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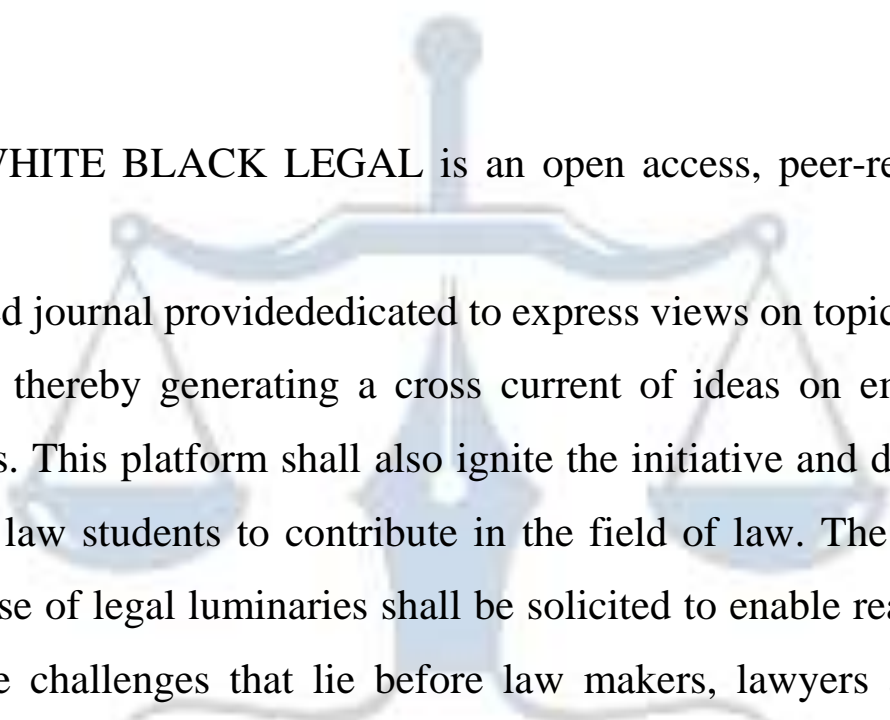
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With this thought, we hereby present to you

# **PRIVATIZATION AND ITS IMPLICATIONS ON AFFIRMATIVE ACTION POLICIES**

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## **ABSTRACT**

The economic reforms initiated in India during the 1990s, which focused on liberalization and privatization, have led to substantial shifts in the country's economic landscape. While these changes have significantly contributed to growth and development, they have also raised questions about the future of affirmative action policies, particularly in sectors that have shifted from public to private control. Affirmative action, embedded in India's Constitution through provisions for reservations in education, employment, and public services, aims to address historical inequities faced by marginalized communities such as Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). However, the privatization of critical sectors like healthcare, education, and employment has reduced the scope of these policies, as private entities are not bound by the same constitutional mandates.

This paper examines the implications of privatization on affirmative action in India, focusing on the challenges posed by the exclusion of marginalized groups from the benefits of privatization. It explores the constitutional framework for affirmative action, the impact of privatization on marginalized communities, and judicial interpretations that have shaped the current legal landscape. Drawing from global examples, the paper suggests practical recommendations, including legislative reforms, mandatory diversity targets, public-private partnerships (PPPs), and enhanced corporate social responsibility (CSR) practices to ensure that the marginalized continue to benefit from the economic growth driven by privatization. Through these recommendations, the paper aims to bridge the gap between privatization and affirmative action, ensuring a more inclusive and equitable society.

**KEYWORDS:** Affirmative Actions, Constitutional Provisions, Social and Political Equality, Scheduled Caste, Scheduled Tribes, Economic Reforms, Reservations, Privatization.



## CHAPTER I

### 1. INTRODUCTION

*The true test of a society is not how well it treats its rich and powerful, but how well it treats its most vulnerable and marginalized.”*

- Nelson Mandela

The Indian constitution guarantees all its citizens equal opportunity in all socio-economic aspects. “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”<sup>1</sup> What is state according to the Indian Constitution? Article 12<sup>2</sup> says, in this part, unless the context otherwise requires, “the state” includes the government and parliament of India, the government and the legislature of each state, and all local or other authorities within the territory of India or under the control of the Government of India.

