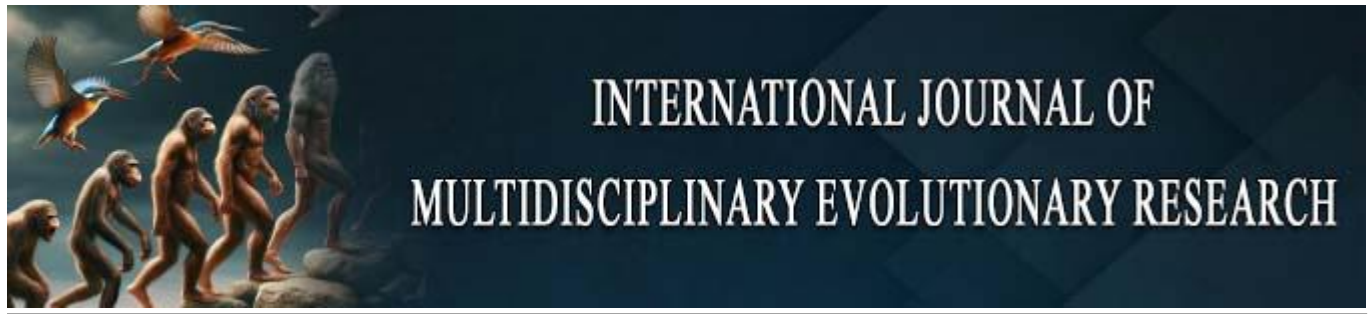




Rethinking Compensatory Justice: A Juridical Analysis of ‘one time, one Family Reservation’ and Periodic Constitutional audits in India

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Abstract

Affirmative action occupies a central place in India's constitutional project of transforming formal equality into substantive equality. The Constitution was framed against a social order marked by caste-based exclusion, educational deprivation and unequal access to public institutions. Reservation therefore emerged not as a measure of charity but as a constitutional instrument for correcting structural disadvantage and securing meaningful participation in public life. Yet the persistence of reservation also raises a difficult constitutional question: how should a remedial measure respond when its benefits become concentrated within relatively advanced sections of the beneficiary communities while substantial sections remain under-represented?

This paper does not advocate the abolition of affirmative action. It argues instead for its recalibration through evidence-based review, intra-group differentiation and safeguards against inter-generational concentration of benefits. It proposes a normative model described as ‘One Time, One Family Reservation’, under which specified transformative benefits of reservation would ordinarily be treated as exhausted for a family after a defined first-generation benefit, subject to carefully designed exceptions and constitutional safeguards. The proposal is not presented as existing law; it is advanced as a policy model requiring legislative design, empirical validation and judicial scrutiny.

The paper examines Articles 14, 15 and 16, together with the limited but instructive history of Article 334, and analyses the evolution of Supreme Court jurisprudence from *M.R. Balaji* and *Indira Sawhney* to *M. Nagaraj*, *Jarnail Singh*, *Janhit Abhiyan* and *State of Punjab v. Davinder Singh*. Particular attention is given to the constitutional significance of the creamy-layer principle, the permissibility of sub-classification within reserved categories, the concentration of benefits identified in the material associated with the Justice G. Rohini Commission, and the competing claims of equality of opportunity and substantive equality. The paper concludes that periodic constitutional audits, transparent data, sub-classification where constitutionally permissible, and a carefully regulated first-generation priority mechanism can make affirmative action more targeted without abandoning its transformative purpose.

Keywords: Affirmative Action, Constitutional Equality, Substantive Equality, Creamy Layer, Sub-classification, Empirical Review, Compensatory Justice

1. Introduction

1.1. Research Problem, Questions and Objectives

The central research problem is whether a reservation framework designed to remedy structural exclusion can remain constitutionally legitimate when access to its transformative benefits becomes concentrated among relatively advanced sections of beneficiary communities. The paper addresses four questions: (i) whether Articles 14, 15 and 16 permit or require periodic empirical reassessment of affirmative-action measures; (ii) what lessons can legitimately be drawn from Article 334 without

treating it as a sunset clause for Articles 15(4) and 16(4); (iii) whether inter-generational concentration justifies a first-generation priority model; and (iv) how such a model can be designed without converting caste-based disadvantage into an impermissible family-based exclusion.

The objectives are to clarify the constitutional architecture of affirmative action, identify doctrinal developments concerning sub-classification and creamy-layer exclusion, evaluate the evidence of unequal distribution of benefits, and develop a legally defensible framework for periodic review.

