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# **AFFIRMATIVE ACTION: A POLICY FRAMEWORK OR A POLICY PARALYSIS**

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## **ABSTRACT**

The ingenuity of the world lies where it starts to discriminate. Identity which is a social construction in the context of the society of India, be it in the past or on the contemporary basis, have been discriminatory or not to be shy of quoting it as a sarcastic one, especially to designate a position or an identity in the specific Indian society based on the birth into a specific caste. Now, this caste structure has been a wholesome part of ancient Indian society, moderating itself in the colonial era and being a force of discrimination (followed as tradition from ancient times) is a rigid, manipulative, and ascribed meaning to serve the personal bias basis by: “Brahmanical Identity People”. Upcoming of the ‘era of renaissance’ during the colonial era of India, during which thinkers such as Raja Rammohun Roy and also the introduction of the aspect of Western Education which being much liberal in its teachings, as a whole to mention: non-discriminatory one; for as it did not consider to restrict the education reach based on caste or varna structure. Since with this implication and the power of rationalizing or questioning the existing discrimination being pursued in the Indian society, thereafter achieving independence from British colonial/imperial rule and also the force of nationalization which led to an independent India; the society of India got blessed with an intellectual thought process which was unbiased and also enlightened to question the discrimination. This intellectual thought was blessed within the constitutional makers and who to justify the new Indian state to be one without discrimination or running on the Equality thought, coined “Affirmative Action,” into the constitution as a policy framework to uplift the discriminated ones of the past and also to “heal the wounds” which our ancestors have had inflicted upon. A critical analysis has been tried to produce in this essay in the domain of Affirmative Action, as a Policy and as an Ideology.

**Keywords** - Affirmative Action, reservation, policy paralysis, caste, policy framework

## **INTRODUCTION**

In continuation of the above, if we could think of ourselves as into a present-day range of situation(s), supposedly just at a university campus tea-stall, we might, not always, but once may question the notion of fairness. Now, since we are considering a conversational situation at a university tea-stall then the notion of fairness of admission to that particular university or to be precise a notion of reservation of seats on a caste-based basis may come into the question of the above-mentioned notion of fairness. So, there may arise questions or instincts may poke the people of India, irrespective of the beneficiaries of the policy of Affirmative Action, or let us here just say: ‘Reservation’.

So now when this notion of fairness is being brought up, the aspect/concept of Justice and Equality does come into focus. This notion/concept or idea of justice and equality varies from person to person in conception. It is at times derivation of what an individual or person has experienced in past and what is situational demand of her in the present life she is experiencing or living?

This variation in consideration of justice and equality as a notion is often an indifferent perception; one may think diversely for herself as an individual of what justice and equality might be for and consequently what might be for her peers or individuals alike. This idea of variation is a derivation from society or institution of which roots are embedded into that particular individual and people alike that individuals; pointing here the idea of Affirmative Action is the focus of deliverance in form of Justice and Equality (conceptually).

But the wholesome idea of being it justice or equality must not be the same for all? Now here comes the idea of ‘differences’ that exist irrespective of society/institution and to be more specific in the context of this paper: within the Indianite structure of society which historically, and unfortunately is caste-ridden.

Now, what role does the caste factor plays in an Indianized version of justice and equality and how does becomes a predominant one for Affirmative Action, is what we would be considering to discuss in the succeeding part of this paper. Let us for now try to figure out what universal implication of justice and equality? And, how can we categorize it into Indianized version?

So, giving a context to justice and equality for the specific concern of Affirmative Action, we can categorize both as followed:

**Equality:**

- Equality of Resources;
- Equality of opportunity;

**Justice:**

- Justice as Fairness;

So, talking about justice as fairness, which indeed is an idea emerging from the inquisitive and intellectually primordial thought process of John Rawls. He postulates his theory of justice as fairness:

1. To provide and identify a set of moral and plausible principles of social justice.
2. Rawls explains the term justice as fairness: uncompromising moral standards for resolving individuals' competing claims.<sup>1</sup>

A basic structure as Rawls explains is a set of major social institutions that distribute rights and duties, and exert a profound influence on individuals' life prospects. So, as a whole a basic structure would comprise of or encompasses:

- Legislations and Government;
- Also, principles and policies are guidelines for exercising political authority. Political here is a derivation for values and power. And authority is not legitimate but a form of public opinion based, as in a democratic form of governance.