It ensures non-discrimination in all sectors including private ones. There are many other articles under Part III of the Constitution like Article 15 which prohibits discrimination based on (race, caste, or sex), Article 16 says for equal opportunity in matters of public employment, Articles 17 and 18 for the abolition of untouchability and abolition of titles respectively. There are various other Articles under Part IV Directive Principles of State Policy like Articles 38, 39, 41, and so on for the achievement of the welfare of people and economic democracy. Additionally, there are many landmark Judgments related to affirmative action policies.

During post-independence, many of the public entities were under the control of the government. In the early 1990s, India faced an economic crisis and the former late prime minister of India P V Narasimha Rao, and former Finance minister Dr. Manmohan Singh implemented the economic reforms. After this, there was an increase in privatization.

Privatization means transferring the control and ownership of public entities to the private for the growth of the economy, which also in turn affects affirmative action policies. Affirmative action policies have been deeply immersed in the Indian constitution to provide equal opportunities to the marginalized people of scheduled tribes (ST), scheduled castes (SC), and other backward classes (OBC). The discrimination of these marginalized people is deeply rooted in Indian society. To overcome these problems the framers of the Constitution have

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<sup>1</sup> Article 14 of the Constitution of India.

<sup>2</sup> Article 12 of the Indian Constitution.



given provisions for implementing the reservations in education, public employment, and various other sectors. However, with the increasing privatization, the concept of equality has been diminishing which is not bound by the affirmative action policies.

Though the concept of privatization helped to overcome the economic crisis, it still ended up with some problems. For instance, the privatization of education and health care led to increased costs where the socially and economically backward classes were not able to access these vital needs. So, with the increase in privatization and fewer permissible provisions ethical and legal questions arise.

## CHAPTER II

### 2. CONSTITUTIONAL PROVISIONS ON AFFIRMATIVE ACTIONS

There are many provisions included for the welfare of the Indian people. The preamble of the Constitution says,

*“We the people of India solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, LIBERTY, EQUALITY, FRATERNITY.”*<sup>3</sup>

#### 2.1 Equality of law and equal protection of the law

Article 14 of the Indian Constitution states "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." which means that whatever may be the position or rank of the individual, he is subject to the procedure of the courts, and the equal safety shall be given within the territory without any discrimination.

According to Dr. Jennings, Equality before the law means that among equals the law should be equal and should be equally administered, and that like should be treated alike. The right to sue and be sued to accuse and be accused for the same kind of action should be the same for all citizens of full age and understanding without discrimination of race, religion, wealth, social status, or political impact.<sup>4</sup>This article forbids only class legislation but not reasonable classification which means that there should be a nexus between the classification and the

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<sup>3</sup> Constitution of India, 1950, Preamble.

<sup>4</sup>Dr. J.N. Pandey "The constitutional law of India" Central Law Publication, 48<sup>th</sup> edition.

purpose,<sup>5</sup> and it must be based on the intelligible differentia.

It mentions the state that includes government institutions and government sectors but doesn't include private sectors. The public sector mainly gives access to public entities like hospitals, education, and employment on the basis of reservation (e.g., reservations for SCs/STs/OBCs) but the private sector is profit-motivated and is not obligated to adhere to affirmative actions. Justice P. N. Bhagwati gave a wider interpretation and highlighted that

*“Equality under Article 14 is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined, and confined’ within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetical to arbitrariness. Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim & caprice of an absolute monarch. Where an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law, and is therefore violative of Article 14.”*<sup>6</sup>

## 2.2 Prohibition of discrimination on certain grounds

Prohibition of discrimination based on religion, race, caste, sex, or place of birth.<sup>7</sup> Article 15(1) says that the state shall not discriminate on certain grounds and it gives the right to equality for all citizens. Article 15(4) gives powers to the state to make provisions for the empowerment of the scheduled tribes (ST) and scheduled castes (SC) who were socially and economically backward. Furthermore, this clause empowers to make affirmative action for historically backward classes.