1.2. Methodology

The study adopts a doctrinal and policy-oriented methodology. It examines constitutional provisions, Constituent Assembly materials, leading Supreme Court decisions and publicly available empirical material concerning reservation benefits. The proposal for 'One Time, One Family Reservation' is normative and exploratory. It is not presented as a statement of current constitutional law. The empirical claims are used to demonstrate the need for review and distributional analysis rather than to establish that reservation has ceased to be necessary for any particular constitutional category.

2. Philosophical and Constitutional Foundations

2.1. Formal Equality and Substantive Equality

The constitutional justification for affirmative action begins with the distinction between formal and substantive equality. Formal equality demands that similarly situated persons be treated alike. Substantive equality asks whether persons who begin from materially different social positions can realistically enjoy the same opportunities if the State merely applies identical rules to all. In a society shaped by inherited exclusion, identical treatment can reproduce rather than remove inequality.

The principle of distributive justice associated with Aristotle and the Difference Principle articulated by John Rawls provide useful philosophical frameworks, although neither is itself a source of Indian constitutional law. The Indian constitutional structure translates the broader idea of substantive equality into specific provisions authorising special measures for disadvantaged classes. Reservation is therefore best understood as a constitutional mechanism of inclusion and representation rather than as a general poverty-relief programme.

Compensatory justice, however, has an internal logic of correction. A remedy should remain connected to the disadvantage it seeks to address. This does not mean that social disadvantage has disappeared merely because some individuals or families have advanced. It means that the State must periodically examine whether the design of the remedy continues to reach those who remain disadvantaged. A dynamic review mechanism can therefore strengthen rather than weaken the constitutional commitment to substantive equality.

2.2. Constituent Assembly Vision: Remedial Instrument and Equality of Opportunity

The Constituent Assembly debates demonstrate the framers' concern that special representation should not destroy the general principle of equality of opportunity. Dr. B.R. Ambedkar, while defending safeguards for backward communities, cautioned against a situation in which

reservations could consume such a large proportion of opportunities that the general guarantee of equality would become illusory. His intervention concerning Draft Article 10, which became Article 16, is important historical evidence of the framers' concern with balance.

The Constituent Assembly debates are persuasive historical material and not themselves a substitute for the constitutional text or later judicial doctrine. The appropriate lesson is therefore one of constitutional balance: affirmative measures should be sufficiently strong to address structural exclusion, but their design must remain connected to equality of opportunity and must not become immune from empirical scrutiny.

3. Constitutional Architecture of Affirmative Action

3.1. Article 14: Equality as a Constitutional Foundation

Article 14 guarantees equality before the law and equal protection of the laws. Indian equality jurisprudence has moved beyond a narrow conception of identical treatment. The constitutional inquiry increasingly considers whether classification is rationally connected to a legitimate objective and, in appropriate contexts, whether substantive equality requires differential treatment. Affirmative action must therefore be assessed not simply by asking whether people are treated differently, but whether the differentiation is constitutionally connected to the remedial objective.

3.2. Article 15: Equality in Access and Special Provisions

Article 15(1) prohibits discrimination against citizens on specified grounds, while Article 15(4) enables special provisions for the advancement of socially and educationally backward classes and for the Scheduled Castes and Scheduled Tribes. Article 15(5) permits specified special provisions concerning admission to educational institutions, subject to its constitutional conditions, and Article 15(6) provides for special provisions, including reservation subject to the constitutional ceiling specified therein, for Economically Weaker Sections outside the classes covered by Articles 15(4) and 15(5).

3.3. Article 16: Equality of Opportunity in Public Employment

Article 16(1) specifically guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16(4) enables reservation of appointments or posts in favour of a backward class of citizens which, in the opinion of the State, is not adequately represented in State services. Articles 16(4A) and 16(4B) subsequently address specified aspects of reservation in promotion and the carrying forward of unfilled reserved vacancies. Article 16(6), introduced by the 103rd Constitutional Amendment, permits reservation for Economically Weaker Sections subject to the constitutional conditions.

It is therefore more accurate to describe Article 16(4) as an enabling provision that facilitates substantive equality rather than simply as an exception that suspends Article 16(1). The relationship between the two provisions is one of constitutional balance: equality of opportunity remains fundamental, while affirmative measures are constitutionally authorised to address inadequate representation and structural disadvantage.

