

Affirmative Action After The 103rd Constitutional Amendment - A Constitutional Analysis Of Reservation Policies In Higher Education

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ABSTRACT

Affirmative action has remained one of the most contested constitutional policies in India since the adoption of the Constitution in 1950. Designed as an instrument of substantive equality, reservation policies seek to rectify historical discrimination and structural inequalities suffered by socially and educationally disadvantaged communities. Over time, constitutional amendments and judicial pronouncements have continually reshaped the contours of reservation, particularly in higher education. The enactment of the Constitution (One Hundred and Third Amendment) Act, 2019, introducing a ten percent reservation for Economically Weaker Sections (EWS) under Articles 15(6) and 16(6), represents one of the most significant constitutional developments in India's affirmative action jurisprudence. Unlike previous reservation measures, which were primarily founded on social and educational backwardness, the EWS reservation introduced economic disadvantage as an independent constitutional basis for affirmative action. This development has generated substantial constitutional debate concerning equality, the basic structure doctrine, the fifty percent ceiling on reservations, and the continued relevance of caste as the principal determinant of disadvantage. This paper critically analyses the constitutional validity and implications of the 103rd Constitutional Amendment within the framework of higher education. It examines the historical evolution of reservation policies, legislative intent behind the amendment, judicial interpretation and the practical impact on admissions in higher educational institutions.

Keywords - Affirmative Action, Reservation, 103rd Constitutional Amendment, Economically Weaker Sections, Equality, Higher Education, Article 15(6), Constitutional Law.

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INTRODUCTION

Affirmative action constitutes one of the defining features of India's constitutional commitment towards achieving substantive equality. Unlike formal equality, which merely guarantees equal treatment before law, substantive equality acknowledges that historically disadvantaged communities require positive governmental intervention to achieve genuine equality of opportunity. Consequently, the Constitution permits the State to adopt special provisions for socially and educationally backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs), particularly in education and public employment. Higher education occupies a pivotal position within this constitutional framework. Universities and professional institutions function not merely as centres of learning but also as gateways to socio-economic mobility. Access to higher education substantially influences employment prospects, income levels, and participation in governance. Consequently, reservation policies within educational institutions have consistently been regarded as instruments of distributive justice rather than mere welfare measures. As observed in *State of Kerala v. N.M. Thomas* ((1976) 2 SCC 310), equality under the Constitution is dynamic and often necessitates differential treatment to eliminate structural disadvantages. For decades, India's reservation

jurisprudence rested upon the constitutional premise that historical discrimination rooted in caste constituted the principal basis for affirmative action. This approach received constitutional recognition through Articles 15(4) and 15(5), introduced by the First and Ninety-Third Constitutional Amendments respectively, enabling reservations for socially and educationally backward classes in educational institutions. Judicial decisions, particularly *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217), reinforced this framework by holding that social backwardness rather than economic poverty constituted the primary criterion for reservations. The constitutional landscape changed fundamentally with the enactment of the Constitution (One Hundred and Third Amendment) Act, 2019. By inserting Articles 15(6) and 16(6), Parliament created a separate constitutional category permitting up to ten percent reservation for Economically Weaker Sections (EWS) among citizens who do not belong to existing reserved categories. The amendment represented the first instance where economic disadvantage alone became a constitutionally recognised basis for reservation. This marked a significant departure from decades of constitutional jurisprudence that treated caste-based social exclusion as the central justification for affirmative action. The amendment generated extensive constitutional debate concerning the

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relationship between economic disadvantage and historical discrimination. Supporters argued that poverty itself constitutes a significant barrier to educational access and that economically disadvantaged individuals from unreserved categories deserved constitutional protection. Critics, however, contended that equating economic disadvantage with centuries of social exclusion diluted the original objective of reservation policies and undermined the constitutional philosophy underlying Articles 15(4) and 16(4). These debates acquired greater significance because the amendment also permitted reservations exceeding the judicially evolved fifty percent ceiling recognised in *Indra Sawhney* (1992 Supp (3) SCC 217). The constitutional validity of the amendment was ultimately examined by the Supreme Court in *Janhit Abhiyan v. Union of India* ((2023) 5 SCC 1), wherein a Constitution Bench upheld the amendment by a narrow majority. The Court concluded that economic criteria could independently justify affirmative action and that exclusion of SCs, STs, and OBCs from the EWS category did not violate the Constitution's basic structure. Nevertheless, the dissenting opinions raised important constitutional concerns regarding equality, social justice, and the possibility of fragmenting India's reservation framework.

