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Social Justice: Indian Perspective and Global Comparative Jurisprudence

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ABSTRACT

This research paper presents an in-depth and comprehensive analytical study of the concept of social justice, its constitutional architecture, judicial interpretations, and global counterparts within the Indian context. The Indian model of social justice goes beyond mere formal equality of opportunity to advocate for 'substantive equality' founded upon 'affirmative action' and 'protective discrimination.' The paper provides a rigorous legal appraisal of Articles 14, 15, 16, 17, 21, 38, 39A, and 340 of the Constitution of India, along with landmark judgments of the Supreme Court—including State of Madras v. Champakam Dorairajan (1951), Indra Sawhney (1992), M. Nagaraj (2006), Janhit Abhiyan/EWS (2022), and State of Punjab v. Davinder Singh/Sub-classification (2024). Furthermore, it evaluates the Indian framework through a comparative jurisprudence lens alongside the American affirmative action model (SFFA v. Harvard, 2023), South Africa's post-apartheid constitutional framework, and international human rights conventions. Finally, strategic policy recommendations are formulated to address contemporary dimensions such as the digital divide, gig economy, caste census, and private sector inclusion.

1. Introduction & Theoretical Framework

Social justice is not merely a political slogan or an abstract legal concept; it constitutes the moral compass of any civilized and democratic society. From antiquity to the modern era, the definition of justice has evolved, yet its core objective has consistently remained the establishment of a society wherein every

individual, free from discrimination, possesses the opportunity to lead a dignified life, develop personal capabilities, and secure an equitable share in societal resources. In the Indian context, the discourse on social justice is uniquely complex and nuanced because Indian society has historically grappled with deep-rooted structural inequalities, including caste-based stratification, untouchability, gender disparity, and systemic socio-economic marginalization.

1.1 Philosophical Foundations of Social Justice

Philosophical Paradigms: Global and Indian intellectual traditions offer diverse philosophical paradigms to conceptualize social justice:

John Rawls' Theory of Justice: John Rawls, in his seminal work 'A Theory of Justice' (1971), formulated the concepts of the 'Veil of Ignorance' and the 'Difference Principle.' Rawls posited that social and economic inequalities are permissible only if they yield the maximum benefit to the least advantaged members of society. This principle serves as an essential philosophical anchor for the affirmative action architecture embedded in the Indian Constitution.

Amartya Sen's Capability Approach: Nobel laureate Amartya Sen and philosopher Martha Nussbaum redefined social justice beyond mere resource distribution to focus on 'capabilities realization.' Sen argues that the true test of justice lies in whether individuals possess the substantive freedom and real capabilities to lead lives they have reason to value. India's expansion of rights to education, health, and livelihood reflects Sen's capability perspective.

Dr. B.R. Ambedkar's Philosophy of Social Democracy: Dr. B.R. Ambedkar, the chief architect of the Indian Constitution, maintained that political democracy remains fragile and transient unless grounded in social democracy. He defined social democracy as a way of life that recognizes liberty, equality, and fraternity as intertwined principles. Ambedkar emphasized that the caste system in India created not merely a 'division of labor' but a 'division of laborers,' where social mobility was biologically predetermined—a structure that must be dismantled to achieve genuine social justice.

2. Indian Constitutional Framework & Social Justice

The Constitution of India is far more than an organizational document for state governance; as eminent constitutional scholar Granville Austin remarked, it is primarily a 'charter of social revolution.' The framers recognized that formal equality ('equality before law') alone could not eradicate centuries of

entrenched social disadvantage. Consequently, they empowered the state to execute protective discrimination and substantive equality measures in favor of marginalized groups.

2.1 The Preamble

The Preamble serves as the foundational beacon of India's commitment to social justice. It explicitly accords priority to 'Justice: social, economic, and political' ahead of liberty and equality. This sequence is deliberate; it signifies that without social and economic justice, political democracy remains inaccessible to the last person in society.

2.2 Fundamental Rights (Part III)

Fundamental Rights protect individual liberties against state overreach while acting as key instruments for social restructuring:

Article 14 (Equality Before Law): Guarantees equality before the law and equal protection of the laws. The judiciary has established that treating unequals equally perpetuates inequality, thereby justifying reasonable classification.

Article 15 (Prohibition of Discrimination & Special Provisions): Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15(3) empowers special provisions for women and children. Article 15(4) (1st Amendment, 1951) enables affirmative measures for Socially and Educationally Backward Classes (SEBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs). Article 15(5) (93rd Amendment) extends reservations to higher educational institutions, and Article 15(6) (103rd Amendment, 2019) introduces a 10% quota for Economically Weaker Sections (EWS).