3.4. Article 335 and Administrative Efficiency

Article 335 requires that the claims of the Scheduled Castes and Scheduled Tribes be taken into consideration, consistently with the maintenance of efficiency of administration. The provision is particularly relevant to promotional reservation jurisprudence. The Court's decisions in *M. Nagaraj* and *Jarnail Singh* demonstrate that constitutional review of reservation cannot be separated from questions of representation, data and administrative functioning.

3.5. Article 334: A Limited but Instructive Constitutional Model

Article 334 concerns the reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People and Legislative Assemblies of the States, together with the former provision concerning Anglo-Indian representation by nomination. Its original design contained a ten-year cessation period, which Parliament subsequently extended through constitutional amendments. The current constitutional framework continues SC/ST legislative reservation until 2030.

Article 334 does not impose a ten-year sunset clause on reservations under Articles 15(4) or 16(4). Nor can the absence of a termination date in Articles 15 and 16 be treated as proof that their affirmative-action provisions were constitutionally intended to expire after ten years. The more defensible argument is narrower: Article 334 demonstrates that the Constitution is capable of embedding periodic reconsideration in an affirmative-representation scheme. It may therefore serve as a constitutional model for legislative review of other reservation policies, but it cannot itself supply a mandatory sunset date for Articles 15 and 16.

4. Evolution of Supreme Court Jurisprudence

4.1. *M.R. Balaji v. State of Mysore* (1963) ^[3]

In *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649, the Supreme Court examined a reservation arrangement that covered a very large proportion of seats in educational institutions. The Court stressed that caste could be a relevant factor in identifying social backwardness but could not mechanically become the sole test. It also indicated that reservation should ordinarily remain below 50 per cent. The decision is important for the early development of the proportionality and balance concerns that later informed the jurisprudence on reservation.

4.2. *Indra Sawhney v. Union of India* (1992)

The nine-judge Constitution Bench decision in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217, remains the principal foundation of modern reservation jurisprudence. The Court upheld the constitutional basis of reservation for Other Backward Classes while establishing important limits. It treated 50 per cent as the general ceiling, subject to extraordinary circumstances; required exclusion of the creamy layer among OBCs; and held that Article 16(4), as then understood, did not authorise reservation in promotions. The Court also rejected economic criteria alone as the basis of backward-class reservation under Article 16(4), a position later altered in the distinct context of EWS through constitutional amendment.

4.3. *M. Nagaraj v. Union of India* (2006) ^[7]

M. Nagaraj v. Union of India, (2006) 8 SCC 212, examined constitutional amendments concerning reservation in promotion. The Court upheld the amendments subject to constitutional limitations. In particular, the State was required to address the relevant constitutional conditions through quantifiable data concerning inadequate representation and to ensure consistency with administrative efficiency. The decision established the importance of evidence in the application of promotional reservation.

4.4. *Jarnail Singh v. Lachhmi Narain Gupta* (2018) ^[8]

Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396, modified aspects of *Nagaraj*. The Court held that the State need not collect quantifiable data to establish the backwardness of Scheduled Castes and Scheduled Tribes because their constitutional classification already carries that premise. At the same time, the Court reaffirmed the relevance of the creamy-layer principle and treated exclusion of advanced sections as connected with the equality guarantee under Article 14. The decision is particularly important for the argument that affirmative-action benefits should not be monopolised by relatively advanced segments.

4.5. *Janhit Abhiyan v. Union of India*

The Constitution (One Hundred and Third Amendment) Act, 2019 introduced Articles 15(6) and 16(6), enabling special provisions for Economically Weaker Sections. In *Janhit Abhiyan v. Union of India*, judgment delivered on 7 November 2022 and reported in (2023) 5 SCC 1, a five-judge Constitution Bench upheld the 103rd Amendment by a 3:2 majority. The decision is significant because it confirms that the Constitution can accommodate economic disadvantage as a basis for a distinct affirmative-action framework when created through constitutional amendment and subject to the constitutional conditions.

4.6. *State of Punjab v. Davinder Singh* (2024)

State of Punjab v. Davinder Singh, 2024 INSC 562, is a major development in the law of sub-classification. A seven-judge Constitution Bench, by a 6:1 majority, overruled *E.V. Chinnaiah* and held that the State may, subject to constitutional requirements and empirical justification, sub-classify Scheduled Castes for the purpose of more equitable distribution of reservation benefits. The judgment recognises that a constitutionally listed class need not be treated as socially and materially homogeneous for every remedial purpose.

