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EMPOWERMENT OF MARGINALIZED AND VULNERABLE GROUPS: “PROTECTIVE DISCRIMINATION”

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INTRODUCTION

Over a great period, a certain section of the society had always been suffering from oppression and exploitation of all kinds. The malady of social disparities crippled the underprivileged and downtrodden classes so intensely that they became economically disabled for generations after generations. The Constitution of India, through various laws and provisions, aims at eliminating disparities between different sections of the society and providing equality of status and opportunity to all. The framers of our constitution were well conscious about the distressed condition of these weaker sections of the society. They putted their best foot forward for the upliftment of weaker sections by providing some auspicious provisions in the constitution for instance equality under article 14, prohibition on discrimination under article 15 and many more. It is out of this historical process that one sees today several conceptions of equality competing for dominance in the legal systems of the world. The most popular model is the “equality of status and of opportunity and of non-discrimination on the basis of religion, sex, race, caste and so on”.

The members of particular group of people experience multiple socioeconomic disadvantages that limit their access to the basic needs of life. Issues of sustainable livelihood, social and political participation of the vulnerable groups exists as the major problem in developing India. In spite of legislative measures and enforcement mechanism, there exist a wide gap between administration of justice and equity. This gap shows that they are susceptible for all kinds of exploitation. In such case justice is capable of reaching only those who can afford and deprives those who cannot afford economically. Here is the concept of Protective Discrimination give protection and tag them along with society developments, underprivileged people, vulnerable groups and peoples those who are dominated by caste institutions

PROTECTIVE DISCRIMINATION:

Protective discrimination is a term refer to the policy, is an endeavor to achieve social justice in India. It aims at granting special privileges to the socially awkward and underprivileged section of the society, most commonly the scheduled castes, scheduled tribes, other backward classes, and women. These are the sections of people who often face racial or caste-based discrimination through centuries by the privileged classes on account of their differences based on sex, religion, place of birth, race, and most prominently based on the institution called the caste system. These actions are justifiably enshrined in the Constitution of India as “Protective Discrimination”. The protective **discrimination policy** adopted by India and the **affirmative** action followed by the U.S. both aim to achieve equality. In other countries, the term “positive discrimination” or “positive action”



is used in legal contexts to describe similar practices. For instance, the European Union has directives on equal treatment that permit member states to adopt measures to improve the situation of disadvantaged groups.

Protective discrimination is a legal principle or policy that involves taking deliberate actions to favour or support individuals or groups who have been historically marginalized or disadvantaged. Such measures are intended to promote equality and prevent further discrimination by ensuring that these individuals or groups receive the necessary support or opportunities to achieve equitable outcomes. Discrimination against discrimination is based on the widely known quote **"iron cuts iron"**. It is clear from history that one type of discrimination is negative and destructive in nature whereas the other type is curative and protective. This approach is intended to address systemic inequalities and can include practices such as affirmative action, targeted outreach, or special accommodations.

Merriam-Webster Dictionary, While "protective discrimination" is not listed, related terms like "affirmative action" are defined. Affirmative action is described as "an action or policy favoring those who tend to suffer from discrimination, especially in relation to employment or education." And in **Oxford English Dictionary**, Similarly, "positive discrimination" is defined as "the practice of giving preferential treatment to members of a disadvantaged group." The expression *"equal protection of laws"* laid down with the underlying rule that *"like should be treated alike and not that unlike should be treated alike"*⁵⁸

HISTORICAL PERSPECTIVE OF PROTECTIVE DISCRIMINATION:

The essence of the Indian society is its intersecting and overlapping groups and subgroups formed on vocation, sect, wealth, religion, political affiliation and language.

However, the most peculiar and overpowering characteristic of Indian society is its formation of caste based hierarchical structure. Throughout Indian history the four caste which were prominent were the Brahmins, Kshatriyas, Vaishyas and the Shudras, with the Shudras being at the lowest rung of this class strata. The Shudras were treated as subordinates to the remaining three classes and were approached only for menial jobs. They were deprived of their basic rights such as education, health and practicing their religious beliefs. Shudras came to be recognized as the untouchables in the modern India. This class was the most oppressed class economically, emotionally and physically.