The contemporary debate surrounding reservation extends beyond constitutional doctrine into questions of educational equity and institutional diversity. According to the All India Survey on Higher Education (AISHE) 2021–22, India's Gross Enrolment Ratio (GER) in higher education has increased to approximately 28.4%,

with significant improvements in enrolment among Scheduled Castes and Scheduled Tribes, although disparities persist across regions, genders, and socio-economic groups (Ahmad & Sikandar, 2022). These developments indicate that reservation policies continue to play an essential role in widening educational access while simultaneously confronting new challenges relating to merit, quality, inclusion, and economic disadvantage (Mohanani & Netto, 2023).

Recent scholarship similarly demonstrates that public perceptions regarding reservation remain deeply divided. While many students perceive reservation as an indispensable mechanism for correcting historical injustices, others increasingly advocate incorporating economic criteria alongside social disadvantage in higher education admissions (Mohanani & Netto, 2023). Simultaneously, broader reforms under the National Education Policy, 2020 have generated renewed discussions regarding the interaction between educational expansion, institutional autonomy, and reservation policies (More & Kurkute, 2025; Kumar, 2024).

This paper undertakes a constitutional analysis of affirmative action following the 103rd Constitutional Amendment by examining its historical foundations, constitutional provisions, judicial interpretation, and practical implications within higher education. It evaluates whether the amendment strengthens India's commitment to substantive equality or represents a transformative shift towards an economic model of affirmative action that departs from the Constitution's original vision of social justice.

Table 1 - Evolution of Constitutional Reservation Framework in India

Constitutional Amendment	Year	Constitutional Provision	Significance
First Amendment	1951	Article 15(4)	Enabled special provisions for socially and educationally backward classes following.
Seventy-Seventh Amendment	1995	Article 16(4A)	Reservation in promotions for SCs and STs.
Eighty-First Amendment	2000	Article 16(4B)	Carry-forward rule for unfilled reserved vacancies.
Eighty-Fifth Amendment	2001	Consequential seniority	Extended benefits in promotional reservations.
Ninety-Third Amendment	2005	Article 15(5)	Reservation in educational institutions including private aided institutions.
One Hundred and Third Amendment	2019	Articles 15(6) & 16(6)	Introduced 10% reservation for Economically Weaker Sections (EWS).

CONSTITUTIONAL FRAMEWORK GOVERNING RESERVATION IN HIGHER EDUCATION

The constitutional architecture governing reservation in higher education is principally derived from Articles 14, 15, 16, 38, 39, 46, and the Preamble, which collectively embody India's commitment to social justice and

substantive equality. Rather than treating equality as a purely formal guarantee, the Constitution authorises the State to adopt affirmative measures aimed at eliminating entrenched social and educational disadvantages.

Article 14 guarantees equality before law and equal protection of laws. However, judicial interpretation has consistently clarified that equality does not require identical treatment of unequals. In *State of West Bengal v. Anwar Ali Sarkar* (AIR 1952 SC 75) and subsequently in *N.M. Thomas* ((1976) 2 SCC 310), the Supreme Court recognised that reasonable classification and affirmative discrimination are compatible with constitutional equality where they pursue legitimate constitutional objectives.

Articles 15(4) and 15(5) constitute the principal constitutional basis for reservations in higher educational institutions. Article 15(4), inserted through the First Constitutional Amendment following *Champakam Dorairajan* (AIR 1951 SC 226), empowered the State to make special provisions for socially and educationally backward classes and for Scheduled Castes and Scheduled Tribes. Subsequently, Article 15(5), introduced by the Ninety-Third Constitutional Amendment, extended reservation to admissions in educational institutions, including private aided institutions, except minority institutions protected under Article 30(1). Its constitutional validity was affirmed in *Ashoka Kumar Thakur v. Union of India* ((2008) 6 SCC 1).

The Directive Principles of State Policy reinforce these constitutional provisions. Article 46 specifically obligates the State to promote the educational and economic interests of weaker sections, particularly Scheduled Castes and Scheduled Tribes, while protecting them from social injustice and exploitation. This constitutional objective continues to shape higher education policies concerning access, scholarships, institutional expansion, and reservation (Kumar, 2024; Chawre, 2023).