The judgment also marked an important constitutional development concerning the creamy-layer principle in relation to Scheduled Castes and Scheduled Tribes. Justice B.R. Gavai expressly advocated the application of the creamy-layer principle to ensure that the benefits of reservation do not remain concentrated among the relatively advanced sections of the reserved communities. Justice Vikram Nath expressly agreed with Justice Gavai on this aspect. The judgment therefore provides significant judicial support for the proposition that intra-category advancement and concentration of reservation benefits are constitutionally relevant considerations. While the detailed reasoning on the creamy-layer principle appears in the individual opinions rather than as an identical formulation adopted by every

member of the Bench, the decision substantially strengthens the constitutional basis for examining elite capture within reserved categories.

Davinder Singh does not itself establish a statutory 'One Time, One Family Reservation' rule; rather, its reasoning concerning intra-category inequality and the creamy-layer principle provides an important constitutional jurisprudential foundation from which such a policy proposal may be examined.

5. Intra-Group Inequality, Elite Capture and Inter-Generational Benefits

5.1. The Problem of Concentration

The effectiveness of reservation cannot be measured solely by the number of seats or posts filled by members of a reserved category. Distribution within the category is equally important. If a small segment repeatedly captures educational and employment benefits while other sub-groups remain substantially under-represented, the policy may achieve formal representation without achieving equitable distribution.

Inter-generational mobility creates a related problem. A family that has obtained a transformative educational opportunity or a senior public appointment may possess greater educational, informational and social capital in the next generation than families that have never accessed such opportunities. The fact that the family continues to belong to a constitutionally recognised category does not automatically answer the policy question whether every form of affirmative action should remain equally available to that family in perpetuity.

5.2. The Justice G. Rohini Commission and Concentration of OBC Benefits

The material associated with the Justice G. Rohini Commission on sub-categorisation of OBCs drew attention to substantial concentration of benefits among a relatively small number of OBC communities. Publicly reported summaries of the Commission's analysis indicated that a small proportion of communities had obtained a disproportionately large share of the observed reservation benefits, while a substantial number had received little or no benefit during the period examined.

These findings should be used carefully. The absence of comprehensive caste-wise population data limits the extent to which observed benefit shares can be directly compared with population shares. Nevertheless, the concentration evidence is sufficient to support a narrower proposition: reservation policy should not assume that every beneficiary community receives benefits in equal proportion, and periodic empirical review is necessary to identify under-representation and concentration.

6. The proposed model: 'one time, one family reservation'

6.1. Nature of the Proposal

'One Time, One Family Reservation' is proposed in this paper as a normative policy model. It is not presently a rule mandated by the Constitution or established by the Supreme Court. Its objective is to preserve the remedial character of affirmative action while giving greater priority to first-generation beneficiaries and reducing repeated concentration of transformative benefits within a relatively advanced family.

6.2. First-Generation Priority

Under the proposed model, where a parent has already obtained a defined transformative benefit through reservation—such as appointment to specified senior categories of public service or admission to designated high-value public educational institutions—the children would not automatically receive the same priority as first-generation applicants. Their reserved-category status would not necessarily disappear; rather, the policy would place them in a secondary priority tier, subject to the specific constitutional category and the legislative framework applicable to it.

The proposal should not operate mechanically across all welfare measures. School-level scholarships, basic educational support, health benefits and other measures addressing continuing deprivation should remain available according to their own eligibility criteria. The proposed exhaustion principle is therefore limited to specified transformative benefits and should not become a general withdrawal of social protection.

6.3 Scope and Exceptions

A workable framework would require a precise statutory definition of the benefits covered. It should distinguish between ordinary welfare assistance and transformative benefits such as specified higher educational admissions and specified categories of public employment. Exceptions may be necessary where a family continues to face demonstrable severe deprivation, where the first-generation benefit was marginal rather than transformative, or where disability, geographical isolation or other objectively verifiable factors materially alter the circumstances.

6.4. Constitutional Compatibility

The principal constitutional challenge is that family-based exclusion may become over-inclusive. A child cannot be presumed to have overcome all forms of structural disadvantage merely because a parent obtained a reserved post or admission. The proposal can therefore survive serious constitutional scrutiny only if it is evidence-based, proportionate, reviewable and tailored to the purpose of preventing concentration of benefits. It should operate as a priority mechanism rather than as an irrebuttable declaration that social disadvantage has disappeared.