The stance of the Indian National Congress on the abhorrent notion called untouchability was a wobbly one till the framing of the Indian Constitution. The only step in this direction was taken in the Congress's session in Calcutta conducted in the year 1917, wherein the Congress passed a resolution for the same. The resolution was aimed at providing social justice against the retrograde customs imposed on the opposed class over centuries. The key person behind the implementation of this resolution was Natesan, he was supported by Rama Iyer and Bhulabhai Desai⁵⁹. The plight of the untouchables was highlighted during the 1922 when the Congress was under the leadership of Gandhi with Annie Besant as the president. The first round table conference conducted in 1930 was the turning event which was the first real step taken by the Congress to address the plight of hundreds and thousands of the silent untouchables. The round table saw the first two untouchables being given a say in the matter of governance, this became the first step in recognizing the interests of untouchables were different from the mainstream Hindu society. To further showcase their stance and seriousness on the issue, the Congress also appointed a

⁵⁸ A.V. Dicey, Law of the Constitution, 127, (3rd edn., acmillan and Co., 1889).

⁵⁹ R.G. misra, reservation policy and personal selection(1990).



minorities committee headed by the then British prime minister Ransay MacDonald⁶⁰.

In 1932, the Communal Award was introduced by the British government, which provided separate electorates for different religious communities in India, including Muslims, Sikhs, and Christians⁶¹. It attempted to address the political representation of minority communities, often marginalized by the majority Hindu community⁶². The Poona Pact was an agreement between Mahatma Gandhi and Dr. B.R. Ambedkar in 1932, resolving the differences between the leaders over the Communal Award⁶³. As a result of the pact, the separate electorate system was replaced by reserved seats in the legislature for the Dalits (formerly known as Untouchables)⁶⁴.

As like in India's caste based discrimination, in America the civil rights movement was a struggle for social justice that took place mainly during the 1950s and 1960s for Black Americans to gain equal rights under the law in the United States. The Civil War officially abolished slavery, but it didn't end discrimination against Black people, they continued to endure the devastating effects of racism, especially in the South. By the mid-20th century, Black Americans, along with many other Americans, mobilized and began an unprecedented fight for equality that spanned two decades.

In India, policy of reservation in India is a social justice initiative aimed at correcting historical and ongoing discrimination against marginalized and underprivileged communities, including scheduled castes (SCs), scheduled tribes (STs), and other backward classes (OBCs)⁶⁵. The roots of the

reservation policy can be traced back to the colonial era when the British introduced the concept of affirmative action to address the backwardness of certain castes and tribes⁶⁶. However, it was not until the adoption of the Constitution of India in 1950 that the reservation policy was institutionalized to promote social justice and equality⁶⁷.

In recent years, there have been debates about extending reservation benefits to other communities, such as the economically weaker sections (EWS) and the Marathas in Maharashtra. The government has also introduced reservations in the private sector, but its implementation is still early⁶⁸. In August 2018, the Indian parliament passed the National Commission for Backward Classes Act 2018, which replaced the earlier National Commission for Backward Classes. The new act gives constitutional status to the National Commission for Backward Classes and provides for the identification and inclusion of communities in the OBC list⁶⁹. The Constitution (103rd Amendment) Act, 2019, popularly known as the 10% quota bill, was passed by the Indian parliament in January 2019. The amendment provides 10% reservation in jobs and education for economically weaker sections (EWS) of the general category, which are not covered under any other reservation scheme⁷⁰. The reservation system in India has a long and complex history, with several significant milestones that have shaped its evolution.

ISSUES EXAMINED BY COMMISSION AND COMMITTEES:

The Constitution itself does not define these groups nor does it provide any standard

⁶⁰ A.K.S. VAKIL, RESERVATION POLICY AND SCHEDULED CASTES IN INDIA 2(1985).

⁶¹ Spectrum Books Pvt. Ltd., A Brief History Of Modern India By Spectrum (Old Edition) (Spectrum Books, 2018).

⁶² Bipan Chandra, History of Modern India, 2020th ed. (New Delhi: Orient Blackswan, 2020).

⁶³ Spectrum Books Pvt. Ltd., A Brief History Of Modern India By Spectrum (Old Edition).

⁶⁴ Chandra, History of Modern India.

⁶⁵ Judith Heyer and Niraja Gopal Jayal, The Challenge of Positive Discrimination in India (Centre for Research on Inequality, Human Security and Ethnicity, University ..., 2009)

⁶⁶ V Santhosh Kumar, Social Justice and the Politics of Reservation in India, 1st ed. (Mittal Publications, 2008).

⁶⁷ C Basavaraju, "Reservation under the Constitution of India: Issues and Perspectives," Journal of the Indian Law Institute 51, no. 2 (2009): 267–74.

⁶⁸ PRAVIN KUMAR JHA AND DEVARATI R O Y CHOWDHURY, "REVISITING RESERVATION POLICY," DISCUSSANT 4, NO. 1 (2016).