In *T.M.A. Pai Foundation v. State of Karnataka*<sup>8</sup> the SC held that the unaided private educational institutions can maintain their affairs like reservation of the seats based on quota and they can formulate it by either common admission test by state or by their entrance exams. They are not subject to the reservation mandatories provided by the government unless the government aids them. However, there were limitations, such as non-profiteering. This shows how privatization impacts marginalized groups. while **Article 15(1)** forbids discrimination, private entities are normally not legally accountable for adhering to anti-discrimination policies

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<sup>5</sup> *K.Thimmappa v. Chairman, Central Board of Directors, SBI*, AIR 2001 SC 467.

<sup>6</sup> *E. P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

<sup>7</sup> Article 15 of the Constitution of India.

<sup>8</sup> AIR 2003 SC 355.

delegated for public sector enterprises. Privatized areas may not always provide the same level of safety against discrimination in areas such as employment, promotions, or wages. This creates a potential gap in confirming equality, especially for disregarded groups (SCs, ST, and OBC).

### **2.3 Equality of opportunity in matters of public employment**

The Constitution of India guarantees equal opportunity for all its citizens in matters of employment or appointment to any office under the state.<sup>9</sup> But practically with the developments of privatization, it is impossible to get equal employment opportunities as they are not bound under this article. These provisions were brought only to uplift marginalized communities but the aim of these provisions is questioned due to their unaccountability in privatization.

Article 16(2) says that no citizens in India can be discriminated against under sex, caste, religion, race, descent, place of birth, or residence. If any of those are violated then they can be considered as violative of the right to equality, and remedies are available by the judiciary which ensures fairness in public employment. The state can make provision for the reservation of posts in public employment favoring any backward classes if it thinks that they are not properly represented. A new sub-clause was added which states that the state can make provisions for the reservation of promotion of the backward classes where it finds that they are not properly represented.<sup>10</sup>

The Constitution 81st Amendment Act, 2000<sup>11</sup>, included a new clause seeking to end the 50% limit for ST, SC, and other backward classes in backlog vacancies that could not be occupied due to the non-availability of qualified candidates from these classes in the last year or years under Article 16 (4B).<sup>12</sup>

In *M. Nagaraj v. Union of India* (2006),<sup>13</sup> this case challenged the constitutional validity of Amendments 16 4A and 4B in reservations of promotions of scheduled caste and scheduled

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<sup>9</sup> Article 16(1) of the Constitution of India.

<sup>10</sup> Article 16(4A) added by the Constitution 103 Amendment, Act, 2019.

<sup>11</sup> Constitution of India, 81<sup>st</sup> Amendment Act, 2000.

<sup>12</sup> Dr. Bhagyashree A. Deshpande, *Indian Constitutional Law the new challenges*, Central Law Publications, 1<sup>st</sup> ed.

<sup>13</sup> *M. Nagaraj v. Union of India*, 2006 8 SCC 212 (India).



tribes. The amendments have seemed to counter certain judicial decrees that had limited the scope of reservation policies in promotions. The main issues were whether they violated the basic structure doctrine or whether the state was obliged or had discretionary power to do so. The SC upheld the constitutional validity of the two amendments and laid down some conditions the state should demonstrate that they are regularly unrepresented and they are economically and socially backward and the burden is on the state to prove so. The state must balance between affirmative and administrative actions and its discretionary power. However, this does not apply to private entities as they are not obliged to do so. Though they have the discretionary power they must collect the quantitative data implying that they are unrepresented and backward in the government services. It also, made clear that the reservation does not exceed the 50% ceiling limit.

In the *U.P. Power Corporation Ltd case*<sup>14</sup>, the Supreme Court held that Art 16(4) creates a place that enables the state to give reservations where it thinks that they are backward and inadequate in representation in public employment these are compelling reasons and they are not mentioned in Article 16(1). This can only be possible if the state is satisfied and gives reservation in the aforesaid manner.

In *State of Karnataka v. K. Govindappa*,<sup>15</sup> the respondent was appointed as the history lecturer in the aided private college Vinayaka Rural Education Society. The government of Karnataka rejected that approval of that appointment was made in the roster policy. It said that he was given an appointment where the reservation was reserved for the scheduled caste candidate. The high court upheld the appointment of the lecturer saying that there was only one post so the reservation of promotion would not apply. But the state of Karnataka approached the Supreme Court and filed the writ petition, the SC upheld the judgment of the high court stating that this would apply only when there are several vacancies available for the post. In the absence of the duality of the post, the reservation is not applied and it will offend the constitutional bar against 100% reservation as given under Article 16 (1) of the constitution of India. So, it hence evolved a principle that the rule of reservation does not apply to a single post.