HISTORICAL EVOLUTION OF RESERVATION POLICIES IN HIGHER EDUCATION

The constitutional commitment to affirmative action cannot be understood without appreciating India's historical experience of caste-based exclusion. For centuries, access to education remained restricted to privileged social groups, while Scheduled Castes, Scheduled Tribes, and several backward communities were systematically denied educational opportunities. The colonial administration introduced limited measures for educational inclusion, but these remained inadequate to dismantle deeply entrenched social hierarchies. Consequently, the framers of the Constitution recognised that merely guaranteeing formal equality would be insufficient unless accompanied by positive discrimination in favour of historically disadvantaged communities (Anthony, 2024).

The Constituent Assembly debates reveal that Articles 15 and 16 were intended to harmonise equality with social justice rather than place them in conflict. Dr. B.R. Ambedkar repeatedly emphasized that constitutional

equality required dismantling centuries of structural discrimination rather than simply prohibiting future discrimination. Article 46 further reflected this constitutional philosophy by directing the State to promote the educational and economic interests of weaker sections, particularly Scheduled Castes and Scheduled Tribes (Anthony, 2024).

India's higher education system simultaneously underwent significant institutional transformation after Independence. Expansion of universities, establishment of professional institutions, and increasing public investment gradually widened educational access. Nevertheless, representation of marginalized communities remained disproportionately low, necessitating continued reservation policies to facilitate equitable participation in higher education (Narasimha, 1996; Wilson, 2022).

The constitutional validity of reservation first came under judicial scrutiny in *State of Madras v. Champakam Dorairajan* (AIR 1951 SC 226), where the Supreme Court invalidated communal reservations on the ground that they violated Article 15(1). Parliament responded by enacting the Constitution (First Amendment) Act, 1951, inserting Article 15(4), which expressly empowered the State to make special provisions for socially and educationally backward classes and Scheduled Castes and Scheduled Tribes. This amendment fundamentally altered the constitutional framework by expressly incorporating affirmative action within the equality code.

Subsequent judicial decisions gradually refined constitutional principles governing reservations. In *M.R. Balaji v. State of Mysore* (AIR 1963 SC 649), the Supreme Court emphasized that reservations should remain reasonable and generally not exceed fifty percent. Later, *State of Kerala v. N.M. Thomas* ((1976) 2 SCC 310) adopted a more expansive understanding of equality, holding that affirmative action constituted an integral component of Article 14 rather than an exception to it.

The landmark judgment in *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217) consolidated Indian reservation jurisprudence by recognizing Other Backward Classes (OBCs) as beneficiaries of reservation while introducing the concept of the "Creamy Layer" to exclude socially advanced members of backward classes. The Court simultaneously held that economic disadvantage alone could not constitute the sole basis for reservation under Article 16(4), reaffirming that social and educational backwardness remained the constitutional foundation of affirmative action.

Parliament subsequently enacted the Constitution (Ninety-Third Amendment) Act, 2005, introducing Article 15(5), which enabled reservations in admissions to educational institutions, including private aided institutions except minority institutions. The amendment was upheld by the Supreme Court in *Ashoka Kumar Thakur v. Union of India* ((2008) 6 SCC 1), which reiterated that affirmative action remained constitutionally consistent with substantive equality.

Thus, until 2019, reservation policies in higher education consistently rested upon the constitutional premise that historical and social disadvantage constituted the principal justification for preferential treatment. The 103rd Constitutional Amendment

marked a significant departure from this settled constitutional philosophy by introducing economic disadvantage as an independent constitutional basis for reservation (Wilson, 2022; Krishnamoorth, 2020).

Table 2 - Landmark Constitutional Developments Affecting Reservation in Higher Education

Year	Development	Constitutional Significance
1951	Champakam Dorairajan (AIR 1951 SC 226)	Reservation invalidated under Article 15
1951	First Constitutional Amendment	Article 15(4) inserted
1963	M.R. Balaji (AIR 1963 SC 649)	Introduced concept of reasonable limits
1976	N.M. Thomas ((1976) 2 SCC 310)	Equality includes affirmative action
1992	Indra Sawhney (1992 Supp (3) SCC 217)	Creamy Layer; 50% ceiling
2005	93rd Constitutional Amendment	Article 15(5) inserted
2008	Ashoka Kumar Thakur ((2008) 6 SCC 1)	Upheld OBC reservation in education
2019	103rd Constitutional Amendment	Articles 15(6) & 16(6) inserted
2022/2023	Janhit Abhiyan ((2023) 5 SCC 1)	Upheld EWS reservation

THE 103RD CONSTITUTIONAL AMENDMENT: A TRANSFORMATIVE SHIFT

The Constitution (One Hundred and Third Amendment) Act, 2019 introduced Articles 15(6) and 16(6), authorising the State to provide up to ten percent reservation for Economically Weaker Sections (EWS) of citizens who are not covered by existing reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Unlike Articles 15(4) and 16(4), which are founded upon social and educational backwardness, the newly inserted provisions recognise economic disadvantage as an independent constitutional criterion.