⁶⁹ Syed Amin Jafri, "The Status of Muslim OBCs in India: Inclusion/Exclusion of Muslim OBCs in the Process of Modernization and Development," in The Routledge Handbook of the Other Backward Classes in India (Routledge India, 2021), 444–78.

⁷⁰ Shikhar Jain and Mridula Goel, "The Volatile Journey of India's Reservation Policy through Legal Amendments & Inconsistencies," Governance & Public Policy 9, no. 2 (2019): 77–102.



by which they may be determined⁷¹. The President may similarly specify "tribes and tribal or parts of or groups within tribes or tribal communities" to be the Scheduled Tribes⁷² by promulgation these lists can be varied only by an act of Parliament. It is further provided that the President shall appoint a special officer "to investigate all matters relating to the safeguards for the Scheduled Castes and Scheduled Tribes" and report to Parliament on their working. **Art. 338** Accordingly, the office of the Commissioner of Scheduled Castes and Scheduled Tribes was established in 1950 as a continuing body with co-ordinating and reporting as per Article 340 provided for the establishment of a Backward Classes Commission to be appointed by the President⁷³.

Report of the Kaka Kalelkar Commission in 1953, the Kaka Kalelkar Commission, also known as the "Backward Classes Commission," was the first commission set up to identify and recommend policies for backward classes in India. It laid the foundation for affirmative action policies in India⁷⁴.

The Mandal Commission, also known as the Socially and Educationally Backward Classes Commission, was set up in 1979 to identify backward communities in India and recommend measures for their upliftment⁷⁵. In 1990, the government of India implemented the recommendations of the Mandal Commission, which provided for 27% reservation in jobs and education for Other Backward Classes (OBCs) in addition to the existing reservation for SCs and STs. Accordingly, Article 16 was amended vide Constitution (77th Amendment) Act, 1995, empowering the government to provide for

reservation in promotion for SCs / STs by inserting clause 4A⁷⁶ in Art 16.

Report of the Sachar Committee in 2006 the Sachar Committee, officially known as the "Prime Minister's High-Level Committee on Social, Economic and Educational Status of the Muslim Community of India," investigated the socio-economic and educational status of Muslims in India. The report highlighted disparities and recommended measures for improving their condition, including targeted affirmative action⁷⁷ and in 2007 Report of the Ranganath Misra Commission, the Ranganath Misra Commission, officially titled the "National Commission for Religious and Linguistic Minorities," focused on the socio-economic conditions of religious minorities in India. It recommended reservations for minorities, including Muslims, in educational institutions and government jobs⁷⁸.

And in 2015, report of the Committee on Sub-Categorization of OBCs this committee was set up to examine the sub-categorization of Other Backward Classes (OBCs) to ensure more effective implementation of reservations. It aimed to address disparities within the OBC category and improve the targeting of affirmative action⁷⁹. In 2023, report of the Standing Committee on Social Justice and Empowerment and Annual Report of the National Commission for Scheduled Castes these reports reviews the implementation of affirmative action policies and reservations, including recent developments, challenges faced in the field of social justice and empowerment challenges faced by the National Commission for Scheduled Castes, including updates on protective discrimination policies affecting Scheduled Castes (SCs). Finally, Review of Reservation Policies and Affirmative Action" by the Ministry of Social

⁷¹ Section (25) of Art. 366 defines Scheduled Castes as those so designated under Art. 341 ; section (26) of Art. 366 defines Scheduled Tribes as those designated under Art. 342; no definition of "backward classes" appears at any point in the Constitution.

⁷² Art. 342(1). See Constitution (Scheduled Tribes) Order, 1950.

⁷³ to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations as to the steps that should be taken' by the Union or any State to remove such difficulties and to improve their condition.

⁷⁴ (National Commission for Backward Classes)

⁷⁵ Arvind Kumar, "Mandal, Mandal Commission and Making of an OBC Identity," in *The Routledge Handbook of the Other Backward Classes in India* (Routledge India, 2021), 184-214.

⁷⁶ Art 16(4A) Nothing in this article shall prevent from making any provision for reservation in matter of promotion to any class or classes of posts in the services under the state in favour of the scheduled castes and scheduled tribes which in the opinion of the state are not adequately represented in the services under the state

⁷⁷ (Ministry of Minority Affairs)

⁷⁸ (National Commission for Minorities)

⁷⁹ (National Commission for Backward Classes).



Justice and Empowerment (2024) This report reviews the current state of reservation policies and affirmative action measures, assessing their effectiveness and suggesting reforms based on recent evaluations.

