



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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# **THE 103RD CONSTITUTIONAL AMENDMENT AND JUDICIAL REVIEW: REDEFINING EQUALITY JURISPRUDENCE**

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## **Abstract**

The Constitution (One Hundred and Third Amendment) Act, 2019 introduced a significant shift in India's affirmative action framework by enabling reservations in education and public employment for Economically Weaker Sections (EWS) of citizens who do not fall within existing reserved categories. By inserting Articles 15(6) and 16(6), the amendment expanded the constitutional basis of reservations beyond historically disadvantaged classes to include economic criteria.

The constitutional validity of the amendment was challenged before the Supreme Court in *Janhit Abhiyan v. Union of India* (2022), where a Constitution Bench upheld the amendment by a narrow majority. The judgment has triggered renewed debate regarding the scope of equality under Articles 14, 15, and 16, the relationship between social justice and formal equality, and the continuing relevance of the Basic Structure Doctrine in evaluating constitutional amendments.

This paper critically examines whether the 103rd Constitutional Amendment represents a legitimate evolution of equality jurisprudence or a departure from the constitutional vision of substantive justice. It analyses the historical development of reservation policy, the doctrinal foundations of equality in Indian constitutional law, and the judicial reasoning in *Janhit Abhiyan*. The study further explores the implications of recognising economic criteria as an

independent basis for affirmative action and assesses whether the exclusion of Scheduled Castes, Scheduled Tribes, and Other Backward Classes from the EWS category withstands scrutiny under the Basic Structure Doctrine.

The paper argues that while the amendment reflects an attempt to address emerging socio economic realities, it also signals a recalibration of equality jurisprudence that warrants sustained constitutional scrutiny.

### **Keywords**

103rd Constitutional Amendment; Economically Weaker Sections (EWS); Equality Jurisprudence; Affirmative Action; Reservations; Basic Structure Doctrine; Article 14; Article 15(6); Article 16(6); Judicial Review; Substantive Equality; Social Justice; Janhit Abhiyan.

### **Introduction**

The principle of equality occupies a central and transformative position in the constitutional framework of India. Enshrined primarily in Articles 14, 15, and 16 of the Constitution, equality has been interpreted not merely as formal non discrimination but as a mandate for substantive justice aimed at dismantling historical disadvantage.<sup>1</sup> From the inception of the Republic, affirmative action particularly in the form of reservations for Scheduled Castes (SCs), Scheduled Tribes (STs), and later Other Backward Classes (OBCs) has been treated as a constitutional tool to correct entrenched social inequalities rooted in caste hierarchy.

The Constitution (One Hundred and Third Amendment) Act, 2019 introduced a significant departure from this established framework. By inserting Articles 15(6) and 16(6), Parliament authorised the State to provide up to 10% reservation in educational institutions and public employment for Economically Weaker Sections (EWS) of citizens, excluding those already covered under existing reservations.<sup>2</sup> For the first time, economic criteria were recognised as an independent constitutional basis for affirmative action.

The amendment immediately generated constitutional controversy. Critics argued that reservations under the Indian Constitution were historically justified as remedies for social and

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<sup>1</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, latest edn).

<sup>2</sup> Constitution (One Hundred and Third Amendment) Act, 2019.

educational backwardness, not poverty alone.<sup>3</sup> The introduction of economic criteria, coupled with the exclusion of SCs, STs, and OBCs from the EWS category, raised questions about the coherence of equality jurisprudence. Further, the amendment permitted reservations beyond the previously recognised 50% ceiling established in *Indra Sawhney v. Union of India*.<sup>4</sup>

The constitutional validity of the amendment was challenged before the Supreme Court in *Janhit Abhiyan v. Union of India* (2022).<sup>5</sup> A Constitution Bench upheld the amendment by a 3-2 majority, reaffirming Parliament's power to amend the Constitution subject to the Basic Structure Doctrine. The Court concluded that the amendment did not violate the basic structure, particularly the principle of equality.

The judgment has profound implications. It compels reconsideration of long standing doctrines such as the 50% reservation cap, the nature of backwardness, and the relationship between economic disadvantage and social discrimination. It also reopens debate on the limits of constitutional amendment under Article 368 and the continued vitality of the Basic Structure Doctrine.