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<sup>14</sup>AIR 2017 SC 2728.

<sup>15</sup>AIR 2009 SC 618.

## CHAPTER III

### 3. DPSP- DIRECTIVE PRINCIPLE OF THE STATE POLICY AND ITS AFFIRMATIVE ACTIONS

The DPSP is enshrined in the part IV of the Indian Constitution of India. They are just guidelines for the making of policies and the promotion of social, and economic justice. They are not legally enforceable. When it comes to privatization and its implications on affirmative action policies DPSP plays a crucial role as it promotes social welfare, equality, and justice to all citizens, especially the marginalized communities like SC, ST, and OBCs.

DR. B.R. Ambedkar in his speech at the constituent assembly debates remarked on the Directive Principles of State Policy as,

*“The Directive Principles are like the instrument of instructions which were issued to the Governor-General and the Governors of the Colonies... The idea is that in the future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive actions that may be taken hereafter in the matter of governance of the country.”<sup>16</sup>*

#### 3.1 State to secure a social order for the promotion of the welfare of the people

Article 38(1) - The state shall promote the welfare of the people by securing and protecting all its citizen's social, economic, and political justice.<sup>17</sup> Article 38 (2) states that the state shall in particular strive to lower the inequalities in income and endeavor to eliminate inequalities in status, facilities, and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in various vocations.<sup>18</sup>

#### 3.2 Certain principles of policy to be followed by the state

Article 39, with its sub-clauses, provides guidelines for securing economic justice: Article 39(a) ensures adequate means of livelihood for all men and women equally. Article 39(b) seeks to prevent the concentration of wealth and resources be distributed for the common good. Article 39(c) mandates equal pay for equal work for both men and women. These provisions direct the State to take action to reduce economic differences and make a more unbiased society.

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<sup>16</sup> Constituent Assembly Debates, Vol. VII, November 19, 1948.

<sup>17</sup> Article 38 was renumbered as clause (1) thereof by the constitution 44<sup>th</sup> Amendment Act, 1978.

<sup>18</sup> Ins. by constitution 44<sup>th</sup> Amendment Act, 1978.

### 3.3 Upliftment of Weaker Sections

Article 46 particularly focuses on raising the educational and economic interests of the SCs, STs, and other weaker sections, and it objects to protecting them from social unfairness and misuse. The article aligns with the larger goal of affirmative action in India, ensuring that downgraded communities receive targeted profits to uplift them socially and economically.

## CHAPTER IV

### 4. JUDICIAL DECISIONS ON AFFIRMATIVE ACTIONS

#### 4.1 Indra Sawhney vs Union of India AIR 1993 SC 477.

Also known as the Mandal Commission case, was a milestone decision in Indian constitutional law. It was decided on 16th November 1992 by a nine-judge bench of the Supreme Court. The validity and scope of the reservations for socially and economically backward classes (SEBCs)<sup>19</sup> were addressed under Article 16(4) of the Constitution. This case is rooted in the recommendations of the Mandal Commission, which had found 3,746 castes as backward and projected a 27% reservation in public employment for Other Backward Classes (OBCs). This led to common debate and litigation, as Indira Sawhney, argued that caste-based reservations violated the principles of equality and secularism and recommended using economic standards instead.

The court maintained the constitutionality of caste-based reservations as a device for attaining social justice and addressing historical inequalities and also brought some notable guidelines. It ruled that reservations must not exceed 50%, to maintain equality. The concept of the “creamy layer” was introduced in this judgment, instructing that economically advanced individuals within OBCs be excluded from reservation benefits to ensure that only the truly disadvantaged benefit. Furthermore, the court emphasized the need to evaluate backwardness based on social and educational criteria rather than purely economic factors and it also recommended creating the National Commission for Backward Classes for periodic review of reservation policies.<sup>20</sup>

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<sup>19</sup>SEBC (Socially and Educationally Backward Classes) refers to communities identified as disadvantaged in terms of social and educational status, but not included in the Scheduled Castes (SC) or Scheduled Tribes (ST) categories. The concept of SEBC was formed through the recommendations of the Mandal Commission (1980), which aimed to identify and provide affirmative action to communities that are economically and socially backward but not sufficiently covered under SC/ST categories. The purpose of the SEBC classification is to extend reservation benefits in education, government jobs, and other welfare schemes to ensure social and educational upliftment of these groups, as mandated by Articles 15(4) and 16(4) of the Indian Constitution.