Now coming to the perception and idea of Equality given Dworkin in his very influential work: "Theory and Practice of Equality", accordingly putting up:

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<sup>1</sup> Catriona McKinnon; Issues in Political Theory; Page No. 151; Justice as Fairness;

- Any division, he suggests should satisfy an appropriate version of what economists' term as 'envy test', and so will ensure that nobody prefers his/her share over anyone else's share of resources.<sup>2</sup>

From the availability of resources, let us here assume an equal distribution of resources being practiced, comes into picture two factions of society, in which resources exist and are distributed, considered here w.r.t to topic and concern of this essay:

- Equals;
- Un-equals;

To be mentioned here with the specification that, factions of society taken into consideration here are based on the caste division or the Varna structure division which indeed would be discussed in succeeding points.

The whole purpose of discussing Justice Theory and Equality perception, in a brief per se is to give the idea of distribution and opportunities emerging out from the distribution of resources, in specific: Education and Employment opportunities. Talking about opportunities from the above-mentioned ideas, it would be a clear picture that if resources availability exists, then there exist the opportunities.

Refining the statement: in a state (not a state in terms of which owns the resources, or if the modern or traditional political notion of state, or not even in any form of government) if the resources are existing either in natural or scientific form or enrichment form, only then and thereby is a possibility of opportunities being generated or emerged. So, to conclude we can say that availability of resources and 'their distribution in a just and equal manner is the need needed for opportunities to be equally and justly delivered.

We have tried to plot a version of equality and justice here not as an introduction for ideological basis, but rather more specifically denoting the idea of 'Reservation and Quota' based system implemented in India as a concept of Affirmative Action policy.

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<sup>2</sup> Catriona McKinnon; Issues in Political Theory; Page No. 154; Equality of Resource

Before we try to discuss Affirmative Action in a detailed version, as requisite of this essay; a brief history of caste and Varna structure, upon which there is the emergence of the idea of Affirmative Action based is needed to be mentioned.

## **CASTE AND VARNA STRUCTURE: HISTORICAL IDEA DISCRIMINATION**

Varna structure or caste-based order which has been the most rigid and manipulated for superior hierarchical basis by the upper order of the structure is in itself a most discriminatory and non-renewal (since based on the criteria of birth) structure existed in Indian history, and now in the contemporary times still have been into the mind set-up of people (more prevalent into rural India and existing as shady, as not openly practiced, in urban areas of India).

The feet and hands of the person at ‘prey’ are determined to be either bend down or folded before, for mercy and rights; rights which are their fundamentals and provided to them by their so very government, whose leaders once accepted these people as partners of democracy.

These people are the Scheduled Caste/Scheduled Tribe, who has been from ages of India at the scrutiny of the Varna system of Vedas. Another name given to SC and ST is Dalit and Adivasi respectively.

If the pages of history are revised, we will get to know how well the Varna system has been exploitative of the nature w.r.t caste in India. The Varna system had divided the society into 4 castes: The Brahmin, The Kshatriya, The Vaishyas, and The Shudras.

Each caste was assigned duty and no caste member was allowed to breach his or her duties. Shudras were the ones who were to serve all the above three castes. This led the Shudras to never grow and emerge out at par with other higher-order castes; their lives were no more than a slave even being free: ‘Marginalized category’.

It is to understand here that, how the idea of the government of India and constitutional provisions exclaimed for equality, non-discrimination, and justice for past atrocities of caste-based order, and how is nature of Affirmative Action is a policy in practice in contemporary times for upliftment

and approachable. The policy implementation and policy formulation are two branches of a single tree. Both cannot be independent. Both depend upon each other for survival; therefore, it becomes mandatory to consider the inclusive factors of equality for resource distribution and justice in deliverance of opportunities, here in the form of Affirmative Action or Reservation, both in deliverance and framework policy factors.

