

EVA STALIN IAS ACADEMY - BEST IAS COACHING IN CHENNAI

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Choose a new palette for India's creative economy

Digital platforms and technology have enabled Indian artists and artisans to reach wider audiences. However, they face challenges that are related to economic sustainability, market access, the digital divide, crime in the art world and preservation. A collaborative model promoting cultural economy can help encourage India's soft power by creating an ecosystem of innovative technology-based start-ups, providing guidance, technical support, infrastructure, access to investors, and networking opportunities.

The creative economy is one of the youngest and fastest-growing sectors, with unique challenges that often go unnoticed by public and private investors. There is now growing recognition of the economic importance of the arts sector as it helps in the creation of jobs, economic growth, tourism, exports, and overall societal development.

Recognising the economic importance of culture, the UNESCO World Conference on Cultural Policies and Sustainable Development (MONDIACULT 2022) was held to address contemporary issues in multicultural societies. The goal was to share a vision for the future of cultural policies and to reaffirm the international community's commitment to leveraging culture's transformative power for sustainable development.

Challenges and status of artists

Online platforms, social media, and digital content creation enable artists, writers, film-makers, musicians, and other creatives to engage with audiences, and monetise their talents. While Indian artists and artisans play a vital role in preserving traditional art forms and creating contemporary artworks, they face challenges that are related to economic sustainability, market access, and the preservation of traditional art forms in a rapidly changing society. Government support, cultural institutions, and initiatives provide financial assistance, training programmes, and opportunities for artists to exhibit their work. However, more efforts are needed to promote contemporary artists as brands and ensure equal representation and financial assistance.

There are challenges in the selection of artists



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A collaborative model can help meet the challenges faced by the creative economy and promote the economic contribution of culture

for financial assistance in organising cultural events. Lack of transparency in the selection process creates inequality in representation. There is no systematic or rotational mechanism in place to provide this assistance, and the selection process is often random or based on subjective criteria. So, talented artists, particularly those based outside the city, are unable to gain from sponsored platforms. Additionally, unlike in other countries, there are no serious efforts by private or public institutions to promote contemporary artists as brands. Artists and artisans with creative ideas require a market, market research, business facilitation, and a platform.

Crime in the art world includes art theft, copyright infringement, forgery, fraud, and illicit trafficking. Addressing these crimes requires increased security measures, international cooperation, public awareness, and advanced technology for authentication and tracking. Tackling crime in the art world will help foster a healthy creative economy. Artworks depicting or exploring criminal activities, as well as criminal activities within the art industry, pose significant challenges. There is no institutional infrastructure, expertise and technology to verify the original artwork. The gap is leading to injustice towards genuine artists.

These offences affect cultural heritage and cause financial harm and erode public trust. Exploitation of Indian artists, unaccounted money preserved through artworks, and the dissemination of disinformation about cultural history through various media only compound the issue. Solutions include increased security measures, international cooperation, public awareness, and advanced technology for authentication. Regular audits of acquired artworks can enhance trust and preserve a collection's integrity. An institutional record of incoming and outgoing artworks with a verified identification mark is required.

A workable solution

Having a collaborative model promoting the cultural economy is an effective solution to address the challenges faced by the creative economy and promote the economic contribution of culture.

To promote economic growth, a solution can be to encourage India's soft power by having a capacity-building centre; this should help create an ecosystem of innovative technology-based start-ups in the arts and crafts sector, providing guidance, technical support, infrastructure, access to investors, and networking opportunities.

The needs of artists must be bridged through training, professional development, market access, and participation in larger communities and networks. A facilitation centre would help foster knowledge sharing, economic empowerment, and sustainable livelihood solutions for artists and artisans. Data analytics should be used to foster creative ecosystems that contribute to a sustainable world. The government along with private players can empower artists, help bridge industry gaps, and contribute to the overall development of the creative economy by providing support, resources, and opportunities for innovation and entrepreneurship.

Additionally, existing institutions should address the various needs of artists, such as training, professional development, material support, access to markets, public validation, and participation in larger communities and networks.

A facilitation mechanism should operate by focusing on fostering knowledge sharing, networking, and economic empowerment for individual artists and creative entrepreneurs by offering business training, incubating innovative projects, and connecting them with global marketing platforms, tools, and practices. The centre should also be a platform to provide sustainable livelihood solutions for artists and artisans through participatory models, leveraging the latest ICT tools to enhance their participation in the business ecosystem. It is also time for new data that shed light on emerging trends at a global level as well as putting forward policy recommendations to foster creative ecosystems that contribute to a sustainable world.

Finally, the economic and cultural significance of art, culture, and the creative economy in India, while addressing challenges and proposing solutions, should support the growth and development of artists and artisans as a whole.

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Striking a blow against affirmative action in America

In a ground-breaking decision, on June 29, 2023, in *Students for Fair Admissions vs Harvard*, the United States Supreme Court (SCOTUS) deemed the race-conscious admission policies at Harvard and the University of North Carolina (UNC) as unconstitutional and violative of the Equal Protection Clause in the Fourteenth Amendment.