Article 16 (Equality of Opportunity in Public Employment): Article 16(1) provides equality of opportunity, while Article 16(4) empowers the state to reserve appointments for backward classes not adequately represented in state services. Articles 16(4A) and 16(4B) govern reservations in promotions and the carry-forward rule for backlog vacancies.

Article 17 (Abolition of Untouchability): Completely abolishes 'untouchability' and forbids its practice in any form. Laws such as the Protection of Civil Rights Act (1955) and the SC/ST (Prevention of Atrocities) Act (1989) were enacted under this constitutional mandate.

Article 21 (Protection of Life and Personal Liberty): Expansively interpreted by the Supreme Court to encompass the 'Right to Live with Human Dignity,' incorporating clean environment, shelter, health, livelihood, and free legal aid.

Articles 23 & 24 (Right Against Exploitation): Prohibits human trafficking, forced labor (begar), and child labor in hazardous occupations, creating a protective sheath for vulnerable workers.

2.3 Directive Principles of State Policy (Part IV)

Part IV outlines non-justiciable directives that guide the state toward establishing a welfare model:

Article 38: Directs the state to secure a social order for the promotion of the welfare of the people and to minimize inequalities in income, status, and opportunity.

Articles 39 & 39A: Mandates adequate means of livelihood, equitable distribution of material resources (39b), prevention of concentration of wealth (39c), and equal justice alongside free legal aid (39A).

Article 46: Obligates the state to promote with special care the educational and economic interests of the weaker sections, particularly SCs and STs, and protect them from social injustice.

2.4 Special Administrative Mechanisms & Commissions

Articles 330, 332 & 335: Provide political reservation of seats for SCs and STs in Parliament and State Assemblies, while balancing public employment claims with administrative efficiency (Article 335).

Articles 338, 338A & 338B: Establish constitutional bodies: National Commission for Scheduled Castes (NCSC), National Commission for Scheduled Tribes (NCST), and National Commission for Backward Classes (NCBC - 102nd Amendment).

Articles 340 & 342A: Empower the President to appoint commissions to investigate conditions of backward classes and notify SEBC lists.

3. Evolution of Social Justice Policies in India

India's policy journey spans pre-independence social reform movements to modern affirmative state interventions. Reformers such as Jyotirao Phule, Savitribai Phule, Chhatrapati Shahu Maharaj, Periyar E.V. Ramasamy, and Dr. B.R. Ambedkar laid the groundwork for social equity. Shahu Maharaj pioneered affirmative action in 1902 by introducing a 50% reservation for backward communities in the princely state of Kolhapur.

3.1 Commissions and Reports: Kaka Kalelkar to Mandal Commission

First Backward Classes Commission (Kaka Kalelkar Commission, 1953): Appointed under Article 340, it submitted its report in 1955 identifying 2,399 backward castes. However, due to internal ambiguities and lack of consensus, its recommendations were not implemented at the central level.

Second Backward Classes Commission (Mandal Commission, 1979-1990): Headed by B.P. Mandal, the commission estimated the Other Backward Classes (OBC) population at 52% based on the 1931 census and recommended a 27% quota in government jobs and educational institutions. The implementation of its report in 1990 marked a transformative watershed in Indian social and political history.

3.2 Key Constitutional Amendments and Expansion

77th & 81st Amendment Acts (1995 & 2000): Inserted Article 16(4A) to protect reservations in promotions for SCs/STs post-Indra Sawhney and Article 16(4B) to exempt backlog vacancies from the 50% ceiling rule.

93rd Amendment Act (2005): Inserted Article 15(5) to extend reservation for SEBCs, SCs, and STs to private unaided educational institutions.

103rd Amendment Act (2019): Inserted Articles 15(6) and 16(6) providing up to 10% reservation for Economically Weaker Sections (EWS) outside existing reserved categories.

105th Amendment Act (2021): Restored the power of State Governments to identify and notify their own SEBC lists, clarifying ambiguities post the 102nd Amendment.

4. Indian Judiciary & Social Justice: Landmark Case Laws

The Supreme Court of India has played a pivotal and balancing role in defining the contours and limits of social justice. Through constructive constitutional interpretation, the bench has harmonized individual merit with collective social redressal.

4.1 Comparative Analytical Table of Landmark Judgments

Case Name & Year	Constitutional Issue / Article	Core Ruling / Principle	Impact on Social Justice
State of Madras v. Champakam Dorairajan (1951)	Articles 15, 29(2) vs. DPSP (Article 46)	Held Fundamental Rights superior to DPSPs. Led directly to the 1st Constitutional	Established the first constitutional basis for affirmative action.