This research examines whether the 103rd Constitutional Amendment represents an expansion of substantive equality or a conceptual shift toward economic populism. It situates the amendment within the broader history of affirmative action jurisprudence and evaluates the reasoning adopted by the Supreme Court in light of constitutional theory and democratic principles.

### **Statement of Problem**

The Constitution of India embodies a commitment to substantive equality, recognising that identical treatment of unequals perpetuates injustice. From its inception, affirmative action has been justified as a compensatory mechanism for historically marginalised communities subjected to systemic social discrimination. Articles 15(4), 15(5), and 16(4) were interpreted as enabling provisions designed to uplift socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes.<sup>6</sup> The judicial understanding of equality has thus

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<sup>3</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>4</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>5</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1.

<sup>6</sup> *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310.

evolved around the recognition of structural disadvantage rather than mere economic deprivation.

The Constitution (One Hundred and Third Amendment) Act, 2019 fundamentally alters this framework by introducing economic criteria as an independent basis for reservation. By inserting Articles 15(6) and 16(6), the amendment authorises reservation exclusively for economically weaker sections among the unreserved categories, while expressly excluding SCs, STs, and OBCs from its scope.<sup>7</sup> This shift generates multiple constitutional dilemmas.

First, the amendment raises a conceptual problem: can poverty alone constitute “backwardness” within the meaning of equality jurisprudence? Historically, the Supreme Court in *Indra Sawhney* rejected economic criteria as the sole basis for reservation, holding that social backwardness was the primary constitutional concern.<sup>8</sup> The 103rd Amendment appears to depart from this reasoning, thereby challenging doctrinal continuity.

Second, the amendment disrupts the previously recognised 50% ceiling on reservations. While the ceiling was treated as a constitutional principle to preserve balance between equality of opportunity and affirmative action, the EWS quota effectively permits reservation beyond this limit. Whether the ceiling forms part of the Basic Structure Doctrine became a critical issue before the Court.

Third, the exclusion of SCs, STs, and OBCs from the EWS quota introduces questions of internal discrimination. If poverty is the basis of the scheme, excluding economically weaker individuals from reserved communities may appear inconsistent with the equality mandate under Article 14.

Finally, the amendment invites reconsideration of the Basic Structure Doctrine itself. If equality forms part of the basic structure as previously recognised in cases such as *Indira Nehru Gandhi* and *Minerva Mills*<sup>9</sup> does the 103rd Amendment alter the essential identity of equality under the Constitution?

The central problem addressed in this research is therefore whether the 103rd Constitutional

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<sup>7</sup> Constitution (One Hundred and Third Amendment) Act, 2019.

<sup>8</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>9</sup> *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1; *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

Amendment represents a constitutionally permissible expansion of affirmative action or a structural redefinition of equality that warrants stricter judicial scrutiny. The issue is not merely policy oriented; it implicates foundational questions regarding constitutional identity, distributive justice, and the limits of parliamentary amendment power.

### Objectives of the Study

The present research seeks to undertake a comprehensive doctrinal and theoretical examination of the 103rd Constitutional Amendment and its implications for Indian equality jurisprudence.

The study is guided by the following objectives:

- 1. To analyse the historical development of reservation policy in India**, particularly the constitutional foundations of affirmative action under Articles 15 and 16.
- 2. To examine the conceptual shift introduced by the 103rd Constitutional Amendment**, especially the recognition of economic criteria as an independent basis for reservation.
- 3. To critically evaluate the judgment of the Supreme Court in *Janhit Abhiyan v. Union of India***, with particular focus on the reasoning adopted by the majority and the dissenting opinions.
- 4. To assess whether the amendment violates the Basic Structure Doctrine**, particularly the principles of equality, secularism, and constitutional identity.
- 5. To examine the constitutional validity of exceeding the 50% reservation ceiling**, and whether the ceiling forms part of the basic structure.
- 6. To explore the broader implications of the amendment for the future of affirmative action and substantive equality in India.**

Through these objectives, the research aims to contribute to ongoing debates on constitutional amendment power, distributive justice, and the evolving meaning of equality under the Indian Constitution.