<sup>20</sup><https://lawbhoomi.com/indra-sawhney-vs-union-of-india/> (accessed Dec. 13, 2024).



#### **4.2 Unni Krishnan, J.P. v. State of Andhra Pradesh AIR 1993 SC 2178.<sup>21</sup>**

The case addressed the issue related to whether the right to education comes under Article 21(right to life and personal liberty). It also raised the issue of whether the state is under the responsibility to provide free and compulsory education as given under Article 45 of the DPSP of the Indian constitution. Does the fundamental right in Article 21 (right to life) also provide for the right to education?

The case was based on the decision that the people have the right to education as a constitutional right.<sup>22</sup> While dealing with the issues the court held that the FR and DPSP in Parts III & IV are supplementary and complementary to each other, the fundamental rights are meant to achieve the goals given under the Directive Principles of the state policy.<sup>23</sup> It also added that the right to education is not given under the right to life in Article 21 it is implicit and flows from the said Article. Also, it has to comply with the parameters given under Articles 45 and 41. In other words, every citizen or child has the right to free and compulsory education until the age of 14. For higher education, the state shall decide if it is economically viable and the state doesn't need to provide higher education it is also unconditional as said in *Mohini Jain v. State of Karnataka (1992)*.

#### **4.3 Janit Abhiyan v. Union of India (2022).<sup>24</sup>**

The 10% EWS quota was introduced by the 103rd Constitution (Amendment) Act, 2019, through the insertion of Articles 15(6) and 16(6), to provide economic reservation for Economically Weaker Sections (EWS) not covered under existing SC, ST, and SEBC reservations.<sup>25</sup> This case is also called the EWS Quota case related to the constitutional 103<sup>rd</sup> Amendment Act. The main issues of the case were,

- 1) whether the reservations be provided on the basics of the economic status of certain classes?
- 2) Whether the EWS reservations breach the 50% ceiling provided under the *Indra Sawhney case in 1992*?

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<sup>21</sup>*Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645, Legal Service India, [https://www.legalserviceindia.com/legal/article-7055-case-analysis-unnikrishnan-j-p-v-s-state-of-andhra-pradesh.html#google\\_vignette](https://www.legalserviceindia.com/legal/article-7055-case-analysis-unnikrishnan-j-p-v-s-state-of-andhra-pradesh.html#google_vignette) (accessed Dec.13, 2024).

<sup>22</sup>*Mohini Jain v. State of Karnataka* (1992) 3 SCC 666: AIR 1992.

<sup>23</sup>*The State of Madras v. Champakam Dorairajan* AIR 1951 SC 226, *Hanif v. State of Bihar* 1959 SCR 629, *Minerva Mills v. Union of India* AIR.1980 SC 1789.

<sup>24</sup> EWS Reservation, Supreme Court Observer, <https://www.scobserver.in/cases/janhit-abhiyan-union-of-india-ews-reservation-case-background/> (accessed Dec 14, 2024).

<sup>25</sup> Economically Weaker Sections (EWS) Bill, Ministry of Social Justice & Empowerment, <https://pib.gov.in/PressReleasePage.aspx?PRID=1577969> (accessed Dec. 14, 2024).

- 3) Can the Scheduled caste, Scheduled Tribes, and the economically backward classes be eliminated under this EWS reservation?
- 4) Whether the state provide reservations to the Pvt institutions that are not aided by the government?