PROVISION REGARDING PROTECTIVE DISCRIMINATION UNDER INDIAN CONSTITUTION:

The constitution has recognized three backward classes namely the scheduled castes, the scheduled tribes and other backward classes or OBC's. The OBC's are considered to be in a better position than SC's and ST's but not at the same footing with the mainstream society. Scheduled castes and scheduled tribes have been defined in the sub clauses 24 and 25 of Article 366 of the Indian constitution respectively, however the term backward class has not been specified. Article 15(4) and Article 340 use the words "socially and educationally backward classes", Article 16(4) use the term "backward classes" and Article 46 refers to the "weaker section of people". There is still not a definite definition of the term backward classes, it has been interpreted differently in various court judgements and have been defined differently by various commissions⁸⁰. The president under the Article 341 has the power to notify, territory wise, "castes, races or tribes or parts of our groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled castes"⁸¹.

The scheduled caste and scheduled tribes are referred to as untouchables due to several socio-cultural grounds were far away from their dream of a safe space for them in the society⁸². To provide the untouchables with a safe space, the framers included various provisions in the Indian constitution. Article 15(1) provides that, "the state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them",

also provides in clause (4) "Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes and tribes."

There was a need to protect the minorities from the discriminatory practices as well. For the purpose of providing protection, three groups have been noticed, the religious minorities who are fighting for their political rights, the linguistic minorities, who are working to conserve their language, to acquire employment and education and the third group includes scheduled castes and scheduled tribes who fight for their economic, political and education rights. All the three groups have a different set of problems which have been duly acknowledged and steps have been taken to safeguard their interest under the Articles 14, 15 and 16 of the constitution⁸³. Article 330 and Article 332 grants reservation of seats for the scheduled castes in the House of People of Lok Sabha and State Legislature respectively. The time period for the continuance of reservation is stated under Article 334. The time period has been extended perpetually as all the political parties have showed a deep interest in the concept of reservation⁸⁴.

The welfare policy adopted for the underprivileged sections of the society is well reflected under various provisions of the Indian constitution are Article 14, Article 15 and Article 16 enshrined under Part III of the Indian constitution. Article 338 and Article 340 of the constitution and Article 38 and Article 46 enshrined under part IV of the constitution as the directive principles of the State Policy. As per Article 38(2), "The State shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas engaged in different

⁸⁰ S.N. SINGH, RESERVATION POLICY FOR BACKWARD CLASS 76 (1996).

⁸¹ INDIAN CONST. art. 341

⁸² MUMTAZ ALI KHAN, RESERVATION FOR SCHEDULED CASTES, 7(1994)

⁸³ B.A.V. SHARMA, RESERVATION POLICY IN INDIA 32(1982).

⁸⁴ SHEO KUMAR LAL, EXTENT OF UNTOUCHABILITY AND PATTERN OF DISCRIMINATION 3 (1990)



vocations.” This obligates the states to subgroup the castes having different characteristics for the purpose of avoiding hostile competition amidst them.

Article 335 assumes that the scheduled castes and scheduled tribes have some claims to reservation and these claims have to be taken into consideration in the making of appointments to services and posts. Reservation of post exceeding 50% limit in order to fill up the backlog of vacancies of Scheduled Castes and Scheduled Tribes is also permitted.

Proviso⁸⁵ to Article 335 of the Constitution of India “Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the scheduled castes and scheduled tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.” The Constitution (85th Amendment) Act, 2001 has inserted, in clause 4A: “in matters of promotion to any class” the words “in matters of promotion, with consequential seniority, to any class.” This Amendment aims at extending the benefits of reservation in favour of the SC/ST'S in the matter of promotion with consequential seniority. **Article 336** speaks for the protection of rights of the Anglo-Indian Community in appointments in various sectors including railways, postal services, and customs. The Parliament in 2020 brought the Constitution (one hundred and fourth amendment) Act 2019, amended Article 334 which extended the reservation of seats to STs and SCs in the Parliament for a further ten years.

All the above mentioned Constitutional Amendments came to be challenged in the case of **M. Nagraj v. Union of India**⁸⁶. The constitutional validity of all these amendments was upheld by the Supreme Court subject to

some conditions. Imposing of these conditions in the judgment is a caution to the legislature and the executive that, in appropriate cases, the court will not hesitate to interfere and strike down the provisions providing for excessive reservations and undue concessions.