### Research Questions

1. Does the 103rd Constitutional Amendment represent a conceptual shift in the constitutional understanding of equality in India?
2. Can economic criteria alone constitutionally justify affirmative action under Articles 15 and 16?

3. Does the exclusion of SCs, STs, and OBCs from the EWS quota violate the principle of equality under Article 14?
4. Does permitting reservations beyond the 50% ceiling alter the basic structure of the Constitution?
5. How does the judgment in *Janhit Abhiyan v. Union of India* reshape the future trajectory of equality jurisprudence?

### **Hypothesis**

This research proceeds on the hypothesis that the 103rd Constitutional Amendment marks a significant doctrinal shift in Indian equality jurisprudence by recognising economic disadvantage as an independent constitutional basis for affirmative action, thereby recalibrating the traditional understanding of substantive equality.

It is further hypothesised that while the amendment may not explicitly violate the Basic Structure Doctrine as interpreted by the Supreme Court, it alters the normative framework of reservation policy by diluting the centrality of social and educational backwardness. The recognition of economic criteria, coupled with the relaxation of the 50% ceiling, signals a transition from caste based remedial justice toward a broader redistributive model of equality. However, the constitutional legitimacy of this shift depends upon whether the amendment preserves the essential identity of equality as a structural principle of the Constitution. The long term stability of the amendment will therefore hinge on judicial interpretation and principled application in future cases.

### **Research Methodology**

The present study adopts a doctrinal and analytical research methodology, supplemented by theoretical and comparative perspectives. The objective is to critically examine the constitutional validity and jurisprudential implications of the 103rd Constitutional Amendment within the broader framework of Indian equality law.

### **Doctrinal Analysis**

The primary method employed is doctrinal research, involving a detailed examination of constitutional provisions, amendment texts, and landmark judicial decisions. Particular attention is given to:

- Articles 14, 15, and 16 of the Constitution of India;
- Articles 15(6) and 16(6) inserted by the Constitution (One Hundred and Third Amendment) Act, 2019;
- Judicial precedents such as *Indra Sawhney v. Union of India*,<sup>10</sup> *M. Nagaraj v. Union of India*,<sup>11</sup> and *Janhit Abhiyan v. Union of India*.<sup>12</sup>

These cases are analysed to trace the evolution of reservation jurisprudence and to evaluate the doctrinal consistency of the 103rd Amendment with established constitutional principles.

### Analytical and Theoretical Framework

The study engages with constitutional theory concerning:

- Substantive equality versus formal equality;
- Compensatory discrimination and distributive justice;
- Constituent power and judicial review under Article 368;
- The Basic Structure Doctrine as a limitation on constitutional amendments.

Scholarly writings on constitutional morality, democratic legitimacy, and social justice are incorporated to critically assess whether the amendment strengthens or destabilises the equality framework.

### Comparative Perspective

Where appropriate, the research briefly refers to comparative constitutional experiences concerning affirmative action and economic based reservations in other jurisdictions. This perspective assists in situating the Indian development within a broader global discourse on equality and redistribution.

### Sources of Data

The research relies upon:

- **Primary sources:** Constitutional provisions, constitutional amendment acts, Supreme Court judgments.
- **Secondary sources:** Scholarly books, peer reviewed journal articles, law commission reports, and academic commentaries.

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<sup>10</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>11</sup> *M. Nagaraj v. Union of India* (2006) 8 SCC 212.

<sup>12</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1.

By combining doctrinal analysis with theoretical inquiry, the methodology seeks to provide a balanced and rigorous evaluation of the constitutional, political, and jurisprudential consequences of the 103rd Constitutional Amendment.

## **Literature Review**

### **Evolution of Equality and Reservation Jurisprudence in India**

The constitutional commitment to equality under Articles 14, 15, and 16 has undergone significant judicial transformation since 1950. Early interpretations conceptualised equality primarily in formal terms, emphasising reasonable classification under Article 14.<sup>13</sup> However, the Supreme Court gradually expanded the doctrine to incorporate substantive equality, recognising that identical treatment of unequals perpetuates injustice.