## **ECONOMIC IDEA OF DISCRIMINATION**

The evidence on the persistence of caste-based economic discrimination in rural areas is perhaps not as surprising as the evidence from urban areas, especially in the modern, formal sector jobs. In rural areas, individuals are more easily identified by their caste status and presumably are more inclined to pursue caste-based occupations given the correspondingly lower spread of the modern, formal economy. Caste is supposed to be anonymous in urban settings; identification of caste is difficult since it is not phenotypically astringent. Additionally, urban markets are supposed to respond to “merit” and so even if hypothetically, caste could be identified, it should not matter.<sup>3</sup>

### **DEFINING AFFIRMATIVE ACTION and HISTORY OF AFFIRMATIVE ACTION**

#### **DEFINITION of AFFIRMATIVE ACTION**

**ORIGIN:** The term "Affirmative Action" was first used in the United States in "Executive Order No. 10925", signed by President John F. Kennedy on 6 March 1961.<sup>4</sup>

**According to the Oxford Politics Reference Dictionary:** Policy designed to correct past practices of discrimination against racial minorities, women, the disabled and other historically disadvantaged groups.<sup>5</sup>

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<sup>3</sup> <http://research.economics.unsw.edu.au/scho/WEE/papers/Ashwini%20Deshpande1.pdf>

<sup>4</sup> [https://en.wikipedia.org/wiki/Affirmative\\_action#:~:text=The%20term%20%22affirmative%20action%22%20was,employees%20are%20treated%20%5Bfairly%5D%20during](https://en.wikipedia.org/wiki/Affirmative_action#:~:text=The%20term%20%22affirmative%20action%22%20was,employees%20are%20treated%20%5Bfairly%5D%20during)

<sup>5</sup> <https://www.oxfordreference.com/view/10.1093/acref/9780199207800.001.0001/acref-9780199207800-e-12?rkey=bkyMGf&result=12>

**According to the Oxford Philosophy Reference Dictionary:** Action is designed to give special support to disadvantaged members of a community, for example by allowing them easier access than others enjoy to benefits such as education, jobs, or housing.<sup>6</sup>

According to the Oxford Sociology Reference Dictionary (Affirmative Action described under Positive Discrimination): Policies and practices that favor groups (mainly ethnic groups and women)

Who have historically experienced disadvantages (usually in the fields of employment and education)?<sup>7</sup>

### **HISTORY:**

To alleviate discriminatory practices against certain historically oppressed groups, a small number of countries have adopted Affirmative Action. In the United States, Affirmative Action is defined as a system of preferential treatment for minorities and women which attempts to compensate them for being denied opportunities of advancement due to past and present discrimination. Other countries, like India, have adopted Affirmative Action to deal with the disadvantaged segments of their populations. India created Affirmative Action to remedy its history of discrimination against groups, such as the "untouchables," who occupy the lowest rung in the Hindu caste system. Various names have been attributed to Indian Affirmative Action. For this note, the term "compensatory discrimination," as used by such legal scholars as Parmanand Singh and Marc Galanter, will refer to India's Affirmative Action programs.<sup>8</sup>

### **HISTORY of AFFIRMATIVE ACTION w.r.t INDIA**

- It was in 1954 that, the then Ministry of Education came up with a provision of providing 20% reservation in educational institutions for SC and ST.

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<sup>6</sup> <https://www.oxfordreference.com/view/10.1093/acref/9780198735304.001.0001/acref-9780198735304-e-77?rskey=Ch1ogF&result=62>

<sup>7</sup> <https://www.oxfordreference.com/view/10.1093/acref/9780199683581.001.0001/acref-9780199683581-e-1759?rskey=d7hiqG&result=1521>

<sup>8</sup> <https://mckinneylaw.iu.edu/iiclr/pdf/vol3p101.pdf>

- Also, in the same period, a provision of relaxation of 5% qualifying marks for SC and ST category of caste in educational institutions.
- Further in 1982 a 15% and 7.5% for SC and ST categories respectively were reserved in government-aided educational institutes and public sector enterprises.
- A new category of OBC, i.e. Other Backward Classes was introduced in the era of 1990s, by the then Prime Minister of India, Mr. V.P. Singh, who came up with the idea of 27% reservation for OBCs in all central government employments.