The model must also distinguish between constitutional categories. The constitutional position of Scheduled Castes and Scheduled Tribes cannot simply be equated with the OBC creamy-layer framework. Article 341 and Article 342 create constitutional mechanisms for specification of SCs and STs, while the jurisprudence concerning backward classes has developed through different provisions. Any legislation adopting a first-generation model would therefore have to respect these distinctions and the controlling jurisprudence.

6.5. Alternative Form: First-Generation Priority Rather Than Absolute Exclusion

For constitutional and administrative reasons, a priority model may be more defensible than an absolute exclusion rule. Under such a system, first-generation applicants would receive priority within the reserved category, while second-generation applicants who can demonstrate continuing substantial disadvantage could remain eligible under a rebuttable framework. This approach would preserve the remedial purpose while reducing the risk that a rigid family rule produces arbitrary results.

7. Periodic Constitutional Audits

7.1. Rationale

Reservation policy should be periodically assessed through transparent and publicly reviewable data. A constitutional audit, as proposed in this paper, does not mean that courts

should routinely reconsider constitutional categories on political grounds. It means that the legislature and executive should establish an institutional process for evaluating whether the design of affirmative action remains connected to its remedial objectives.

7.2. The Tri-Fold Empirical Evaluation Matrix

Evaluation Tier	Indicative Empirical Indicators	Possible Policy Response
Economic and Asset Mobility	Household income; tax records where lawfully available; urban property; landholding; occupational mobility; access to professional employment.	Periodic review of creamy-layer thresholds and identification of concentrated benefits, subject to category-specific constitutional rules.
Educational and Generational Depth	First-generation graduates; parental educational attainment; repeated access to higher education; professional qualifications within the family.	Greater priority for first-generation applicants and review of continued eligibility for specified transformative benefits.
Representation and Intra-Category Distribution	Sub-group representation in public employment and higher education; concentration of benefits; regional distribution; institutional access.	Sub-classification or targeted measures where constitutionally permissible and supported by reliable data.

7.3. Ten-Year Review: Constitutional Inspiration, Not Article 334 Extension

The proposed ten-year audit is inspired by the Constitution's historical use of periodic reconsideration in Article 334. It should not be described as a rule already contained in Article 334 for educational and employment reservations. A ten-year review would instead be created by legislation or appropriate regulatory frameworks, with transparent criteria and opportunities for consultation. The review should examine whether particular measures remain necessary, whether benefits are equitably distributed, and whether new forms of disadvantage require targeted intervention.

7.4. Independent Review Institution

A credible audit system should not be controlled exclusively by the department administering reservation benefits. An independent statutory review body could include constitutional law experts, economists, sociologists, statisticians, administrators and representatives of affected communities. Its reports should be placed in the public domain and should disclose methodology, limitations and data quality.

8. Digital Beneficiary Registry And Constitutional Safeguards

A digital beneficiary registry could reduce duplication and enable the State to study inter-generational access to transformative benefits. However, the creation of a registry linking identity, caste-related information, education and employment history raises serious privacy and data-governance concerns. A registry should therefore be created only under clear statutory authority and with purpose limitation, data minimisation, access controls, correction rights, retention limits, independent oversight and effective grievance redress.

The use of Aadhaar or other identity infrastructure should not be assumed merely because it is technologically possible. Any identity-linked mechanism must have a lawful basis and comply with the applicable constitutional and statutory privacy framework. The registry should collect only information genuinely necessary to determine eligibility and should not become a general-purpose caste surveillance database.

9. Non-Beneficiaries, Article 14 And Harmonious Balancing

9.1. Equality of Opportunity for Unreserved Candidates

The constitutional debate should not overlook citizens competing in the unreserved category. Article 16(1) protects equality of opportunity for every citizen. At the same time, the constitutional legitimacy of affirmative action does not depend upon treating all citizens as identically situated. The proper question is whether the reservation measure remains rationally connected to the disadvantage it seeks to address and whether its design unnecessarily excludes similarly situated persons from consideration.

A periodic review can reduce resentment not by abandoning affirmative action, but by demonstrating that its benefits are distributed according to evidence and that no category is treated as permanently entitled to an unexamined share of public opportunities. This also strengthens fraternity by showing that affirmative action is directed toward genuine inclusion rather than indefinite privilege.