In *State of Kerala v. N.M. Thomas*,<sup>14</sup> the Court acknowledged that equality is not merely a prohibition against discrimination but also a positive mandate enabling the State to take affirmative measures to remedy structural disadvantage. This marked a doctrinal shift toward substantive equality, aligning constitutional interpretation with the social justice aspirations embedded in the Preamble and Directive Principles.

The jurisprudence reached a watershed moment in *Indra Sawhney v. Union of India*,<sup>15</sup> where a nine judge Bench upheld reservations for Other Backward Classes (OBCs) while articulating two critical principles: (i) social and educational backwardness, not economic criteria alone, justifies reservation; and (ii) reservations ordinarily should not exceed 50%, except in extraordinary circumstances. The Court rejected poverty as an independent basis for affirmative action, reasoning that economic disadvantage lacks the structural and historical dimension of caste based oppression.<sup>16</sup>

Scholars such as M.P. Jain and Granville Austin have interpreted this framework as reflecting the Constitution's transformative character, aimed at dismantling entrenched hierarchies rather than merely redistributing resources.<sup>17</sup> Gautam Bhatia further argues that reservation

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<sup>13</sup> *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75.

<sup>14</sup> *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310.

<sup>15</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>16</sup> *ibid.*

<sup>17</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, latest edn); Granville Austin, *Working a Democratic Constitution* (Oxford University Press 1999).

jurisprudence represents a constitutional strategy for restructuring public institutions to reflect social diversity.<sup>18</sup>

Thus, prior to the 103rd Amendment, the doctrinal foundation of affirmative action was anchored in social disadvantage rooted in caste hierarchy. The recognition of economic criteria as a standalone ground for reservation therefore represents a significant jurisprudential departure.

### **Economic Criteria and the Debate on Poverty Based Reservations**

The introduction of economic criteria as a constitutional basis for reservation has long been debated in academic and judicial discourse. Even prior to the 103rd Constitutional Amendment, the question of whether poverty alone could justify affirmative action was examined in *Indra Sawhney v. Union of India*.<sup>19</sup> The Supreme Court in that case expressly rejected economic criteria as the sole determinant of backwardness under Article 16(4), holding that the constitutional vision of reservation was primarily concerned with social and educational disadvantage rooted in historical discrimination.

Scholars have generally supported this distinction. Upendra Baxi argued that the architecture of reservation in India is fundamentally tied to structural oppression embedded in caste hierarchies, and not merely to economic deprivation.<sup>20</sup> Economic poverty, while significant, was viewed as lacking the intergenerational and systemic dimensions that characterise caste based exclusion. The Court in *Indra Sawhney* reasoned that poverty is a transient and individual condition, whereas caste based disadvantage is structural and collective.<sup>21</sup>

However, other scholars have criticised this rigid separation between social and economic disadvantage. Marc Galanter, in his influential work on compensatory discrimination, observed that poverty often intersects with caste and that exclusion cannot always be compartmentalised neatly.<sup>22</sup> Some commentators have argued that a constitutional commitment to social justice should evolve to address emerging forms of marginalisation, including economic vulnerability in non reserved categories.<sup>23</sup>

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<sup>18</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>19</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>20</sup> Upendra Baxi, 'The Crisis of the Indian Legal System' (Vikas Publishing 1982).

<sup>21</sup> *Indra Sawhney* (n 1).

<sup>22</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Oxford University Press 1984).

<sup>23</sup> Sudhir Krishnaswamy, *Democracy and Constitutionalism in India* (Oxford University Press 2009).

The 103rd Amendment reflects this latter perspective by constitutionally recognising economic weakness as a distinct ground for affirmative action. Supporters of the amendment argue that the Constitution does not prohibit Parliament from expanding the scope of equality measures beyond caste based criteria.<sup>24</sup> They contend that Articles 15 and 16 are enabling provisions, and the insertion of clause (6) represents a legitimate exercise of constituent power under Article 368.

Critics, however, caution that equating poverty with backwardness risks diluting the philosophical foundation of reservation. Anup Surendranath has argued that economic disadvantage, while serious, does not generate the same systemic barriers in public institutions as caste discrimination.<sup>25</sup> The concern is that expanding reservations to include economically weaker sections may transform affirmative action from a remedial mechanism addressing structural exclusion into a broader redistributive welfare policy.