Carry forward rule of reservation:

If in a particular year, the seats specifically reserved for the Scheduled Castes and Scheduled Tribes for appointment are not filled and remain vacant, such vacancies can be deserved after following the due procedure for dereservation, the vacancies can be filled by candidates of other communities. The unfilled reserved vacancies to be carried forward to the subsequent year. This is known as the ‘Carry Forward Rule’. In **Devdasan v. Union of India**⁸⁷ the validity of the rule has been challenged. The Supreme Court by a majority of 4:1 struck down the carry forward of reservation stating unconstitutional on account of violation of right to equality of opportunity guaranteed by Article 16. Later in the landmark judgment **of Indra Sawhney v. Union of India**⁸⁸ overruling the judgment given in *Devdasan Case*, ruled that operation of carry forward rule is valid and should not in breach of 50% and most importantly, there shall be no reservation in matters of promotions.

In 2000, (81st Amendment) Act, inserted new clause 4B in Article 16 which seeks to end the 50% ceiling on reservation for SCs/STs in the backlog vacancies which could not fill up in the previous year because of non availability of eligible candidates. Under the newly added clause 4-B of Article 16, the vacancies which could not be filled up in the previous years or years shall be treated as a separate class of vacancies of the years, even if they go beyond the 50% limit.

Claiming position in Political status:

In matter of political recognition Article 164(1) provides⁸⁹, that there shall be a minister in

⁸⁵ the constitution (82nd Amendment) Act, 2000
⁸⁶ AIR 2007 SC 71

⁸⁷ AIR 1964; SC 179.,
⁸⁸ AIR 1993 SC 477,
⁸⁹ state of Bihar, Madhaya pradesh and Orissa



charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. Article 330 provides, for reservation of seats⁶⁵ of SCs / STs in the Lok Sabha. In pursuance of this 106 seats out of 545 total seats are reserved for members of SC / ST communities. In the post 11th Lok Sabha, SC / ST number of MPs outnumbered the fixed quota which indicates that besides the reserved constituencies SC / ST candidates are elected against unreserved Lok Sabha seats also. It is a healthy sign of social transformation.

In accordance with the Constitution (73rd Amendment) Act 1992, seats in Panchayat from Gram panchayat to Zilla panchayat will be reserved for SC / STs in proportion to their population at respective level, in direct election⁹⁰. Out of the seats reserved for SCs and STs one third will be reserved for women of these communities. These reserved seats for SCs and STs shall be allotted by rotation to different constituencies in a panchayat at each level. In accordance with the Constitution (74th Amendment) Act, 1992 out of total seats filled by the direct election, seats shall be reserved for SCs/STs proportion to their population in the municipal bodies at each level⁹¹. Out of these seats for SCs / STs at least one-third shall be reserved for SC / ST women.

With the enactment of the Panchayat (extension to the Scheduled Areas) Act, 1996, the provision of part IX of the constitution relating to Panchayats have been extended to the scheduled areas subject to exceptions and modifications that a legislature of a state shall not make any law inconsistent with any of the following features- customary law, Social and religious practices and traditional management practices of community services.

Empowerment of vulnerable class:

Article 15(3)⁹² empowers the State to make special provision for 'Women and Children.' Women and Children require special treatment on account of their very nature. The women's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well being becomes an object of public interest and care in order to preserve the strength and vigour of the race⁹³.

Free and compulsory education to all children. The Constitution (86th Amendment) Act 2002, has added a new Article 21A and has made education for all children of the age of 6 to 14 years a fundamental right. It provides that "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine⁹⁴."

Identification of backward classes and tribes for welfare:

We assess the policy of reservation in terms of facts and figures collected from the data presented by census, Table 1 and Table 2 shows the data collected in identification of backward classes and tribes.

Table 1:

Table 1 Increase in numbers of OBCs over the years ⁹⁵

YEAR	1950	1955	1980	2006
Other backward classes	1372	2399	3763	5013

⁹² 15(3): Nothing in Article 15 shall prevent the State from making any special provision for women and Children
⁹³ Muller v. Oregon, 52 L. Ed 551
⁹⁴ Art 45: provision for early childhood care and education to children below the age of six years, The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
⁹⁵ Source: Prepared from the date on a report in The Hindu on September 13, 2007

⁹⁰ Article 243-D, Constitution of India
⁹¹ Article 243-T, Constitution of India



Apart from the rapid increase in the Schedules Tribes and Scheduled Castes population, the other strong reason for the increase in the numbers of Schedules Tribes and Scheduled Castes with every successive census years is the inclusion of the castes and tribes in the population more than delisting the creamy layers amongst them.

