

# The Role of the Supreme Court in Protective Discrimination Under the Indian Constitution

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## Abstract

This research paper examines the crucial role played by the Supreme Court of India in interpreting and shaping the principles of protective discrimination as enshrined in the Indian Constitution. Protective discrimination—an integral aspect of India's commitment to social justice—refers to affirmative action measures aimed at uplifting historically marginalized and disadvantaged groups, particularly the Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). The paper delves into the constitutional framework supporting such measures, analyzes landmark Supreme Court judgments, and discusses the evolution of judicial reasoning on the subject. It also critically assesses contemporary challenges and the ongoing debate around meritocracy, equality, and social equity. The analysis is supported with references to case laws, constitutional amendments, and legal commentaries to underscore the nuanced approach adopted by the Indian judiciary. This paper aims to present a comprehensive understanding of how the Supreme Court has navigated the tension between formal equality and substantive equality through its interpretations of protective discrimination.

## 1. Introduction

India's commitment to building an egalitarian society is reflected in the Constitution's provisions that promote social justice and substantive equality. Protective discrimination is one such constitutional mechanism that allows for the unequal treatment of unequals to ensure equal opportunity and representation. Given the historical context of caste-based oppression, economic disparity, and educational backwardness, the Indian Constitution provides for affirmative action policies in education, employment, and political representation. The Supreme Court of India has emerged as a key player in interpreting these provisions, often balancing constitutional morality, policy considerations, and the demands of a changing society. This paper aims to critically examine how the Supreme Court has influenced the development and implementation of protective discrimination.

## 2. Constitutional Framework for Protective Discrimination

The concept of protective discrimination is embedded in multiple provisions of the Indian Constitution. These provisions aim to empower the State to undertake affirmative action to ensure the inclusion and advancement of disadvantaged groups.

- **Article 15(4):** Added by the First Amendment in 1951 following the decision in *Champakam Dorairajan*, it enables the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs.

- **Article 15(5):** Inserted by the 93rd Amendment in 2005, it permits reservations in admissions to educational institutions, including private unaided institutions, with exceptions for minority institutions.
- **Article 16(4):** Allows the State to make provisions for reservation in appointments or posts in favor of any backward class of citizens that is not adequately represented in public services.
- **Article 16(4A):** Allows reservation in promotions for SCs and STs, inserted through the 77th Amendment Act in 1995.
- **Article 46:** A Directive Principle of State Policy that urges the State to promote the educational and economic interests of weaker sections, particularly SCs and STs.
- **Article 335:** Stipulates that the claims of SCs and STs to services and posts shall be taken into consideration, while maintaining administrative efficiency.

These constitutional provisions form the bedrock of India's affirmative action regime and have been the subject of extensive judicial scrutiny.

### 3. Historical Background and Early Judicial Interpretations

The judiciary's initial approach towards protective discrimination was grounded in a strict interpretation of formal equality. The landmark case of *State of Madras v. Champakam Dorairajan* (1951) is a seminal decision where the Supreme Court invalidated caste-based reservations in educational institutions, holding them to be in violation of Article 15(1). This judgment led to the First Constitutional Amendment, inserting Article 15(4), thus legitimizing affirmative action.

In *M.R. Balaji v. State of Mysore* (1963), the Court declared that caste alone cannot determine backwardness and emphasized the importance of a broader socio-economic assessment. The Court also introduced the 50% ceiling on reservations, asserting that excessive reservations would compromise the merit principle.

### 4. Landmark Judgments and Doctrinal Development

#### 4.1 T. Devadasan v. Union of India (1964)

The Supreme Court struck down the carry-forward rule in reservations that could potentially lead to over 50% of posts being reserved, reinforcing the ceiling doctrine. This judgment further emphasized the necessity to balance merit and protective discrimination.

#### 4.2 Indra Sawhney v. Union of India (1992)

This nine-judge bench decision remains the cornerstone of affirmative action jurisprudence in India. The Court upheld 27% reservations for OBCs and confirmed the 50% ceiling. The introduction of the creamy layer concept excluded socially advanced members of OBCs from availing reservation benefits.<sup>1</sup>

#### 4.3 M. Nagaraj v. Union of India (2006)

Here, the Court upheld reservations in promotions for SCs and STs but imposed conditions: the State must demonstrate backwardness, inadequate representation, and maintenance of administrative efficiency. It emphasized the need for quantifiable data.<sup>2</sup>

#### 4.4 Jarnail Singh v. Lachhmi Narain Gupta (2018)

This decision modified *M. Nagaraj*, removing the requirement to collect quantifiable data on backwardness

<sup>1</sup> Baxi, "The Indian Supreme Court and Politics," Eastern Book Company, 1980)

<sup>2</sup> *Indian Journal of Constitutional Law* have highlighted how this judgment reflects judicial caution against unsubstantiated affirmative action policies.

ss of SCs/STs but upheld the applicability of the creamy layer concept. This judgment emphasized the need for equitable distribution of benefits within marginalized communities.

