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Affirmative Action in India and the United States

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I. The Problem:

Caste in India and race in the USA are often compared for their institutional similarities, and also because these categories form the social basis on which the affirmative action program in the two countries is based. While disadvantage and discrimination produce similar outcomes for certain groups within caste- or race-divided societies, it is important to understand the differences between the two systems. If race is a system of ascriptive or color-based disparities, caste can be called a system non-ascriptive or non-color based disparities. (For a detailed discussion of the lack of a clear link between skin color and caste, see Deshpande and Darity, 2003). The caste system is prevalent primarily in the Indian subcontinent, but there are several other examples of non- color-based disparities in large parts of Asia, Africa and Europe.

Caste in India

Estimated to be over 2500 years old, the caste system has undergone many transformations, from the ancient *varna* system to the contemporary *jati* system<sup>1</sup>. The varna system divided the population initially into four and later into five mutually exclusive, endogamous, hereditary and occupation specific groups: the Brahmins, Kshatriyas, Vaisyas, Sudras and Ati- Sudras. The last two comprised all castes doing menial jobs with the latter being considered “untouchables”, in that even their presence was considered polluting and thus was to be avoided<sup>2</sup>. The three higher varnas are often referred to as “caste Hindus” (upper caste Hindus) or as “twice born”, since (the men of) these castes enter an initiation ceremony (the second birth) and are allowed to wear the sacred thread. Together, the upper castes constitute 17-18 percent of the population. The Ati-Sudras are roughly 16 percent of the population. Numerically, the largest varna is Sudra, constituting nearly half of the population.

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<sup>1</sup> Unfortunately, these are translated into a single English term, the caste system, which does not enable us to distinguish between these manifestations.

<sup>2</sup> The Ati-Sudras were considered untouchables because almost the entire range of social interaction with them was to be avoided by other castes. However, the manner in which jatis interact with each other used to be according to rather complex rules of social interaction, wherein certain interactions were permitted with some castes and others weren't.

Clearly, this division of castes corresponded to a rudimentary economy. Over the years as economy and society grew more complex, this system metamorphosed into the *jati* system, with features similar to the *varna* system, but with some differences. Firstly, the number of *jatis* today is estimated to be between 2 to 3000. It is a testimony to the complexity of the system that even the exact number of caste divisions cannot be determined with certainty. Secondly, most *jatis* are regional categories, making inter-regional comparisons of *jatis* less than straightforward. It must be noted that *jatis* are not clear subsets of the *varnas*, thus making the ranking of *jatis* an enormously complicated task, if not an impossible one. Thirdly, the *jati*-occupation link is not as straightforward as the *varna*-occupation link. However, the association between *jati* and *varna* at the topmost level (Brahmin *jatis*, most Kshatriya *jatis*) and at the bottom (Ati-Sudra or former untouchables) is clearer than it is in the middle ranks.

Being at the bottom of the caste hierarchy, the former untouchables not only are poorer, they continue to be targets of discrimination, oppression, violence and exclusion. Thus, the affirmative action program in India is targeted at these *jatis*, designed both to bring these groups into the mainstream and also to compensate them for centuries of discrimination. The names of these *jatis* are listed in a government schedule and thus in official literature these castes are referred to as Scheduled Castes, or simply as SCs. Mahatma Gandhi referred to them as Harijans, literally, as people of (close to) God, but some view this as a patronizing term. Most prefer to use the original Sanskrit, but now Marathi term Dalit, meaning the oppressed, which is seen as a term of pride. It should be noted that in independent India, untouchability is abolished by law, and caste-based discrimination is a crime, in principle. Also, in keeping with the ideal of a casteless society, an individual is not obliged to disclose his/her caste (*jati*) anywhere. Data are, therefore, not available by caste: the last *jati* based census was in 1931. Since caste is not ascriptive in the same way as race, it is not always possible to ascertain the caste status of an individual if he/she chooses not to reveal it, especially in urban areas.<sup>3</sup> However, overt and covert instances of untouchability continue and caste is used as a basis of both social and economic discrimination.