Similarly, the Scheduled Castes and the Scheduled Tribes have increased with every successive year. Their collective population figures are shown in Table 2. Table 2 Population Increase of STs and SCs Since 1981.

Table 2:

Census in year	Population in lakhs	
	Scheduled Caste	Scheduled Tribes
1981	504.48	912.05
1991	627.51	1123.43
2001	773.39	1330.11
2011	1045.25	1666.35

Identification of Legislative Framework for the Empowerment of Backward class and Vulnerable groups:

Certainly! Here's a list of key acts and legislation in India related to the empowerment of marginalized and vulnerable groups:

Acts and Legislation:

For Scheduled Castes (SCs) and Scheduled Tribes (STs),

- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 , this act aims to prevent and punish acts of discrimination and violence against SCs and STs and provides for special courts and procedures for the speedy trial of such offenses.

- The Constitution (Scheduled Castes) Order, 1950 which Specifies the castes considered to be Scheduled Castes.
- The Constitution (Scheduled Tribes) Order, 1950, it defines the tribes considered to be Scheduled Tribes.

For Other Backward Classes (OBCs)

The National Commission for Backward Classes Act, 1993 which establishes a National Commission for Backward Classes to examine and recommend measures for the social and educational development of OBCs.

For Women

- The Protection of Women from Domestic Violence Act, 2005 which Provides protection and support for women who are victims of domestic violence, including access to legal aid, shelter, and compensation.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It aims to prevent and address sexual harassment at workplaces and establish mechanisms for redressal.

For Children

- The Juvenile Justice (Care and Protection of Children) Act, 2015, It provides for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.
- The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), It guarantees free and compulsory education for children aged 6 to 14 years.

For Persons with Disabilities

- The Rights of Persons with Disabilities Act, 2016, It provides a comprehensive framework for the protection and promotion of the rights of persons with disabilities, including accessibility, education, and employment.



- The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999: Establishes the National Trust to provide support for individuals with severe disabilities.

For Economic and Social Welfare

- The National Food Security Act, 2013, Ensures subsidized food grains to eligible households, including the marginalized and vulnerable populations.
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, It recognizes and vests forest rights in forest-dwelling communities, including Scheduled Tribes and other traditional forest dwellers.

For Elderly and Vulnerable Groups

- The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, this act provides for the maintenance and welfare of elderly parents and senior citizens, including provisions for their financial support and care.

For Social Justice and Legal Aid

- The National Legal Services Authority Act, 1987, Establishes the National Legal Services Authority (NALSA) to provide free legal aid and ensure justice for the underprivileged and marginalized sections of society.
- The Protection of Human Rights Act, 1993, This act establishes the National Human Rights Commission (NHRC) to investigate and address human rights violations, including those affecting marginalized groups.

Other Relevant Legislation

- The Right to Information Act, 2005, Promotes transparency and accountability in governance, which can benefit marginalized and vulnerable groups by ensuring their right to access information.
- The Equal Remuneration Act, 1976, Ensures equal pay for equal work for

men and women, promoting gender equality in the workplace.

These acts and legislation form the legal framework for addressing the needs and rights of marginalized and vulnerable groups in India, aiming to provide protection, promote equality, and support their overall empowerment.

Government Schemes and Programs:

For Scheduled Castes (SCs) and Scheduled Tribes (STs)

- **National SC/ST Hub (NSSH):** Supports SC and ST entrepreneurs through business development and capacity building.
- **Post-Matric Scholarship Scheme:** Provides financial assistance to SC/ST students pursuing post-matric education.
- **Pre-Matric Scholarship Scheme:** Aims to support SC/ST students from class I to X.

For Other Backward Classes (OBCs)

- **Central Sector Scheme of Scholarships for College and University Students:** Provides financial assistance to OBC students for pursuing higher education.
- **Pre-Matric and Post-Matric Scholarships for OBCs:** Offers financial support for educational expenses.

For Women and Children

- **Beti Bachao Beti Padhao (BBBP):** Aims to improve the welfare and education of girls, addressing gender disparity and ensuring equal opportunities.
- **One Stop Centre Scheme:** Provides integrated support and services to women affected by violence.
- **Integrated Child Development Services (ICDS):** Offers health, nutrition, and education services to children under 6 years and pregnant and lactating mothers.



- **Pradhan Mantri Matru Vandana Yojana (PMMVY):** Provides financial support to pregnant and lactating women.

For Economically Weaker Sections (EWS)

- **Pradhan Mantri Awas Yojana (PMAY):** Provides affordable housing to low-income groups and economically weaker sections.
- **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA):** Ensures 100 days of guaranteed wage employment per year to rural households.