9.2. The Balance Between Merit and Social Justice

Merit and social justice should not be treated as mutually exclusive constitutional values. Competitive examinations measure performance within particular institutional conditions, while affirmative action recognises that access to those conditions has historically been unequal. The constitutional challenge is therefore to design a system that widens access while maintaining competence in public institutions. Article 335 forms part of this balancing exercise, especially in the context of SC/ST claims in public services.

10. Constitutional Challenges To The Proposed Model

10.1. Risk of Arbitrary Family Classification

A family rule may be challenged under Article 14 if it treats materially different families alike or assumes that one parent's advancement automatically eliminates the child's disadvantage. The answer must be a carefully defined, rebuttable and evidence-sensitive mechanism rather than an irreversible exclusion.

10.2. Risk of Over-Inclusion and Under-Inclusion

No single indicator—income, parental occupation, educational attainment or government employment—can perfectly measure social advancement. A multi-factor

framework is therefore preferable. It should also provide an appeal and review mechanism for exceptional circumstances.

10.3. Distinct Constitutional Treatment of SC, ST, OBC and EWS

The four broad categories cannot be collapsed into a single eligibility rule. SC and ST reservations have constitutional foundations connected with Articles 341 and 342; OBC affirmative action has developed principally under Articles 15 and 16; and EWS reservation rests upon Articles 15(6) and 16(6). A common policy objective—more equitable distribution—does not eliminate these doctrinal differences.

10.4. Judicial Review

Any legislative implementation of the proposed model would remain subject to judicial review. Courts would examine classification, arbitrariness, proportionality, compatibility with the relevant constitutional provisions and the adequacy of the evidentiary basis. The proposal should therefore be drafted as a reviewable and evidence-based mechanism rather than as an absolute constitutional command.

11. Actionable Policy Blueprint

First, Parliament and State Legislatures should establish statutory periodic reviews of reservation policies using transparent data. The review should not automatically terminate reservations; rather, it should determine whether the existing design remains effective and equitable.

Second, governments should develop category-specific mechanisms for excluding or deprioritising advanced sections where constitutionally authorised, while recognising that the legal basis for creamy-layer exclusion differs across categories.

Third, States should implement sub-classification within constitutionally permissible categories where reliable empirical evidence establishes unequal distribution of benefits and where the requirements identified in *Davinder Singh* are satisfied.

Fourth, a regulated beneficiary-information system may be developed for specified transformative benefits, subject to privacy, data-protection and statutory safeguards. The system should facilitate policy evaluation rather than create a permanent caste surveillance architecture.

Fifth, the first-generation priority principle should initially be tested through carefully designed pilot programmes or limited statutory schemes, followed by independent evaluation. A rigid nationwide rule should not be adopted without evidence concerning its social and constitutional consequences.

12. Conclusion

Affirmative action remains one of the most significant constitutional instruments for achieving substantive equality in India. Its continuing necessity cannot be denied merely because some beneficiaries have achieved substantial social and economic mobility. At the same time, constitutional commitment to affirmative action does not require the State to remain indifferent to unequal distribution of its benefits. The jurisprudence of the Supreme Court has progressively moved toward greater attention to evidence, inadequate representation, administrative efficiency, creamy-layer exclusion and intra-category differentiation.

The significance of *Davinder Singh* lies particularly in its recognition that constitutionally listed groups may contain

meaningful internal differences for the purpose of distributing remedial benefits. The empirical concerns associated with OBC benefit concentration reinforce the case for periodic assessment. These developments provide a constitutional foundation for asking a further policy question: whether transformative benefits should continue indefinitely within the same family when first-generation members of the same beneficiary community remain severely disadvantaged. The 'One Time, One Family Reservation' model proposed here is intended to open that debate, not to declare a completed constitutional rule. A constitutionally sound version would prioritise first-generation beneficiaries, distinguish transformative benefits from ordinary welfare support, permit narrowly tailored exceptions, respect the different constitutional status of SC, ST, OBC and EWS categories, and remain subject to judicial review.

The broader proposal is therefore one of calibrated continuity rather than abrupt termination. India does not need to choose between social justice and equality of opportunity. It needs a reservation system that continuously measures whether its remedial benefits are reaching those for whom they are most necessary. Periodic constitutional audits, transparent empirical evidence, sub-classification where justified, and carefully regulated inter-generational priority can help move affirmative action from a static entitlement model toward a dynamic instrument of substantive equality.

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