



# The Realistic Approach of Affirmative Action In India: A Legal Study

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## Abstract

Affirmative action in India is primarily addressed through the reservation system, which aims to uplift historically marginalized communities by providing them with reserved seats in education institutions, government jobs, and political representation. The Indian Constitution, in its preamble, commits to securing justice, liberty, equality, and fraternity for all citizens. The constitutional basis for affirmative action in India is found in Articles 15(4) and 16(4) of the Indian Constitution. These articles empower the state to make special provisions for the advancement of socially and educationally backward classes of citizens, including Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). Here is a legal study of the realistic approach to affirmative action in India. The Key features of affirmative action is Equal Opportunity, Diversity and Inclusion, Targets and Quotas, Elimination of Discrimination, Compensatory Justice

**Keywords:** *Affirmative Action, Equality, Liberty, Diversity and Inclusion, Reservation*

## INTRODUCTION

Affirmative action is a set of policies or actions designed to address historical and systemic inequalities, particularly in the areas of employment and education. These policies aim to promote equal opportunities for individuals from groups that have been historically marginalized or discriminated against based on factors such as race, ethnicity, gender, or socioeconomic status. All People are not equal in the country. They are born in different communities with unequal economic opportunities, social status, political influence, educational achievements, etc. Therefore, they do not have equal resources to meet their needs. Levels of inequality determine the relationships of individuals and communities to resources. In this context, people in all communities do not have the resources to meet their demands. In India, there is inequality between castes, tribes and gender groups, and between the poor and the rich. These communities are known as SC (Dalits), STs, OBCs, male, female and transgender groups. Because of the inequality between them, not all communities can fulfil their needs equally well. In order for everyone to have equal opportunities, it is

necessary that the weakest groups in society receive special state aid. Special aid is a compensatory measure offered by the state to groups in need due to past or present inequalities.

**Key features of affirmative action include:**

1. **Equal Opportunity:** Affirmative action seeks to ensure equal opportunity by actively taking steps to eliminate discrimination and provide fair access to education and employment for individuals who have faced historical disadvantages.
2. **Diversity and Inclusion:** One of the goals of affirmative action is to promote diversity and inclusion in various sectors of society. This can involve measures such as setting aside a certain percentage of seats in educational institutions or jobs for individuals from underrepresented groups.
3. **Targets and Quotas:** Affirmative action may involve the establishment of targets or quotas to ensure that a specific percentage of opportunities are allocated to individuals from disadvantaged backgrounds. This is often implemented in sectors such as education, government employment, and private industry.
4. **Elimination of Discrimination:** Affirmative action policies work toward eliminating discriminatory practices and biases that may exist in educational institutions or workplaces. This may include addressing unconscious biases in hiring or admissions processes.
5. **Compensatory Justice:** Affirmative action is often viewed as a form of compensatory justice, seeking to rectify past and ongoing injustices by providing additional opportunities to those who have historically been denied them.

It's important to note that affirmative action policies can be a subject of debate and controversy. Critics argue that these policies may lead to reverse discrimination or tokenism, while proponents believe that they are essential for dismantling systemic barriers and promoting a more inclusive society. The specific nature of affirmative action policies varies by country and region, and their implementation may be subject to legal frameworks and periodic reviews.

**Reservations**

Reservation, in the context of government policies, refers to the practice of setting aside a certain percentage of seats or opportunities for specific groups of people based on criteria such as caste, ethnicity, gender, or economic status. The primary goal of reservation is to address historical and social inequalities, promote inclusivity, and ensure equitable representation in various spheres of society.

## Objectives

The objectives of this research study are designed to guide the investigation into the realistic approach of affirmative action in India from a legal perspective.

### **Here are some common types of reservations:**

1. **Caste-Based Reservation:** Many countries, especially in South Asia, have implemented caste-based reservations to uplift historically marginalized communities. For example, in India, reservations are provided for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) in educational institutions, government jobs, and political representation.
2. **Gender-Based Reservation:** Reservations for women are often implemented to address gender disparities in political, educational, and employment opportunities. This may involve setting aside a certain percentage of seats or positions for women.
3. **Economic Reservation:** Some countries have introduced reservations based on economic criteria to support economically disadvantaged sections of society. For instance, in India, the introduction of reservations for Economically Weaker Sections (EWS) among the general category is an example of economic-based reservation.
4. **Educational Reservation:** Reservations in educational institutions aim to provide access to quality education for underprivileged groups. This may involve setting aside seats or quotas for specific communities or economically disadvantaged students.
5. **Employment Reservation:** Governments may implement reservations in public sector jobs to ensure diverse representation in government offices. This can involve setting quotas for different social or economic groups.