For Scheduled Areas and Tribes

- **Tribal Sub-Plan (TSP):** Allocates funds for the development of tribal areas and communities.
- **Vanbandhu Kalyan Yojana:** Focuses on the holistic development of tribal communities.

Education and Skill Development

- **National Skill Development Mission (NSDM):** Aims to enhance the skills of the youth, including those from marginalized communities.
- **Skill Development Schemes for SC/ST/OBC:** Includes various vocational training and skill development programs tailored to these communities.

Social Security and Welfare

- **Public Distribution System (PDS):** Provides subsidized food grains to economically weaker sections.
- **National Social Assistance Programme (NSAP):** Includes old age pensions, disability pensions, and widow pensions.
- **National Health Mission (NHM):** Focuses on improving healthcare services, particularly in rural and underserved areas.

Legal Aid and Justice

- **National Legal Services Authority (NALSA):** Provides free legal aid to individuals from marginalized and disadvantaged groups.
- **Legal Aid Clinics:** Established in various states to offer legal assistance to economically weaker sections.

Housing and Infrastructure

- **Deendayal Antyodaya Yojana – National Urban Employment Guarantee Scheme (DAY-NRLM):** Focuses on providing employment opportunities and enhancing livelihoods for the urban poor.
- **Rajiv Awas Yojana (RAY):** Aims to provide affordable housing and infrastructure to the urban poor.

Special Schemes for Persons with Disabilities

- **Deen Dayal Disabled Rehabilitation Scheme (DDRS):** Supports various rehabilitation services and programs for persons with disabilities.
- **Accessible India Campaign (Sugamya Bharat Abhiyan):** Aims to make public spaces accessible to persons with disabilities.

These policies and schemes reflect India's commitment to addressing the needs and challenges faced by various marginalized and vulnerable groups, though their effectiveness can depend on implementation and local contexts.

Steps taken by judiciary:

It is said that 'Protective Discrimination' is a facet of equality under Articles 14, 15 and 16 of the Constitution. In the later cases, the court has come to hold that in order that the equality of opportunity may reach the backward classes and the minority, the state must take affirmative action by giving them a 'preferential treatment' or 'protective



discrimination' and taking positive measures to reduce inequality.

One of the earliest and most significant cases in U.S. legal history regarding protective discrimination is "**Brown v. Board of Education of Topeka**"(1954). This landmark Supreme Court decision declared that racial segregation in public schools was unconstitutional, thus laying the groundwork for various forms of affirmative action and protective discrimination aimed at addressing racial inequality. The *Brown v. Board of Education* case challenged the doctrine of "separate but equal" established by the earlier case "**Plessy v. Ferguson**"(1896), which had sanctioned racial segregation. The Supreme Court's ruling in *Brown* held that segregated schools were inherently unequal and violated the Equal Protection Clause of the 14th Amendment. This decision was pivotal in dismantling formal segregation and set a precedent for future protective measures designed to advance racial equality. While *Brown v. Board of Education* was not about protective discrimination in the sense of affirmative action, it was a critical turning point that eventually led to the development of various protective discrimination policies aimed at addressing and correcting historical inequities⁹⁶.

In the historic *Mandal Commission case*⁹⁷, the Supreme Court held that the sub classification of backward classes into more backward classes for the purpose of Art 16(4) can be done. But, as a result of sub-classification the reservation cannot exceed more than 50 per cent.

In "**State of Kerala v. N.M Thomas**"⁹⁸, the dispute before the Court was whether preferential treatment to SC's and ST's comes under the permissible limit of Clause (1) of Article 16. In this case, the Supreme Court by 5:2 majority held that classification of employees

belonging to SCs and STs that provided an extended period of two years for allowing them to pass the tests for promotion from other classes of employees was just and reasonable one that can be defended on the ground of providing rational nexus between such classifications and the object of promoting equal opportunities amongst all citizen for employment and appointment matters to the public offices.

In **Government of A.P v. P.B Vijayakumar**⁹⁹, explaining the objective of inserting clause (3) to Article 15, the Supreme Court observed that, inserting the Clause is a realization of the fact that for centuries, in this country women have been socially and economically depressed. Hence, Clause (3) of Article 15 was enacted for eliminating the backwardness of women and also for empowering them.