Article 15(6) empowers the State to make special provisions, including reservation in admissions to educational institutions, whether aided or unaided, except minority educational institutions protected under Article 30(1). Article 16(6) similarly permits reservation in appointments to public employment for economically weaker sections. Together, these provisions constitute the first constitutional recognition of poverty as a distinct ground for affirmative action.

The Statement of Objects and Reasons accompanying the amendment argued that economically disadvantaged persons belonging to the general category often experience significant barriers to accessing higher education and employment despite not suffering from traditional caste-based disadvantages. Parliament therefore sought to broaden the constitutional understanding of disadvantage by incorporating economic vulnerability within the affirmative action framework.

However, the amendment immediately generated substantial constitutional controversy. Critics argued that the amendment fundamentally altered the philosophical basis of reservation by equating poverty with centuries of social discrimination. They further contended that excluding Scheduled Castes, Scheduled Tribes, and Other Backward Classes from EWS reservation created an artificial classification because economically poor individuals also exist within these communities (Alam, 2023).

Another significant constitutional concern related to the fifty percent ceiling recognised in Indra Sawhney (1992 Supp (3) SCC 217). Since the amendment introduced an additional ten percent reservation beyond existing quotas, total reservations in many institutions exceeded fifty percent. Supporters maintained that Parliament possessed constituent power to amend constitutional provisions and therefore could create a new reservation category independent of earlier judicial limitations.

The amendment also intersects with broader reforms in higher education under the National Education Policy, 2020. Expansion of multidisciplinary institutions, increased Gross Enrolment Ratio targets, digital education, and institutional restructuring have renewed discussions regarding equitable access to quality higher education. Scholars have argued that affirmative action must evolve alongside educational reforms to ensure that increased institutional capacity benefits historically marginalized communities rather than reproducing existing inequalities (More & Kurkute, 2025; Wilson, 2022; Sunder, 2010; Sunder, 2011).

Furthermore, contemporary policy discourse increasingly recognizes that access alone does not guarantee educational equity. Student retention, financial assistance, language barriers, digital infrastructure, and institutional support significantly influence educational outcomes. Consequently, reservation policies increasingly operate alongside scholarships, fee waivers, academic support programmes, and targeted welfare measures designed to improve educational attainment among disadvantaged groups (Hauptman, 1999; Behera, Mohapatra, & Behera, 2025; Greenbank, 2006).

CONSTITUTIONAL VALIDITY: JANHIT ABHIYAN V. UNION OF INDIA

The constitutional validity of the 103rd Constitutional Amendment was challenged before a Constitution Bench of the Supreme Court in *Janhit Abhiyan v. Union of India* ((2023) 5 SCC 1). By a 3:2 majority, the Supreme Court upheld the amendment. Justice Dinesh Maheshwari observed that economic deprivation constitutes a legitimate source of disadvantage capable of justifying affirmative action under the Constitution. Justice Bela M. Trivedi similarly concluded that Articles 15(6) and 16(6) merely created an additional enabling provision rather than disturbing the constitutional framework governing existing reservations. Justice J.B. Pardiwala emphasized that the Constitution remains a living document capable of responding to evolving forms of disadvantage.

The majority further held that the fifty percent ceiling recognised in *Indra Sawhney* (1992 Supp (3) SCC 217) did not constitute an immutable component of the Constitution's basic structure. Since Articles 15(6) and 16(6) were themselves constitutional amendments, Parliament possessed constituent authority to create a separate reservation category.

The dissenting opinions of Chief Justice U.U. Lalit and Justice S. Ravindra Bhat, however, expressed profound constitutional concerns. Justice Bhat argued that excluding SCs, STs, and OBCs from EWS reservation effectively denied economically poor individuals belonging to reserved communities equal treatment despite suffering identical economic hardships. According to the dissent, such exclusion undermined substantive equality and therefore damaged the Constitution's basic structure.

The decision consequently represents one of the most significant constitutional developments in modern affirmative action jurisprudence, fundamentally expanding the constitutional understanding of disadvantage while simultaneously generating continuing academic and judicial debate regarding the future direction of reservation policy.

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