It's important to note that while reservations are intended to promote social justice and inclusivity, there are ongoing debates about their effectiveness, potential drawbacks, and the need for alternative approaches to address social inequalities. The specifics of reservation policies vary widely from country to country and even within regions of a country. They are often subject to legal frameworks and may be periodically reviewed and revised based on societal needs and changes in government policy.

### **The "Karpoori Thakur Formula"**

The "Karpoori Thakur Formula" is associated with the implementation of reservations in educational institutions and government jobs in the state of Bihar, India. It is named after the late Karpoori Thakur, a

prominent political leader and former Chief Minister of Bihar. The formula was devised to address the issue of social and educational backwardness among certain communities. The Karpoori Thakur Formula, also known as the Mandal Formula, was implemented in Bihar in the 1970s. This formula aimed to provide reservations to socially and economically disadvantaged groups in educational institutions and public employment. The reservations were primarily based on caste considerations and were meant to uplift historically marginalized communities. The Mandal Commission, officially known as the Socially and Educationally Backward Classes Commission, was established in India in 1979 to assess the status of socially and educationally backward classes and recommend measures for their advancement. The Mandal Commission, chaired by B.P. Mandal, played a significant role in recommending reservations for Other Backward Classes (OBCs) in addition to Scheduled Castes (SCs) and Scheduled Tribes (STs). The Karpoori Thakur Formula, inspired by the Mandal Commission's recommendations, became a significant policy in Bihar, and it aimed to allocate a certain percentage of seats in educational institutions and government jobs to OBCs. It's worth noting that the reservation policies and formulas may evolve over time due to changes in government policies and legal decisions. For the latest and most accurate information, it's advisable to refer to official government notifications and legal documents related to reservations in the specific region or state.

### **Reservations for women**

Reservations for women typically refer to affirmative action policies or measures implemented by governments to ensure a certain level of representation for women in various spheres, including politics, education, and employment. These policies are often introduced to address historical and systemic gender inequalities.

The specific details and extent of reservations for women vary widely across different countries and regions. Here are a few examples:

1. **Political Representation:** Many countries have introduced quotas for women in political offices, such as legislatures or local government bodies. Quotas may specify a certain percentage of seats reserved for women, or they may require political parties to field a minimum number of female candidates.
2. **Education:** Some countries provide reservations for women in educational institutions to promote gender equality in access to education. This may involve setting aside a certain number of seats for female students or providing scholarships specifically for women.
3. **Employment:** In some cases, reservations for women are implemented in the workplace to ensure equal opportunities. This may involve setting targets for the employment of women in certain sectors or positions.

4. **Public Sector Jobs:** Certain countries have introduced reservations for women in public sector jobs to encourage their participation in government and public administration.

It's important to note that the effectiveness and acceptance of such reservations vary, and there are debates about the best approaches to achieving gender equality. The goal is to create an environment where women have equal opportunities and representation in all areas of society. If you are interested in the specific policies in a particular country or context, it's recommended to refer to the latest laws and regulations governing gender reservations in that area.

## RESERVATION FOR EWS

In India, the government introduced a 10% reservation for Economically Weaker Sections (EWS) among the general category in education and government jobs. This reservation was introduced through the 103rd Constitutional Amendment Act, 2019. The reservation is meant for individuals whose family income is below a certain threshold and who do not belong to any other reserved category such as Scheduled Castes (SCs), Scheduled Tribes (STs), or Other Backward Classes (OBCs).

### Constitutional Framework:

- a) **Equality and Non-Discrimination:** The Indian Constitution guarantees equality under Article 14 and prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Affirmative action is considered an exception to formal equality to address historical injustices.
- b) **Article 15(4) and 16(4):** These articles enable the state to make special provisions for the advancement of socially and educationally backward classes. The use of the term "backward classes" has been expanded to include not only SCs and STs but also OBCs.

### Implementation of Affirmative Action:

- a) **Reservation Policies:** The reservation system allocates a certain percentage of seats in educational institutions, government jobs, and legislative bodies for SCs, STs, and OBCs. The percentage of reserved seats has evolved over time and varies across states.
- b) **Creamy Layer Concept:** The "creamy layer" concept excludes economically advanced individuals within reserved categories from the benefits of reservation. It aims to ensure that the benefits reach those who genuinely need them.