In **P.A Inamdhar v. State of Maharashtra**¹⁰⁰, the Supreme Court held that "neither the policy of reservation can be enforced by the state nor can any quota or percentage of admission can be carved out to be appropriated by the state in an unaided educational institution. Reiterating its stand in **T.M.A. Pai Foundation v. State of Karnataka**¹⁰¹, the right to establish an educational institution, for charity, or for profit being an occupation, is protected by Article 19(1)(g) it went further and held that "imposition of quota of state seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institution, which cannot be held to be reasonable restriction within the meaning of Article 19(6)." This was neutralised by the Constitution (93rd Amendment) Act, 2006, added clause (5) into Article 15. By this Amendment, the scope of special provision is extended to admission to private educational institutions whether aided or unaided by the

⁹⁶ Cornell Legal Information Institute, *Brown v. Board of Education*, 347 U.S. 483 (1954),

⁹⁷ AIR 1993 SC 477

⁹⁸ AIR 1976 SC 490.

⁹⁹ AIR 1995 SC1648

¹⁰⁰ (2005) 6 SCC 537.

¹⁰¹ (2002) 8 SCC 481.



state. In **Ashok Kumar Thakur v. UOI**¹⁰², Supreme Court held that the Constitution (93rd Amendment) Act 2006 providing 27 percent reservation in admission to OBC candidates in higher educational institutions like IITs and IIMs is Constitutional.

In **Mohan Kumar Singhania v. Union of India (1991)**, the Supreme Court explained that Article 16(4) is an enabling article that gives the state freedom to make any provision or reservation for any backward class of citizens that is not adequately represented in the state's service. The state government takes the total population of the backward class and their representation in state services, does the appropriate calculations, and then makes the reservation and provides the percentage of reservation for the posts, which must be carefully adhered to. **Nasir Service Society case**¹⁰³ observed that the creamy layer rule is a necessary bargain between the compelling ends of caste-based reservations and the principle of secularism, and is "a part of the constitutional scheme. Court's prescription of means test to exclude the creamy layer has made laudable contribution to ensure that the benefits of protective discrimination would go to really deserving section¹⁰⁴. In **B K Pavitra and Others v. State of Karnataka**¹⁰⁵, the apex court held that the exercise for determining 'inadequacy of representation'; Backwardness' and 'overall efficiency must be carried out before granting of promotion to scheduled Castes and Scheduled Tribes employees under the Constitution.

In a recent case of **Ranveer Singh & Anr. v. Union of India, the Central Administrative Tribunal (CAT) 2021** observed that the scope of Article 15(3) is much greater than Article 16(4) of the Constitution. CAT upholds the reservation of 80% posts of Nursing Officer in favor of female in AIIMS. It was held that the said reservation is to be treated as a special provision for women

candidates under Article 15(3) and a separate classification is held to be valid.

SUGGESTIONS:

The policy of protective discrimination has no doubt been very influential in ameliorating the life conditions of the lower caste and tribal groups in the country. But it has not reached to the grass-root levels as the above discussion reveals. Following are the suggestions to improve the policy in its efficiency levels.

- A high level committee should be established so as to completely assess the life conditions of all the caste and tribal groups of the country. A complete account will help redesigning the structure favourable according to the household economic position to improve the desired return of the policy.
- Within the groups the benefits should be allocated according to the different economic levels and the extents of beneficiaries in the households.
- The benefits should be scrapped from the all kinds of jobs that require high skill and competence.
- The downtrodden, discriminated and marginalized groups must be aided financially so that they can compete with others outside.
- Reservation policy should be restructured in such a way that it in any case may not mar excellence and merit.

Conclusion:

The constitution of India via various provisions aims at eliminating disparities between different sections of the society and providing equality of status and opportunity. However, there has been a long-debated dilemma of preservation of rights of the historically oppressed and socially as well as economically backward classes of citizens and the privileged section simultaneously. All people mustn't be equal by their nature, attainment, and circumstances. **Chiranjit Lal Chaudhary v.**

¹⁰² 2008 SCW 2899.

¹⁰³ (2007) 4 SCC 1.

¹⁰⁴ Ishwar Bhat, P. Law and social transformation, Eastern Book Co. p.492.

¹⁰⁵ Civil Appeal No. 2368 of 2011 decided on 9th February 2017.



Union of India¹⁰⁶, The policy unlike the affirmative action in U.S.A expressly provides for the reservation, however where India did fail in the implementation of the policy. The policy should have achieved its goal in the initial ten years, however, due to the corrupt use of the provisions of reservation we still fail to meet ideals of the policy. It would benefit the nation to review the policy, restrict its extension and take appropriate measures to provide the benefits to those who need it and not those who exploit it.

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¹⁰⁶ AIR 1951, SC 41.