### **MANDAL COMMISSION**

The Mandal Commission or the Socially and Educationally Backward Classes Commission (SEBC), was established in India on 1 January 1979 by the Janata Party government under Prime Minister Morarji Desai with a mandate to "identify the socially or educationally backward classes" of India. It was headed by the late B.P. Mandal an Indian parliamentarian, considers the question of reservations for people to redress caste discrimination and used eleven social, economic, and educational indicators to determine backwardness. In 1980, based on its rationale that OBCs ("Other backward classes") identified based on caste, economic and social indicators comprised 52% of India's population, the Commission's report recommended that members of Other Backward Classes (OBC) be granted reservations to 27% of jobs under the Central government and public sector undertakings, thus making the total number of reservations for SC, ST, and OBC to 50%. Though the report had been completed in 1983, the V.P. Singh government declared its intent to implement the report in August 1990.<sup>9</sup>

The commission argued caste as a primary factor of discrimination and backwardness existing then in society. A survey was conducted and it was found out that, there were 3743 specific castes (around 50% of the then Indian population) that were backward and to be categorized as OBCs (Other Backward Classes).

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<sup>9</sup> Indian Constitution by P.M. Bakshi;

## **CONSTITUTIONAL PROVISIONS**

- Constitutional Provisions start narrating themselves from the idea of fundamental rights like Article 14 (Equality before law), Article 15 (Prohibition of discrimination), and Article 21 (Prohibition of discrimination and protection of personal liberty).
- Article 23 and Article 24 dealing with economic safeguards of SCs and even Article 46 (promotion of educational interests of SCs)
- Employment opportunities and other safeguards were made for them under Article 16.
- The safeguard in extending a hand in protecting them from untouchability and caste-based discrimination. Article 17 deals with this provision.<sup>10</sup>
- Article 46 of the Indian Constitution declares "The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."
- Article 341 & 342 Indian Constitution list of Castes and Tribes entitled to the above provision and known as Scheduled Castes and Scheduled Tribes<sup>11</sup>.

Constitutional provisions which provide for equality, liberty, and justice have led to the path leading to policies such as ‘reservation’ for them. This policy is for bringing the marginalized to par within the society.

To protect SC and ST from future atrocities and suffering and met out the past sufferings the ‘Protection of Civil rights act (PCRA)’ and even ‘SC/ST Prevention of Atrocities Act was promulgated (SC/ST POA)’.

But the whole point of discussion of a policy lies where and how is it being implemented. How well is it being produced at the forefront of the deserving for which it has been designed?

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<sup>10</sup> <http://www.mgcub.ac.in/pdf/material/202004101120317f4a32b19c.pdf>

<sup>11</sup> <http://archive.Indianexpress.com/news/affirmative-action-and-its-limits/956313/>

## **IMPLEMENTATION and LIMITATION OF AFFIRMATIVE ACTION-RESERVATION POLICY:**

### **An Access or not?**

A policy can be framed but implied in real or documentation is never a matter of cause. The policymakers may be smart and ready to serve the public selflessly but, is it that their smartness is limited or we as a society are not ready to accept that there exists a group of people near us, who work with us or for us or amongst us are of lower caste order? How well is the government ready to deal with the failure of policy at social, urban, and rural levels?

Every policy is framed with a motive of welfare or intention of nation's development. If out sudden or slowly the policymakers realize that their made policies are not making any impact on the society or targeted audience then this is loss of society as a whole for whose welfare the policy was aimed as the welfare isn't being delivered.