		Amendment inserting Article 15(4).	
M.R. Balaji v. State of Mysore (1963)	Article 15(4), Limits on Reservation	Imposed a 50% ceiling on total reservations and held that caste cannot be the sole criterion for backwardness.	Set reasonable limits on protective discrimination.
Indra Sawhney v. Union of India (1992)	Article 16(4), Mandal Validity	Upheld 27% OBC quota; enforced strict 50% cap; introduced 'Creamy Layer' exclusion; barred quotas in promotions.	The most definitive benchmark judgment on reservation jurisprudence.
M. Nagaraj v. Union of India (2006)	Article 16(4A), 16(4B), Promotions	Upheld SC/ST promotion quotas subject to 3 conditions: quantifiable data on backwardness, inadequacy, and efficiency.	Introduced strict evidentiary standards for promotion quotas.
Jarnail Singh v. L.N. Gupta (2018)	Article 16(4A), Nagaraj Review	Dispensed with proving SC/ST backwardness but applied the 'Creamy Layer' exclusion	Promoted intra-group equity within Scheduled Castes/Tribes.

		principle to SC/ST promotions.	
Janhit Abhiyan v. Union of India (EWS Case 2022)	103rd Amendment, Art. 15(6), 16(6)	Upheld 10% EWS quota by 3:2 majority; held economic criteria valid and 50% cap not applicable to EWS.	Expanded reservation beyond historical caste-based criteria to economic vulnerability.
State of Punjab v. Davinder Singh (2024 - 7 Judge)	Article 341, SC Sub-classification	Overruled E.V. Chinnaiah; permitted States to sub-classify SCs/STs to allocate sub-quotas to the most vulnerable.	Paved the way for targeted justice for the most marginalized sub-castes.
Navtej Singh Johar v. Union of India (2018)	Articles 14, 15, 21, Sec 377 IPC	Decriminalized homosexuality; recognized LGBTQ+ rights as fundamental to dignity and social justice.	Expanded social justice horizons to gender identity and sexual orientation.

4.2 Deep Legal Analysis of Key Precedents

Indra Sawhney Case:

1. Indra Sawhney v. Union of India (1992) — The Mandal Case:

Delivered by a 9-judge Constitution Bench, this ruling constitutes the bedrock of Indian affirmative jurisprudence. The Court held that caste can act as a valid social indicator to identify backwardness. However, to maintain societal equilibrium, it instituted three vital principles: (a) A mandatory 50% ceiling on reservations (except in extraordinary situations); (b) Exclusion of the 'Creamy Layer' to ensure benefits

reach true beneficiaries; and (c) Restriction of quotas to initial appointments, excluding promotions (later modified via constitutional amendments).

EWS Case:

2. Janhit Abhiyan v. Union of India (EWS Case, 2022):

A 5-judge Constitution Bench by a 3:2 majority affirmed the 103rd Constitutional Amendment. The majority ruled that providing reservations based solely on economic criteria does not violate the 'Basic Structure' of the Constitution. This decision significantly expanded the philosophy of affirmative action from compensating historical social injustice to mitigating economic deprivation.

Sub-classification Ruling:

3. State of Punjab v. Davinder Singh (2024) — Sub-classification Judgment:

A 7-judge Constitution Bench overruled the earlier 5-judge ruling in E.V. Chinnaiah (2005). The Court held that Scheduled Castes are not a homogenous class and that State Governments possess the constitutional power to create sub-classifications within SC/ST lists to grant sub-quotas to the most backward castes, provided such decisions are backed by empirical data. This judgment strengthens the doctrine of 'equality among equals' and ensures justice reaches the lowest rungs.

5. Global Comparative Jurisprudence

Social justice is a universal imperative. Democratic nations worldwide have devised distinct constitutional and legal mechanisms to rectify historical racial, ethnic, and socio-economic oppressions. Comparing the Indian model with systems in the United States, South Africa, and international human rights frameworks highlights India's unique constitutional approach.

5.1 United States: Affirmative Action & Diversity Model

In the United States, affirmative action developed following the Civil Rights Act of 1964 to address historical racial discrimination against African Americans. Unlike India's statutory quota system, the American model emphasizes 'diversity' as a compelling state interest rather than fixed numerical reservation seats.

Regents of the University of California v. Bakke (1978): The US Supreme Court struck down rigid racial quotas as unconstitutional but allowed race to be considered as one of several factors in holistic university admissions.

Students for Fair Admissions v. Harvard (SFFA, 2023): In June 2023, the US Supreme Court effectively ended race-conscious university admissions, ruling that Harvard and UNC admission programs violated the Equal Protection Clause of the 14th Amendment. This marks a stark divergence from India, where reservation remains a constitutionally protected and permanent structural mechanism.

