments or posts for any "backward class of citizens" inadequately represented in public services. Initially, Articles 15(4) and 16(4) Indian

Constitution were viewed as exceptions to the broader equality clauses. However, the Supreme Court in *State of Kerala v. N.M. Thomas* ^[14] dismissed this interpretation. The Court held that these provisions are not exceptions but instruments designed to fulfill the promise of substantive equality envisaged in Articles 14, 15(1), and 16(1).

Article 15 of Indian Constitution, while generally prohibiting discrimination, includes provisions that allow both the Union and State governments to implement special measures for the socially and educationally disadvantaged sections of society, including Scheduled Castes (SCs) and Scheduled Tribes (STs). This clause was added through a constitutional amendment in 1951, primarily to address judicial rulings that had invalidated certain reservation policies in educational admissions. The amendment reflects strong political support for affirmative action, despite initial reservations from leaders like Nehru.

Article 15 of Indian Constitution

- **Clause (4):** enables the state to make special provisions for the advancement of socially and educationally backward classes (SEBCs), or for the Scheduled Castes (SCs) and Scheduled Tribes (STs) ^[15].
- **Clause (5):** allows special provisions for SEBCs/SCs/STs in educational institutions, including private ones (excluding minority institutions) ^[16].
- **Clause (6):** enables reservation of up to 10% for economically weaker sections (EWS) in educational institutions ^[17].

Similarly, Article 16, which guarantees equality of opportunity in public employment, permits the reservation of posts for any backward class of citizens that, in the opinion of the State, is inadequately represented in public services. It also allows for similar provisions in favor of SCs and STs.

Article 16 of Indian Constitution

- **Clause (4):** Permits the state to make provisions for reservation in public employment for any backward class not adequately represented.
- **Clause (4A):** Allows reservation in promotions for SCs and STs ^[18].
- **Clause (4B):** Ensures that the ceiling limit of 50% on reservations does not apply to backlog vacancies ^[19].
- **Directive Principles of State Policy:** Articles 38 and 46 Indian Constitution

Although not enforceable in a court of law, the Directive Principles of State Policy provide crucial guidance. Article 38 mandates the State to promote a social order informed by justice—social, economic, and political and to minimize inequalities in income and status. Article 46 specifically calls for the State to safeguard the educational and economic interests of weaker sections, particularly the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and exploitation ^[20].

Political Representation: Articles 330, 332, and 334 Indian Constitution

These Articles provide for the reservation of seats for Scheduled Castes and Tribes in the Parliament and State Legislatures. Although originally intended for a ten-year period, this provision has been extended repeatedly through constitutional amendments, reflecting the continued relevance of such measures. Article 330 of the Indian Constitution provides safeguards for political representation by reserving seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha, proportionate to their population in each respective state. These reservations are also extended to the legislative assemblies of the states to ensure a minimum level of representation for these communities in legislative bodies. Originally, under Article 334, this reservation was intended to last for only ten years from the commencement of the Constitution. However, this duration has been repeatedly extended in ten-year increments ever since ^[21].

Affirmative Action and Administrative Efficiency: Article 335 Indian Constitution

Article 335 mandates that while considering appointments to public services, the claims of Scheduled Castes and Tribes must be considered, provided that administrative efficiency is not compromised. This provision attempts to balance affirmative action with institutional performance. The Supreme Court, for instance, rejected the argument that reservations had caused an increase in railway accidents, reaffirming that efficiency need not be sacrificed for inclusion. Article 335 of the Constitution states that the claims of members belonging to the Scheduled Castes (SCs) and Scheduled Tribes (STs) should be considered while maintaining the efficiency of public administration. To support the advancement of SCs and STs in line with policies aimed at their economic development, a National Commission was established to monitor, review, and evaluate their progress. Additionally, another commission was set up to examine the conditions of socially and educationally backward classes. It is striking to observe that the reservation provisions in the Constitution specifically allow for certain exclusive measures, even though the document prohibits discrimination based on caste, race, and other such grounds. Furthermore, the very structure of India's caste system deeply rooted in birth-based hierarchies—stands in contradiction to the principles of social justice and equality ^[22]

Backward Class Commissions: Article 340 Indian Constitution

Article 340 empowers the President to appoint commissions to examine the social and economic conditions of backward classes. The First Backward Classes Commission (Kaka Kalelkar, 1953) and the Second (B.P. Mandal, 1978) laid the foundation for subsequent affirmative action policies. The latter, popularly known as the Mandal Commission, had a significant impact on reservations in education and employment. India's Constitution stands out for its provision of special protections to certain marginalized social groups, particularly Scheduled Castes (SCs) and Scheduled Tribes (STs), through mandated reservations as a form of safeguard. Additionally, the Constitution extends protections to other backward classes (OBCs), even though it does not explicitly define the term "backward classes." A

key distinction lies in the fact that SCs and STs are constitutionally recognized communities, whereas backward classes can be found across all religious communities Hindus, Muslims, Christians, and others. The identification of these backward classes is carried out by both central and state governments, in accordance with constitutional safeguards. This responsibility is vested in the President of India under Article 340(1) of the Constitution, which empowers the President to establish a commission for identifying socially and educationally backward classes, composed of members he deems appropriate [23].