The debate thus turns on the conceptual boundaries of equality. Whether substantive equality under the Constitution is limited to correcting historical oppression or extends to alleviating contemporary economic inequality remains a contested question. The 103rd Constitutional Amendment has brought this theoretical tension to the forefront of constitutional discourse.

### **Basic Structure Doctrine and Equality as a Structural Principle**

The constitutional challenge to the 103rd Amendment was framed not merely as a policy disagreement but as a structural question under the Basic Structure Doctrine. Since *Kesavananda Bharati v. State of Kerala*,<sup>26</sup> the Supreme Court has held that constitutional amendments may be invalidated if they damage the “basic structure” of the Constitution. Equality has repeatedly been recognised as one such foundational principle.

In *Indira Nehru Gandhi v. Raj Narain*,<sup>27</sup> the Court emphasised that free and fair elections, rule of law, and equality form part of the Constitution’s basic framework. Later, in *Minerva Mills Ltd. v. Union of India*,<sup>28</sup> the Court reaffirmed that limited amending power and the balance between Fundamental Rights and Directive Principles are structural features. Judicial review

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<sup>24</sup> Constitution (One Hundred and Third Amendment) Act, 2019.

<sup>25</sup> Anup Surendranath, ‘Reservations and Constitutional Morality’ (2023) *Indian Law Review*.

<sup>26</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>27</sup> *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1.

<sup>28</sup> *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

itself was identified as part of the basic structure in *L. Chandra Kumar v. Union of India*.<sup>29</sup>

Scholarly commentary has generally endorsed the view that equality lies at the heart of constitutional identity. Sudhir Krishnaswamy argues that the equality code is not merely an individual right but a structural commitment to a just social order.<sup>30</sup> Gautam Bhatia similarly conceptualises equality as transformative, requiring active dismantling of entrenched hierarchies rather than neutral formalism.<sup>31</sup> From this perspective, any amendment that redefines equality must withstand heightened scrutiny under the Basic Structure Doctrine.

The critical debate in relation to the 103rd Amendment concerns whether expanding reservation to economically weaker sections alters the “identity” of equality. Some scholars contend that the amendment represents an expansion rather than a dilution of substantive equality, as it extends protective measures to additional vulnerable groups.<sup>32</sup> Others argue that excluding SCs, STs, and OBCs from the EWS quota introduces internal discrimination inconsistent with Article 14’s guarantee of equal protection.<sup>33</sup>

Another contentious issue is the 50% ceiling on reservations established in *Indra Sawhney*. While the Court in that case treated the ceiling as essential to maintaining balance between equality of opportunity and affirmative action, its precise constitutional status remains debated. In *Janhit Abhiyan*, the majority declined to treat the 50% limit as part of the basic structure, whereas the dissenting judges viewed it as integral to equality’s structural equilibrium.<sup>34</sup>

Comparative constitutional scholarship adds nuance to this discussion. Yaniv Roznai’s theory of unconstitutional constitutional amendments posits that courts must protect core constitutional principles even against formally valid amendments.<sup>35</sup> If equality is accepted as such a core principle, then the judiciary’s role in reviewing the 103rd Amendment becomes constitutionally imperative rather than discretionary.

Thus, the literature reflects a deep theoretical divide: whether the amendment broadens the

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<sup>29</sup> *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261.

<sup>30</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>31</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>32</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, latest edn).

<sup>33</sup> Anup Surendranath (n 7).

<sup>34</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1 (dissenting opinions).

<sup>35</sup> Yaniv Roznai, *Unconstitutional Constitutional Amendments* (Oxford University Press 2017).

scope of equality in response to evolving socio economic realities, or whether it recalibrates the equality code in a manner that weakens its structural coherence. The resolution of this debate will shape the trajectory of affirmative action jurisprudence for decades to come.

### **Judicial Examination in *Janhit Abhiyan*: Majority Reasoning**

The constitutional validity of the 103rd Constitutional Amendment was adjudicated in *Janhit Abhiyan v. Union of India*<sup>36</sup> by a five judge Constitution Bench of the Supreme Court. The Court delivered a split verdict (3 2), with the majority upholding the amendment. The judgment constitutes a significant moment in the evolution of equality jurisprudence and the Basic Structure Doctrine.