For the impact on the welfare of SC/ST, policies should focus on their "planned emergency urbanization", because the entire discrimination is more popular in the rural area. And when the word urbanization is used, it is strictly to mean that the population of SC/ST should be transformed into more modern ways of development. There can be the following measures that can be kept in mind while framing policies related to the specific SC/ST:

- The areas which are predominantly dominated by the SCs or STs should be kept in mind and policy should be targeted at those specific areas more and concentrated efforts by the executive of the country should focus on the implementation of policy fully and in a planned manner.
- Concerning the reservation or Affirmative Action policies, the policymakers should realize the need for a more critical analysis of the policy and its outcomes. The policy is for welfare without any doubt, but, the implications related to it should be more in a way futuristic for them like students opt for colleges but do not attend colleges because of part-time work they are doing or girls busy in household chores as their parents go for work; policies can consider these factors and carve out a way like providing a stipend for Below Poverty Line students, books, etc.

- In the case of the rural lifestyle, unemployment is the biggest issue for SC/ST. They depend upon agriculture and facilities are denied to them in the form of discrimination, like irrigation facility is denied. This type of factor if removed and livelihood provided, equality will and can be easily sustained.

All that requires is a concrete study of the raw issues and not just the umbrella issues. The policy implication and policy formulation are two varied branches of a single tree. Both cannot be independent. Both depend upon each other for survival; therefore, it should be made mandatory to consider the inclusive factors of issues and both implied and framed policy factors. Broadly speaking, a judgment raises four sets of issues:

1. Identification of backwardness on a secular basis: as far as the policy of reservation, or using the technical term Affirmative Action, the domain of consideration of the beneficiaries is somewhat defined only of the Hindu religion caste structure; considering Buddhism, Jainism, and Sikhism coming under the same religious domain. But, if to speak of a broader version of why Affirmative Action policy was brought into the legal framework of constitutional mandate, then it was for benefit of the marginalized caste strata. Here, it must be pointed out that, caste is a social construct, and unbiased of religious domain. Thereby, it must be seen and brought into focus that, marginalization domain is not left limited to only the Hindu religion and covers the factor of the diversity of religions existing within Indian society.
2. Homogeneity of minority communities: since the independence, we could see and even figures point outgrowth in class within the marginalized communities or minority communities. Like, the Jatz of North India or Yadav's of the Eastern region of India. These communities though being enriched with monetary resources, but are still a minority caste or minority community. And since, the Affirmative Action policy is defined in consideration of for lower caste order, homogeneity in getting the policy framework delivered to targeted ones should be a prime focus.
3. Procedures adopted by the government: governmental measures as discussed above too, exist; but are such measures of welfare or specifically reservation made aware to the community/people/marginalized/marginalized within marginalized? This raised the

question of the authenticity of the governmental framework in policy implementation and limiting the reach of policy deliverance.

4. Lack of empirical evidence to justify the government's move: policies do get framed, brought into action, but considering here a very crucial factor of evidential data available for beneficiaries? Considering the aspect of reservation which is a caste-based policy for the same can we trust caste census data? Unfortunately, we only have census data that showcases the empirical evidence of caste(s) categories being existent in India.

### **CRITICAL REVIEW AND CONCLUSION**

Here we would like to present an impression formed from the two-fold idea of Prof. (Dr.) Ghanshyam Shah, Former Professor of Social Sciences, Jawahar Lal Nehru University, New Delhi; quotes these two points as a foreword in the book titled: “Reservation and Private Sector” by Rawat Publications, 2005.

1. Primarily the idea he puts forward is that only reservation in jobs and education industry or institution is not the possible solution of discrimination which government is trying to achieve. So, there must be also recognized for what the historical wounds have been inflicted. Thus, the requisite is a policy framework that not only serves the purpose of equality of marginalized in the society for example: by criminalizing the practices of untouchability, but also a just distribution of resources for like of what purpose reservation policy solves.
2. Secondly, but not last as the debate continues till ‘an egalitarian society’ is achieved, reservation policy in the present day or contemporary scenario has been affected by the upcoming Globalization and a cosmopolitan world. Globalization with itself also brought policy or ideology of liberalism. Now, here comes a bias factor for the marginalized that fall prey to satisfying the conditions of ideologies such as liberalism. So, the role-play of private sector-based reservation or Affirmative Action policy framework, it gets implemented it would be a powerful tool for undue liberalization.