Defining Scheduled Groups: Articles 341, 342, 366(24), and 366(25) Indian Constitution

Articles 341 and 342 facilitate the creation of official lists of Scheduled Castes and Scheduled Tribes. Articles 366(24) and 366(25) define these groups in reference to these lists, providing a constitutional basis for their identification and subsequent policy targeting. Article 336 of the Indian Constitution extended certain special privileges in employment to the Anglo-Indian community, particularly within government sectors such as the Railways, Posts and Telegraphs (P&T), and Customs departments. Similarly, Article 337 allowed for the provision of special educational grants to Anglo-Indian schools across India. However, both these provisions were intended to be temporary in nature and were originally set to expire on 25th January 1960, which renders them largely of academic interest today.

Furthermore, it is important to note that the constitutional recognition of the Anglo-Indian community through Article 366(2) which defined an Anglo-Indian as a person of European descent whose father or any of the male ancestors in the male line was born in India has now been removed. This change was brought about by the 104th Constitutional Amendment Act, 2019, which came into effect in January 2020, and effectively abolished the provision for nomination of Anglo-Indian members to the Lok Sabha and State Legislative Assemblies, thereby ending a significant chapter in constitutional protections for the community [24].

Article 15(5) Indian Constitution and the Basic Structure Doctrine

The introduction of Article 15(5), which permits the State to make special provisions for the advancement of socially and educationally backward classes in private educational institutions (except minority institutions), was challenged on the grounds that it violated the basic structure of the Constitution. Critics argued that the "notwithstanding" clause in Articles 15(3), 15(4), and 15(5) undermines the core principle of equality.

However, Chief Justice K.G. Balakrishnan, 37th Chief Justice of India, upheld the constitutionality of Article 15(5), reasoning that a constitutional amendment that moderately alters the principles of equality or freedom under Article 19(1)(g) does not necessarily breach the Constitution's basic structure. The Court held that Article 15(5), in relation to State-maintained and aided institutions, was valid. Other Justices concurred, although they differed on the interpretive scope of the "notwithstanding" clause. While Chief Justice Balakrishnan limited its application to Article 15(1), Justice Raveendran, Chief Justice of the Madhya Pradesh High Court, believed it applied to both Article 15(1) and (2), and Justice Bhandari suggested that

15(5) would override 15(4) in the context of educational admissions.

This divergence reveals a lack of consensus regarding the interpretive limits of Article 15(5) and its relationship with other provisions. Importantly, the Court's reasoning seemed to conflate basic structure review which focuses on constitutional values and not mere textual conformity with traditional interpretive approaches, a methodological misstep according to some legal scholars.

Educational Autonomy and Article 19(1)(g) of Indian Constitution

Private unaided educational institutions possess a fundamental right under Article 19(1)(g) to establish and administer institutions freely. The extent to which this right can be limited by affirmative action policies has been the subject of judicial scrutiny. The T.M.A. Pai Foundation case laid down that the State cannot impose reservations or quotas on these institutions. Subsequent judgments Islamic Academy of Education and P.A. Inamdar case clarified and reaffirmed this position, confirming that private unaided institutions are not obliged to implement reservation policies [25].

Legislative Framework

The 1st Constitutional Amendment (1951) – Article 15(4)

A new clause was added to Article 15, stating that nothing in this Article or in Article 29(2) would prevent the State from implementing special measures aimed at the advancement of socially and educationally backward groups, including Scheduled Castes and Scheduled Tribes.

The 8th Constitutional Amendment (1956) – Article 334

The initial ten-year limit on legislative reservations for Scheduled Castes and Tribes was extended to twenty years, reflecting the ongoing necessity of such measures.

The 65th Constitutional Amendment (1990) – Article 338

Substantial revisions were made to Article 338, transforming the existing Commission into the National Commission for Scheduled Castes and Scheduled Tribes. The amended provision broadened the Commission's composition, powers, and responsibilities. It included monitoring the implementation of safeguards, handling grievances, participating in developmental planning, and advising both central and state governments. It also empowered the Commission with civil court authority in matters of investigation and required governments to act on its recommendations.

The Mandal Commission (1980) and Indra Sawhney Judgment (1992)

- Recommended 27% reservation for OBCs.
- Supreme Court upheld caste as a criterion for backwardness.
- Imposed a 50% ceiling on reservations but allowed exceptions in extraordinary cases.