#### **Scope of Review under the Basic Structure Doctrine**

The majority reaffirmed that constitutional amendments are subject to judicial review under the Basic Structure Doctrine established in *Kesavananda Bharati*.<sup>37</sup> The Court clarified that while Parliament's power under Article 368 is wide, it cannot destroy or abrogate essential features of the Constitution. However, the threshold for invalidating an amendment is high: the amendment must damage the "identity" of the Constitution.

The majority held that the 103rd Amendment did not violate the basic structure, particularly the principle of equality. It reasoned that the Constitution does not freeze affirmative action exclusively within the framework of caste based backwardness.<sup>38</sup> Parliament, acting in its constituent capacity, may expand the scope of reservation to address other forms of disadvantage.

#### **Recognition of Economic Criteria**

A central issue before the Court was whether economic criteria could independently justify affirmative action. The petitioners relied on *Indra Sawhney*, where the Court had rejected economic criteria as the sole basis for reservation under Article 16(4).<sup>39</sup>

The majority distinguished *Indra Sawhney* on the ground that it interpreted the unamended

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<sup>36</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1.

<sup>37</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>38</sup> *Janhit Abhiyan* (n 1).

<sup>39</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

Constitution. With the insertion of Articles 15(6) and 16(6), the constitutional text itself had been modified to recognise economic weakness as a permissible basis for reservation.<sup>40</sup> Therefore, the reasoning in *Indra Sawhney* could not limit Parliament's constituent power.

The Court further observed that economic disadvantage can generate barriers to opportunity that warrant remedial intervention. In recognising poverty as a legitimate ground for affirmative action, the majority emphasised the evolving character of equality in a dynamic society.

### **Exclusion of SCs, STs, and OBCs**

Another challenge concerned the exclusion of SCs, STs, and OBCs from the EWS quota. Petitioners argued that this exclusion violated Article 14 by discriminating against economically weaker individuals within reserved categories.

The majority rejected this contention, reasoning that SCs, STs, and OBCs already benefit from reservation under existing constitutional provisions.<sup>41</sup> The EWS quota was designed specifically to extend affirmative action to those previously excluded from the reservation framework. Thus, the classification was considered rational and constitutionally permissible.

### **The 50% Ceiling**

The majority declined to treat the 50% ceiling articulated in *Indra Sawhney* as part of the basic structure.<sup>42</sup> It characterised the ceiling as a judicially evolved rule of prudence rather than an inviolable constitutional limitation. The Court observed that extraordinary circumstances may justify deviation from the 50% rule, and the amendment's provision for 10% EWS reservation did not, by itself, destroy equality's structural identity.

### **Constitutional Implications**

The majority judgment reflects a deferential approach to Parliament's constituent power. It emphasises constitutional flexibility and recognises that the equality code may evolve to accommodate emerging socio economic realities. By upholding the amendment, the Court signalled that the Basic Structure Doctrine operates as a protective boundary rather than a rigid

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<sup>40</sup> *Janhit Abhiyan* (n 1).

<sup>41</sup> *ibid.*

<sup>42</sup> *Indra Sawhney* (n 4).

barrier to reform.

At the same time, the decision recalibrates the doctrinal foundations of reservation. It expands the permissible grounds of affirmative action while narrowing the scope of structural limitations previously articulated.

### **Dissenting Opinions and Constitutional Concerns**

While the majority in *Janhit Abhiyan v. Union of India* upheld the 103rd Constitutional Amendment, the dissenting opinions raised profound constitutional concerns regarding equality, structural coherence, and the limits of constituent power. The dissents serve as an important counterpoint, highlighting tensions within contemporary equality jurisprudence.

### **Equality and Structural Exclusion**

The dissenting judges emphasised that equality under the Constitution is rooted in the recognition of historical and structural disadvantage.<sup>43</sup> They argued that the framework developed in *Indra Sawhney* conceptualised reservations as a remedy for systemic discrimination rather than a poverty alleviation measure. Economic weakness, though significant, does not carry the same intergenerational and institutional barriers associated with caste based exclusion.