As Chief Justice John Roberts stated, "Eliminating racial discrimination means eliminating all of it." This ruling profoundly impacts affirmative action programmes, where 'race' has historically been a factor to foster diversity in college admissions, such as in Texas and Michigan. Many believe that the Harvard judgment now makes affirmative action nearly impossible in the U.S.

SCOTUS underpinned its verdict with four reasons. First, it emphasised that the equal protection clause is colour-blind, and the term "equal protection" means identical treatment. Thus, race-based affirmative action contravenes this promise. Second, it affirmed that any such contravention could only be justified if the state has a compelling goal, and affirmative action is absolutely necessary to attain it. The state must articulate this goal clearly to enable judicial scrutiny. The court found Harvard and the UNC's objectives, such as "training future leaders", as commendable but vague. Third, the Court reiterated an earlier ruling that affirmative action policies should have a 'sunset clause'. However, both Harvard and the UNC lacked this. Lastly, the court held that affirmative action should not rely on racial stereotypes or disadvantage anyone based on race – two aspects it identified as problematic in this case.

With Indian courts often drawing upon U.S. judgments, and given shared histories of discrimination based on caste and race (India and the U.S.), it is pertinent to examine the implications of this decision for India. Can this lead to 'reservations' being either curtailed or considerably diluted?

Two different Constitutions

The Indian and U.S. Constitutions are poles apart on how they treat affirmative action. The U.S. Constitution is silent on it, prohibiting only the denial of "equal protection", leading to varied interpretations of this amorphous phrase depending on the sitting Justices. To today's majority, it means exactly what it meant in the



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19th century; colour-blindness. To the dissent, it means consciously treating historically-oppressed races differently.

The Indian Constitution is more clear, thanks to its framers. It expressly allows affirmative action in favour of backward classes in matters of education (Article 15) and jobs (Article 16). Article 16 expressly permits "reservations" in jobs, something that is unique to the Indian Constitution. In fact, this reservation provision was part of the original Constitution as enacted on January 26, 1950, unlike affirmative action in education which was introduced the next year through the First Amendment. India's courts routinely debate the granular questions: what percentage of seats or posts can the state reserve? How should the beneficiary classes be identified? Unlike the U.S., however, India's courts do not debate as to whether affirmative action is fundamentally permissible, for the Constitution conclusively answers that question.

Formal versus substantive equality

Another distinction is the notion of equality that lays the foundation for affirmative action in both jurisdictions. The U.S. seeks to eliminate all distinctions based on race universally, the reason being equality cannot mean different things for different individuals. This applies even for affirmative action that may be justified to undo the historic discrimination faced by African Americans or Hispanics (or other groups). Thus, measures which treat one race as distinct from another in any manner, including a preference in education, are viewed strictly and against equality. This narrow view of equality is called a formal equality and prevents U.S. courts from allowing broad-based race conscious measures.

India, on the other hand, does not treat all distinctions of race or caste alike. Certain classes such as the Scheduled Castes, Scheduled Tribes and Backward Classes who have faced discrimination in the past are not considered on a level field with others. To help them to achieve equal opportunities it is imperative that they have access to reservation. As Justice K.K. Mathew explained in 1976, "the notion of equality of opportunity has meaning only when a limited good or, in the present context, a limited number of posts, should be allocated on grounds which do not *a priori* exclude any section of citizens of those that desire it." Thus, reservation is not antithetical to equality, but a tool that furthers

equality. This is called a substantive notion of equality and facilitates Indian Courts to pass pro-reservation judgments, in sync with the constitutional mandate. In this context, a decision such as the Harvard University case is unimaginable for Indian courts.

Test for constitutionality

Further, the test to determine whether affirmative action or reservation is constitutional also varies substantially. The U.S. has strict scrutiny of all measures that create distinctions based on race. This means a measure is constitutionally permissible only if it furthers a compelling state interest and is narrowly tailored to achieve such interest. The only permissible state interest in the U.S. is the need for a diverse student body. Once this is established, it must be proved that the measure closely correlates to diversity. This is a high standard that makes it extremely difficult for universities to devise admission programmes that are favourable to the minority race. Any broad measures are viewed with great caution so that non-minority candidates are not disadvantaged at the cost of minority.

In stark contrast, Indian courts have a very different standard to meet under Articles 15 and 16 of the Constitution. 'Education' and 'public employment' are already enshrined in the Constitution as legitimate goals for reservation. Thus, the standard adopted by courts focuses on whether the class seeking reservation is socially and educationally backward, and inadequately represented. In employment, this requires proof of quantifiable data from the state. If these two criteria are met, even broad reservation measures are constitutional and the interests of the non-minority are instead taken care of by capping reservations at 50%.

Given India's constitutional mandate that champions substantive equality and adopts a more reasonable test, Indian courts are unlikely to align with the SCOTUS's Harvard ruling. Courts have repeatedly sounded caution that foreign decisions should not be relied on without a proper appreciation of the context in which they were rendered. However, the emphasis on a sunset clause, akin to the Indian Supreme Court's suggestion in the Economically Weaker Section (EWS) Reservations case, could potentially resonate. Parliament's receptiveness to this idea remains to be seen.