By a majority vote of 3 to 2, the Supreme Court maintained the legality of the 103rd Amendment to the Constitution on the issues of the fundamental structure of the Constitution, Discrimination because SCs, STs, OBCs, and SEBCs weren't included in the 10% EWS reservation quota, The only factor used to grant reservations under Articles 15(6) and 16(6) of the Constitution is economic. 10% EWS reservation is being provided to private unaided institutions. The Constitution's fundamental framework Kesavananda Bharti vs. State of Kerala along with other earlier rulings were used by the Supreme Court to comprehend and review the underlying structure of the constitution theory. It was decided that if an amendment modifies the form, character, or substance, it may violate the fundamental structure.

## CHAPTER V

### 5. INTERNATIONAL CONVENTIONS RELATED TO PRIVATIZATION AND AFFIRMATIVE ACTION

#### 5.1 Universal Declaration of Human Rights, 1948.<sup>26</sup>

The UDHR was adopted by the United Nations in 1948 and it has a set of 30 Articles for basic human rights. It mainly focuses on human dignity, equality, freedom, and non-discrimination. Article 1 of UDHR and Fundamental Rights in the Constitution of India are interlinked with each other as the Art 1 UDHR states, “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*”. This also says that all people have equal access to participation in both political and public life.<sup>27</sup> Article 23 of the UDHR provides that everyone has the right to work and be protected from unemployment. It also says that private employment should not discriminate based on wages and opportunities.

Everyone has the right to live a standard life with better health and medical care, basic needs like clothes, food, housing education, other social necessities, and security from

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<sup>26</sup> [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

<sup>27</sup> Article 21 of Universal Declaration of Human Rights states, “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”.

unemployment.<sup>28</sup> Due to privatization, there may be disparities in the distribution of sources of livelihood, and the government can take affirmative action and require them to adhere to their human rights.

## **5.2 International Human Rights Conventions and Their Relevance to Articles 38, 39, and 46**

As a part of the international community, India has ratified several important international human rights treaties and conventions that illustrate its dedication to promoting equality, social justice, and non-discrimination. India is deemed accountable by these international norms for supporting the values of equality and human dignity, especially to vulnerable and excluded groups. Articles 38, 39, and 46, are intended to advance welfare, lessen disparities, and protect the economic and educational rights of socially disadvantaged groups such as Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), are at the core of India's constitutional promise.

According to Article 38, the state must ensure equitable distribution of resources in order to advance the welfare of the populace and eradicate inequality. By instructing the state to guarantee fair resource distribution and sufficient means of survival for all citizens, especially the underprivileged, Article 39 strengthens this. Article 46, on the other hand, highlights the duty of the state to defend and advance the educational and financial goals of SCs, STs, and OBCs while protecting them against exploitation and social injustice. These domestic constitutional provisions are reinforced by international human rights instruments like the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These global accords prioritize the rights to education, equality, and work, requiring India to ensure that its national policies, with affirmative action, are in line with worldwide ethics.

The relevance of these international frameworks becomes even more critical in the context of privatization. As India continues to embrace privatization across various sectors, there is a heightened responsibility to ensure that affirmative action policies, which historically have been applied in the public sector, are extended to the private sector as well. Privatization has

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<sup>28</sup> Article 25 of UDHR.



the potential to create economic disparities if access to essential services and opportunities is not equally distributed, and the private sector may not be subject to the same legal obligations as public entities. Therefore, aligning privatization policies with international human rights conventions is essential for ensuring that marginalized communities continue to have equitable access to education, employment, and other services.

### **5.3 THE INTERNATIONAL COVENANT ON SOCIAL, CULTURAL, AND ECONOMIC RIGHTS (ICESCR) <sup>29</sup>**

After ratifying the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1979, India agreed to protect everyone's right to a decent standard of life, which includes access to work, healthcare, and education.

- Following Article 39(a) of the Indian Constitution, which underlines the state's obligation to provide a sufficient level of living for all citizens, Article 6 of the ICESCR provides the freedom to choose one's employment and the right to work.
- Following Article 46 of the Indian Constitution, which requires the government to enhance the educational and economic standing of socially disadvantaged groups, Article 13 provides the right to education.