From this perspective, expanding reservations to include economic criteria risks diluting the remedial purpose of affirmative action. The dissent cautioned that transforming reservations into a general anti poverty tool may undermine the constitutional vision of social justice embedded in Articles 15 and 16.

### **Exclusion of SCs, STs, and OBCs**

A central constitutional concern in the dissent related to the exclusion of SCs, STs, and OBCs from the EWS quota. The dissenting judges held that if economic weakness is the determining criterion, then excluding economically weaker individuals from reserved categories violates Article 14's guarantee of equal protection.<sup>44</sup>

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<sup>43</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1 (dissenting opinions).

<sup>44</sup> *ibid.*

The dissent argued that such exclusion creates a paradox: economically disadvantaged persons belonging to historically marginalised groups are denied the benefit solely because they fall within an existing reservation category. This, according to the dissent, introduces a new layer of discrimination inconsistent with the constitutional commitment to substantive equality.

### **The 50% Ceiling as Structural Principle**

The dissent also addressed the 50% reservation ceiling established in *Indra Sawhney*.<sup>45</sup> It viewed the ceiling not merely as a prudential guideline but as a structural limitation designed to maintain balance between affirmative action and equality of opportunity. Exceeding this limit without extraordinary justification, the dissent reasoned, risks distorting the equilibrium inherent in the equality code.

The dissent thus treated the 50% ceiling as closely connected to the basic structure of equality, warning that its erosion could destabilise constitutional balance.

### **Constituent Power and Judicial Review**

The dissent reaffirmed that Parliament's constituent power under Article 368 is not absolute.<sup>46</sup> Even constitutional amendments must conform to the basic structure. The dissenting judges concluded that the 103rd Amendment altered the identity of equality by reorienting reservation from structural disadvantage to economic redistribution.

This reasoning reflects a more cautious approach to constitutional change, emphasising continuity with established jurisprudence and structural safeguards.

### **Significance of the Dissent**

Although the majority judgment prevails, the dissent underscores unresolved tensions in equality jurisprudence. It highlights competing visions of social justice: one rooted in historical redress, and another oriented toward contemporary economic vulnerability.

The presence of a strong dissent signals that the constitutional debate over economic based reservations is far from settled. Future judicial interpretation may revisit or refine these

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<sup>45</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>46</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

concerns, particularly if further expansion of reservation policies occurs.

### **Critical Evaluation: Redefinition or Expansion of Equality?**

The 103rd Constitutional Amendment and the decision in *Janhit Abhiyan* represent a pivotal moment in the evolution of Indian equality jurisprudence. The central question is whether the amendment merely expands the scope of substantive equality or fundamentally redefines its normative foundation.

#### **From Caste Based Remedial Justice to Economic Redistribution**

Historically, affirmative action in India has been anchored in the logic of compensatory discrimination. The constitutional scheme recognised that caste based hierarchies produced structural barriers that could not be dismantled through formal equality alone. In *Indra Sawhney*, the Supreme Court clearly distinguished social backwardness from economic poverty, holding that economic criteria alone could not justify reservation.<sup>47</sup>

The 103rd Amendment marks a departure from this position by constitutionally recognising economic disadvantage as an independent basis for affirmative action. This shift signals a broader understanding of vulnerability one that includes poverty as a structural impediment to opportunity.

However, the normative foundations of these two approaches differ. Caste based reservation addresses systemic exclusion from social and institutional spaces. Economic based reservation, by contrast, seeks redistributive justice. The amendment therefore moves affirmative action from a primarily structural remedial framework toward a partially redistributive model.

#### **Equality as a Dynamic Concept**

The majority in *Janhit Abhiyan* embraced a dynamic understanding of equality, suggesting that constitutional interpretation must evolve with changing socio economic conditions.<sup>48</sup> From this perspective, expanding reservation to economically weaker sections reflects responsiveness to contemporary realities rather than doctrinal inconsistency.

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<sup>47</sup> *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217.

<sup>48</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1.

Indeed, Article 14 has been interpreted expansively in cases such as *E.P. Royappa v. State of Tamil Nadu*, where equality was described as antithetical to arbitrariness.<sup>49</sup> The elasticity of equality jurisprudence arguably permits constitutional adaptation.