5.2 South Africa: Post-Apartheid Substantive Equality Model

South Africa's 1996 Constitution is widely recognized as one of the most progressive legal frameworks globally. To overcome the devastating legacy of Apartheid, South Africa adopted 'substantive equality' alongside Broad-Based Black Economic Empowerment (B-BBEE). Section 9 (Equality Clause) explicitly guarantees protection against unfair discrimination and empowers remedial measures to advance persons disadvantaged by unfair discrimination.

5.3 International Legal Framework & United Nations

Universal Declaration of Human Rights (UDHR, 1948): Articles 1 and 2 affirm equality in dignity and rights for all human beings.

International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966): Guarantees rights to work, fair wages, social security, and adequate living standards.

CERD & CEDAW Conventions: Impose state obligations to eliminate all forms of racial discrimination and discrimination against women.

UN Sustainable Development Goal 10 (SDG 10): Targets reducing inequality within and among countries by 2030.

5.4 Cross-Country Comparative Table

Parameter / Feature	Indian Model	US Model	South African Model
Primary Basis	Caste, Social/Educational Backwardness, EWS	Race, Diversity, Gender	Race (Black, Coloured, Indian), Gender, Disability
Legal Mechanism	Statutory/Constitutional Quotas (SC/ST/OBC/EWS)	Affirmative Action / Diversity Goals	B-BBEE Legislation, Proportionality & Corporate Scorecards

		(Restricted post-SFFA 2023)	
Constitutional Status	Explicitly embedded (Parts III, IV, and XVI)	14th Amendment Equal Protection (Strict Judicial Scrutiny)	Protected under Section 9 Equality Clause
Private Sector Scope	Limited to Public Sector / Aided Institutions	Applies to both Public and Private employers	Mandatory compliance across Public and Private sectors
Recent Judicial Trend	Expanding scope (EWS upheld, Sub-classification allowed)	Curtailed race-conscious admissions (SFFA v. Harvard 2023)	Strong ongoing support for affirmative redistribution

6. Contemporary Challenges & New Frontiers

In the 21st century, globalization, rapid technological advancement, and economic restructuring have introduced complex challenges to social justice. Beyond traditional caste disparities, novel axes of exclusion are emerging that demand innovative policy solutions.

6.1 Caste Census & Empirical Data Imperative

A primary weakness in executing affirmative policy has been the reliance on outdated socio-economic data. The last comprehensive caste census was conducted in 1931. In M. Nagaraj (2006) and Davinder Singh (2024), the Supreme Court stressed that any sub-classification or reservation measure must be grounded in 'empirical data.' State-level socio-economic surveys (e.g., Bihar and Karnataka) have amplified calls for a nationwide census.

6.2 Justice in the Private Sector & Gig Economy

With economic liberalization post-1991, public sector employment has shrunk while private employment has expanded exponentially. Marginalized representation in corporate managerial roles remains disproportionately low. Furthermore, millions of platform workers in the 'gig economy' lack basic labor protections, minimum wage guarantees, and social security, forming a new tier of precarious employment.

6.3 Digital Divide & Algorithmic Bias

The rapid digitalization of education and public services threatens to exacerbate existing inequities. Rural and underprivileged students face severe disadvantages due to lack of device and broadband access. Additionally, Artificial Intelligence algorithms used in hiring and credit evaluation risk embedding historical societal biases into automated decisions.

6.4 Gender Justice & Intersectionality

Social justice remains incomplete without addressing structural gender oppression. Marginalized women face 'intersectional discrimination' at the nexus of caste and gender. The enactment of the Constitution (106th Amendment) Act 2023 (Nari Shakti Vandan Adhiniyam) reserving 33% seats for women in Parliament and State Assemblies marks a milestone, though debate continues regarding sub-quotas for backward classes.

7. Conclusion & Strategic Policy Recommendations

The framers envisioned an egalitarian society wherein birth-based privileges are dismantled and every citizen can realize their full potential. Over seven decades, India has achieved commendable progress through affirmative action, legal protections, and welfare state planning. However, quotas alone cannot serve as a panacea. True social justice requires empowering marginalized communities through quality primary education, healthcare access, land reform, asset ownership, and entrepreneurship.

Key Recommendations:

1. Nationwide Socio-Economic Caste Census: Conduct an updated census to build a robust, transparent empirical database for evidence-based policymaking.

2. Universal Quality in Primary Education & Healthcare: Shift focus toward capacity building at the foundational level rather than relying solely on post-secondary quotas.

3. Social Security Code for Gig & Platform Workers: Enact enforceable statutory protections ensuring minimum wages, health coverage, and pensions for informal workers.

4. Empirical Sub-classification Implementation: Execute sub-classification for SCs/STs/OBCs in alignment with the 2024 Davinder Singh ruling to reach the most disadvantaged sub-castes.

5. Voluntary Diversity Scorecards for Private Industry: Encourage corporate diversity scorecards and supplier diversity programs modeled on US and South African practices.

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