### Criticisms and Challenges:

- a) **Challenges of Implementation:** Challenges include proper identification of beneficiaries, preventing misuse of reservations, and ensuring that benefits reach the intended groups.
- b) **Over-reliance on Reservation:** Critics argue that reservations have not effectively addressed the root causes of social and economic disparities. There is a need for a comprehensive approach that includes education, economic development, and social awareness.
- c) **Creamy Layer Ambiguity:** The application of the creamy layer concept has faced challenges in defining criteria for identifying economically advanced individuals within reserved categories.
- d) **Reverse Discrimination Concerns:** Some argue that affirmative action can lead to reverse discrimination against individuals not covered by reservations.

### Realistic Assessment:

- a) **Incremental Progress:** Affirmative action has contributed to the upliftment of marginalized communities, especially in education and employment. However, progress has been incremental, and challenges persist.
- b) **Need for Comprehensive Policies:** There is a growing recognition of the need for comprehensive policies that address not only reservations but also focus on improving educational infrastructure, skill development, and economic opportunities.
- c) **Social Dialogue:** A realistic approach involves fostering social dialogue to address concerns and ensuring that policies are periodically reviewed and adapted to changing socio-economic dynamics.

### Legal Landmarks and Judicial Interpretations:

- a) **Mandal Commission: Mandal Commission Case (Indra Sawhney v. Union of India, 1992):** The Mandal Commission recommended 27% reservation for OBCs in government jobs, leading to significant debates and protests. Courts have played a crucial role in interpreting and upholding affirmative action policies while also addressing concerns of arbitrariness and fairness. The Supreme Court upheld the concept of reservations but capped it at 50%, emphasizing that it should not violate the basic structure of the Constitution.
- b) **Creamy Layer Concept:** The Supreme Court, in the Indra Sawhney case, introduced the concept of the creamy layer, excluding the affluent and socially advanced members within the reserved categories from availing reservation benefits.

### Future Directions:

- a) **Diversity and Inclusivity:** Affirmative action should evolve to promote diversity and inclusivity beyond just reservations, considering factors like gender and regional disparities.
- b) **Education and Skill Development:** Focusing on education and skill development as long-term measures to uplift marginalized communities and reduce the need for reservations.

#### **Legislation:**

- a) **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Provides for the prevention of atrocities against SCs and STs and ensures special courts for a speedy trial.
- b) **The Protection of Civil Rights Act, 1955:** Prohibits untouchability and prescribes penalties for enforcing any disability arising out of untouchability.
- c) **National Commission for Scheduled Castes and Scheduled Tribes Act, 1990:** Establishes commissions to investigate and monitor matters relating to SCs and STs. This legislation aims to prevent atrocities against SCs and STs and provides for special courts for their speedy trial.

#### **Realistic Approach:**

**Reservation Policies:** Reservation in educational institutions and government jobs is a key tool for implementing affirmative action. Concerns often arise about the potential perpetuation of stereotypes and the creamy layer within reserved categories benefiting disproportionately.

**Challenges and Criticisms:** Critics argue that affirmative action can lead to reverse discrimination and may not address the root causes of social inequality. The creamy layer issue within reserved categories is a significant challenge, as benefits may not reach those who need them the most.

**Empowerment Programs:** Apart from reservations, the government implements various empowerment programs, such as scholarships, skill development initiatives, and financial aid, to uplift marginalized communities.

**Judicial Pronouncements:** Courts play a crucial role in interpreting and upholding affirmative action measures. Various judgments have clarified the scope and limitations of reservations, ensuring they are in line with the constitutional mandate.

**Monitoring Mechanisms:** The establishment of commissions to monitor the implementation of affirmative action measures is essential. Regular reviews and assessments help identify gaps and challenges in the system.

**Conclusion:**

Affirmative action in India is a multifaceted approach involving constitutional provisions, legislation, and policy measures. While it has made progress in addressing historical injustices, ongoing challenges like the creamy layer issue, effective implementation, and societal attitudes require continuous attention. A realistic approach involves a balanced evaluation of the impact of these measures, with an emphasis on addressing the root causes of social inequality and ensuring that benefits reach the intended beneficiaries. Ongoing legal and policy discussions aim to refine and adapt these measures to the evolving socio-economic landscape while upholding the constitutional principles of equality and justice.

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