## **CHAPTER VI**

### **6. IMPACT OF PRIVATIZATION ON AFFIRMATIVE ACTION IN THE CONTEXT OF INTERNATIONAL COMMITMENTS**

A vital aspect of India's economic changes all over the 1990s has been privatization, the process of giving private ownership over state-owned businesses and services. The rising privatizing of major sectors has sparked concerns as to how well India's affirmative action laws work, particularly when it comes to guaranteeing equality and non-discrimination for minority groups. Since private organizations are exempt from the same constitutional protections as state institutions, which have historically upheld affirmative action policies like reservations and other social justice initiatives, this issue is particularly critical.

#### **6.1 Economic Inequality and the Concentration of Wealth**

Privatization often results in increased costs for essential services, such as healthcare,

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<sup>29</sup> International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> .

education, and infrastructure. When such services are moved to the private sector, they are frequently priced in a way that makes them unaffordable for economically disadvantaged groups. These marginalized communities, which often include SCs, STs, and OBCs, have limited financial resources and therefore find it difficult to access privatized services. This situation is contrary to the objective of **Article 39(b)** of the Indian Constitution, which seeks to prevent the concentration of wealth and resources, ensuring that the resources of the nation are used for the benefit of the public.

International conventions like the **International Covenant on Economic, Social, and Cultural Rights (ICESCR)** emphasize equitable access to services such as healthcare and education. Privatization, when it leads to the exclusion of economically marginalized groups, threatens these rights. The ICESCR explicitly highlights that the right to an adequate standard of living should be upheld for everyone, regardless of economic status. By ensuring that privatized services remain accessible to all, India can align its policies with international standards and continue to fulfill its constitutional duties towards disadvantaged groups.

## **6.2 Erosion of Social Welfare Provisions**

The privatization of essential services such as healthcare and education may erode the social welfare provisions previously offered by the government. Public services, traditionally available to all, including marginalized groups, often offer subsidized rates, which are critical for economically disadvantaged communities. However, when these sectors are privatized, the costs of services increase, making them less accessible to SCs, STs, and OBCs, who are already struggling with systemic inequalities.

This trend is at odds with **Article 46** of the Indian Constitution, which directs the state to promote the educational and economic interests of the weaker sections of society. By making essential services like healthcare and education more expensive, privatization disproportionately affects these groups and undermines their ability to access services that are fundamental to improving their quality of life.

International human rights commitments, particularly under the **ICESCR**, support the need for governments to ensure that all individuals, especially those from marginalized backgrounds, have access to essential services. Therefore, India's ongoing privatization must be closely monitored to ensure it does not diminish access to such services for disadvantaged

communities.

### **6.3 Absence of Affirmative Action in the Private Sector**

One of the most significant challenges posed by privatization is the absence of affirmative action policies in private institutions. In India, while public sector institutions are required by law to implement affirmative action measures—such as reservations for SCs, STs, and OBCs—the private sector is largely exempt from these obligations. This creates a gap in access to education and employment for marginalized groups, particularly as more sectors, such as education and healthcare, are privatized.

International human rights frameworks, including the **Convention on the Elimination of All Forms of Racial Discrimination (CERD)**, emphasize the need for inclusion and non-discrimination in both public and private spheres. CERD advocates for the adoption of measures to eliminate racial and social discrimination in all sectors of society, including the private sector. India's failure to enforce affirmative action in privatized sectors risks creating an inequitable system that undermines social justice and equality, which are central to both India's Constitution and international human rights agreements.

## **CHAPTER VII**

### **7. CONCLUSION**

As Dr. B.R. Ambedkar, the architect of the Indian Constitution, profoundly stated,

*“Political democracy cannot last unless there lies at the base of it social democracy”*

India's economic system has risen and become more productive as a result of privatization and has also changed major sectors including work, healthcare, and education. It has, however, also made it more difficult to execute affirmative action measures, which are essential for guaranteeing social justice and equality for under-represented groups, such as Scheduled Tribes (STs), Scheduled Castes (SCs), and Other Backward Classes (OBCs). Although Articles 38, 39, and 46 of the Indian Constitution offer a strong foundation for affirmative action, privatization has restricted the application of these provisions particularly to private enterprises immune from the reservation laws.

India must take a balanced approach to addressing these issues, ensuring that privatization complies with both its constitutional mission and its international human rights obligations,



Corporate social responsibility (CSR), and legislative reforms

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