Yet elasticity has limits. If equality becomes too fluid, its structural coherence may weaken. The dissent in *Janhit Abhiyan* warned that diluting the remedial purpose of reservation risks transforming it into a general welfare mechanism, potentially eroding its constitutional distinctiveness.

### **The 50% Ceiling and Structural Balance**

The majority's refusal to treat the 50% ceiling as part of the basic structure introduces further complexity. In *Indra Sawhney*, the ceiling was justified as preserving a balance between equality of opportunity and affirmative action.<sup>50</sup> By permitting reservations beyond 50%, the amendment recalibrates this balance.

Whether the ceiling was ever intended as an inflexible constitutional limit remains debated. However, its symbolic significance as a structural safeguard cannot be overlooked. Removing or relaxing the ceiling without clear limiting principles may open the door to incremental expansion.

### **Constitutional Identity and the Basic Structure Doctrine**

The ultimate test under Article 368 is whether the amendment damages the Constitution's identity. The majority concluded that expanding reservation to economically weaker sections does not abrogate equality's core.<sup>51</sup> The dissent, however, viewed the amendment as altering the essential architecture of affirmative action.

The disagreement reflects divergent conceptions of constitutional identity: one flexible and evolutionary, the other rooted in structural continuity. The longevity of the amendment will depend upon how future courts interpret and apply its provisions.

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<sup>49</sup> *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3.

<sup>50</sup> *Indra Sawhney* (n 1).

<sup>51</sup> *Janhit Abhiyan* (n 2).

### **Implications for Future Jurisprudence**

The 103rd Amendment is likely to influence future debates on affirmative action. It may encourage further expansion of reservation policies or prompt renewed examination of constitutional limits. The decision in *Janhit Abhiyan* suggests that the Basic Structure Doctrine will operate as a broad safeguard rather than a rigid barrier.

In this sense, the amendment does not abolish equality's structural core but reorients its emphasis. Whether this reorientation strengthens or weakens the transformative vision of the Constitution remains an open constitutional question.

### **Conclusion**

The Constitution (One Hundred and Third Amendment) Act, 2019 marks a significant turning point in Indian equality jurisprudence. By recognising economic weakness as an independent constitutional basis for reservation, the amendment expands the traditional framework of affirmative action beyond caste based structural disadvantage. The Supreme Court's decision in *Janhit Abhiyan v. Union of India* affirms this expansion, while simultaneously reiterating the continuing vitality of the Basic Structure Doctrine.

Historically, reservations in India were conceived as instruments of remedial justice aimed at dismantling entrenched social hierarchies. Judicial precedents such as *Indra Sawhney* emphasised that backwardness for the purpose of affirmative action was primarily social and educational, not merely economic. The 103rd Amendment departs from this doctrinal foundation by constitutionalising poverty as a ground for reservation. In doing so, it reflects an evolving understanding of disadvantage in contemporary India.

The majority judgment adopts a flexible conception of equality, viewing the amendment as an expansion rather than a distortion of substantive justice. It underscores Parliament's constituent authority to respond to emerging socio economic realities, provided that constitutional identity remains intact. By declining to treat the 50% ceiling as part of the basic structure, the Court signals a recalibration of structural limits in favour of legislative flexibility.

The dissenting opinions, however, highlight enduring concerns. They caution that transforming reservation into a poverty based redistributive tool may dilute its foundational purpose as a

remedy for systemic discrimination. The exclusion of SCs, STs, and OBCs from the EWS quota and the relaxation of the 50% ceiling raise questions about internal consistency within the equality code. These concerns reflect a deeper tension between continuity and change in constitutional interpretation.

Ultimately, the 103rd Amendment does not dismantle the equality principle but reshapes its contours. It broadens the constitutional vocabulary of disadvantage while altering the balance between structural redress and economic redistribution. The future trajectory of equality jurisprudence will depend upon how courts navigate this expanded framework, particularly if further amendments or policy innovations test constitutional limits.

The decision in *Janhit Abhiyan* thus represents neither the abandonment of substantive equality nor its unqualified reaffirmation. Rather, it marks a moment of constitutional recalibration one that invites sustained scholarly engagement and careful judicial stewardship to preserve the transformative promise of the Indian Constitution.

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