The 77th Constitutional Amendment (1995) – Article 16(4A)

This amendment enabled the State to provide reservation in promotions within public services for Scheduled Castes and Scheduled Tribes, especially in cases where their representation was deemed insufficient.

The 79th Constitutional Amendment (1999) – Article 334

The timeframe for reservation of seats in the legislature was further extended, this time from fifty to sixty years post-Constitution adoption.

The 81st Constitutional Amendment (2000) – Article 16(4B)

This amendment clarified that unfilled reserved posts from a particular year could be carried forward and treated as a separate category. This provision ensured these vacancies would not be counted toward the 50% cap on reservations for any given year.

The 82nd Constitutional Amendment (2000) – Article 335

A proviso was introduced allowing for relaxed qualifying criteria (such as lower marks or standards) for Scheduled Castes and Scheduled Tribes in promotions, despite the general requirement of maintaining administrative efficiency.

The 83rd Constitutional Amendment (2000) – Article 243M

This amendment exempted the state of Arunachal Pradesh from the requirement of reserving seats for Scheduled Castes in Panchayat elections, as laid out in Article 243D.

The 85th Constitutional Amendment (2001) – Article 16(4A)

This revision to Article 16(4A) permitted reservation in promotions with consequential seniority, allowing beneficiaries to retain seniority benefits even when promoted through reservation.

The 93rd Constitutional Amendment (2005) - inserted Article 15(5) into the Constitution.

This provision empowered the State to make special provisions for the advancement of socially and educationally backward classes, including Scheduled Castes (SCs) and Scheduled Tribes (STs), in private unaided educational institutions, except minority institutions. This marked a notable expansion of the affirmative action framework, extending reservations beyond public institutions to certain private sector educational institutions.

The 95th Constitutional Amendment (2009) - Article 334

This amendment which originally limited reservations for SCs and STs in the Lok Sabha and State Legislative Assemblies to ten years from the commencement of the Constitution. Recognizing the continued need for political representation of these communities, this amendment extended the reservation period by another ten years, until 2020.

The 102nd Constitutional Amendment (2018) - Article 338B

This amendment thereby granting constitutional status to the National Commission for Backward Classes (NCBC). Prior to this, the NCBC existed as a statutory body. The amendment also clarified that the President of India has the authority to determine and notify the list of socially and educationally backward classes for the purposes of central policies.

The 103rd Constitutional Amendment (2019) introduced two new clauses—Article 15(6) and Article 16(6)

This will be enabling the State to provide up to 10 percent reservation in education and public employment for economically weaker sections (EWS) of citizens who are not covered under existing SC, ST, or OBC reservations. This was a landmark amendment as it introduced economic criteria as a new basis for affirmative action within the constitutional framework.

The 104th Constitutional Amendment (2020) once again amended Article 334

It extended the reservation of seats for SCs and STs in the Lok Sabha and State Legislative Assemblies until 2030. Simultaneously, it ended the provision for nominating members of the Anglo-Indian community to the legislatures, thereby concluding a unique form of representation that had existed since the inception of the Constitution.

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13. Scheduled Castes and Scheduled Tribes Commission Report, 1951, p. 23.
14. AIR 1976 SC 490
15. Article 15(4) – Introduced by the Constitution (First Amendment) Act, 1951, to empower the State to make special provisions for the advancement of SEBCs, SCs, and STs.
16. Article 15(5) – Inserted by the Constitution (Ninety-Third Amendment) Act, 2005, enabling reservation in admissions to private educational institutions, excluding minority institutions.
17. Article 15(6) – Introduced by the Constitution (One Hundred and Third Amendment) Act, 2019, permitting up to 10% reservation for Economically Weaker Sections (EWS) in education.
18. Article 16(4A) – Inserted by the Constitution (Seventy-Seventh Amendment) Act, 1995, allowing reservation in promotions for SCs and STs.
19. Article 16(4B) – Inserted by the Constitution (Eighty-First Amendment) Act, 2000, allowing the State to carry forward backlog vacancies exceeding the 50% cap.
20. Constitution of India, Article 38 – “The State shall strive to promote the welfare of the people by securing and protecting a social order in which justice—social, economic and political—shall inform all institutions of national life.” Constitution of India, Article 46 – “The

- State shall promote with special care the educational and economic interests of the weaker sections... and shall protect them from social injustice and all forms of exploitation.”
21. Constitution of India, Article 330 – Reservation of seats for SCs and STs in the Lok Sabha. Constitution of India, Article 332 – Reservation in State Legislative Assemblies. Constitution of India, Article 334 – Original 10-year limitation extended via successive Constitutional Amendments
 22. Constitution of India, Article 335 – “The claims of the members of the SCs and STs shall be taken into consideration... consistent with the maintenance of efficiency of administration.”
 23. Constitution of India, Article 340 – Empowers the President to appoint a commission for backward classes.
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