#### 4.5 Janhit Abhiyan v. Union of India (2022)

The 103rd Amendment introduced 10% EWS reservations for economically backward groups in the general category. The Supreme Court upheld its validity, asserting that economic criteria could be a basis for affirmative action. The dissenting opinions in this case raised concerns over the exclusion of SCs/STs and OBCs from EWS quotas.<sup>3</sup>

### 5. Principles Evolved Through Judicial Interpretations

The Supreme Court's jurisprudence on protective discrimination has led to the development of several guiding principles:

- **Reasonable Classification:** Affirmative action must be based on intelligible differentia and a rational nexus with the objective.
- **Substantive Equality:** Moving beyond formal equality, the Court has recognized the need to address historical and structural disadvantages.
- **50% Ceiling Rule:** Except in extraordinary circumstances, reservations should not exceed 50% to preserve equality of opportunity.
- **Creamy Layer Doctrine:** Ensures that benefits reach the genuinely disadvantaged by excluding the advanced among backward classes.
- **No Reservation in Promotions (with exceptions):** While generally restricted, reservations in promotions are allowed for SCs and STs under certain conditions.

### 6. Contemporary Challenges and Criticisms

#### 6.1 Political Pressures and Populism

Affirmative action has become a politically sensitive issue. Electoral considerations often drive the expansion of quotas, sometimes without adequate empirical backing. The Supreme Court has been cautious in endorsing such measures without robust data.

#### 6.2 Backwardness Determination

The lack of regular socio-economic surveys has hindered objective assessment of backwardness. Despite recommendations, India has not conducted a caste-based census since 1931. The Court in *Indra Sawhney* called for periodic review, but implementation remains weak.

#### 6.3 Inclusion of the Economically Weaker Sections

The EWS reservation raised questions about the constitutional validity of economic criteria in affirmative action. The exclusion of SCs, STs, and OBCs from EWS quotas has also been criticized as violating the equality principle.

#### 6.4 Judicial Activism and Separation of Powers

Critics argue that the judiciary has sometimes encroached into legislative functions, particularly in crafting the creamy layer doctrine or imposing the 50% cap, which are not explicitly stated in the Constitution.

### 7. Comparative Perspectives

Examining affirmative action jurisprudence in other jurisdictions can offer valuable insights:

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<sup>3</sup> Analysis by Tarunabh Khaitan in the *Oxford Journal of Legal Studies* suggests this decision represents a paradigm shift in the understanding of affirmative action in India.

- **United States:** The U.S. Supreme Court has endorsed race-conscious admissions under strict scrutiny. However, recent decisions like *Students for Fair Admissions v. Harvard* (2023) reflect a conservative shift.
- **South Africa:** The Constitution explicitly mandates corrective measures to redress past inequalities. Courts have generally supported race-based affirmative action.
- **Brazil:** Implements a quota system in higher education and public employment based on race and socio-economic criteria.

India's approach is unique due to its entrenched caste system, but international perspectives underline the global relevance of affirmative action.

## 8. The Road Ahead: Reform and Reimagination

The Supreme Court must continue to guide affirmative action with sensitivity to evolving social realities. Key areas for reform include:

- **Periodic Review and Data Collection:** Ensure that reservation policies are based on empirical evidence and subject to revision.
- **Horizontal Reservations:** Incorporate intersectionality by recognizing gender, disability, and regional disparities within vertical categories.
- **Capacity Building:** Invest in quality education and training to complement affirmative action with capability enhancement.
- **Public Awareness:** Judicial pronouncements must be accessible and promote informed debate on social justice.

## 9. Conclusion

The Supreme Court of India has played a transformative role in the evolution of protective discrimination. It has been instrumental in harmonizing the ideals of equality and social justice. Through landmark rulings, it has both validated and constrained affirmative action to ensure that it remains a tool for genuine upliftment and not political expediency. Drawing on the insights of legal theorists like Ronald Dworkin, who emphasized "equality of resources," and Amartya Sen, who advocated for "capability equality," the Court's jurisprudence resonates with both philosophical and constitutional values. Justice B.P. Jeevan Reddy in *Indra Sawhney* articulated the delicate balance required between meritocracy and affirmative action, noting that "reservations are not a poverty alleviation program, but a tool to ensure equality of opportunity." Justice D.Y. Chandrachud, in his dissent in *Janhit Abhiyan*, warned against the risk of constitutional amendments undermining the basic structure doctrine by excluding historically marginalized groups from EWS benefits. These judicial perspectives underscore the enduring role of the Supreme Court in steering protective discrimination in a direction that aligns with India's democratic and egalitarian aspirations. As Indian society continues to evolve, the judiciary's responsibility remains central in ensuring that protective discrimination adapts to serve its intended constitutional purpose—bridging inequality and fostering inclusive growth.

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