While the caste system is conventionally associated with Hinduism, all religions in India, including Christianity and Islam, display inter-group disparity akin to a caste system leading to the hypothesis that perhaps caste was a system of social stratification in pre-modern India. This is

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<sup>3</sup> For the differences between race and caste as categories, see "Introduction" to Darity and Deshpande (ed.s) "Boundaries of Clan and Color", Routledge, 2003.

also true for the so-called egalitarian religions such as Buddhism. “The term ‘Brahmana’ of the Vedas is accepted by the Buddhists as a term for a saint, one who has attained final sanctification.” (Radhakrishnan, 2004)<sup>4</sup>. Thus, Buddhism makes a distinction between Brahmins and others. This is ironic, since Buddhism has been embraced by low castes in large numbers with the belief that it will provide them with the equality that Hinduism denies them. Occasionally, castes with a stigmatized ethnic identity, the ‘untouchables’, have converted to other religions, including Christianity and Islam, as an escape from discrimination and exclusion. However, such conversions do not necessarily guarantee social equality; for instance, the census label ‘neo-Buddhist’ indicates an ex-untouchable who has converted to Buddhism. Since this is common knowledge, it is unlikely that the social position of this person will improve significantly.

However, only the caste divisions among the Hindus will be highlighted for a variety of reasons, including the fact that these are central to the program of affirmative action in India. Low castes from other religions, such as Dalit Christians, have been demanding affirmative action, but so far it has been restricted to Hindu SCs.

In addition to the caste system, more than 50 million Indians belong to tribal communities that are often distinct from the Hindu religious fold. These are the *Adivasis*, (literally, original inhabitants) who have origins that precede the Aryans and even the Dravidians of the South. Many have lifestyles and religious practices that are distinct from any of the known religions in India and languages distinct from the official languages of India and their dialects. Most live on the margins of existence, excluded from the mainstream development process. These tribes are also targets of affirmative action, similarly notified in a government schedule and hence referred to as Scheduled Tribes or STs.

Very close to the social and economic position of the Dalits are the erstwhile Sudra jatis that, however, have *not* been targets of untouchability. The blanket term “Other Backward Classes” (OBCs) is supposed to capture these jatis that have been described in the constitution as “socially and educationally backward classes”. The implication of these categories on data

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<sup>4</sup> Radhakrishnan (2004), p.177, quotes J.G. Jennings: “It should never be forgotten that Buddhism is a reformed Brahmanism, as is evidenced by the invariably honorific use which Gautama makes of the title ‘Brahmin’ and it therefore takes for granted certain Vedic or Vedantic postulates”.

availability is the reduction from an extremely high indeterminate number to either 3 or 4 categories, making comparisons easier. Upto the early 1990s, government data was available for three categories: SC, ST, 'Others' (everyone who is neither SC nor ST: the residual category). From the mid-1990s, 'Others' got divided into OBCs and 'Others' (non-SC/ST/OBC residual). While the narrowing of the number of categories definitely eases analysis, the non-availability of data by jati does not enable us to isolate the status of the upper castes. However, it should be apparent that any estimate of inter-group disparity, based on this three or four way division, will *underestimate* the gap between the top and the bottom end of the caste hierarchy. This is because "Others" is a residual term that includes "everyone else" (as explained above) and, thus, it includes jatis that are very close to SCs in economic and social position.

#### Race in the US:

While race is ascriptive in that it is primarily based on skin color (also on other phenotypical attributes such as quality and color of hair, nasal index, type of lips etc), and thus, is more easily identified, it needs to be emphasized that race is a social construction, in that, the presumed phenotypical similarities that unite members of a given 'race' are more imaginary than real. There is enough evidence to suggest that there is greater variation in each of the phenotypical characteristics *within* races than *between* races (AAA resolution, 1998). However, since disparities in color-based societies such as the USA are crucially defined by race, it is a very real phenomenon in everyday life, particularly for those at the receiving end of racial discrimination.

History of the ethnic conflict in the US goes back to its foundation as a nation or its 'discovery' by white European settlers. Native Americans were subjected to violent dispossession as the settlers moved in and gained control over land, the most precious natural resource. The subsequent economic development was based on black slave labor forcibly brought from Africa. The sentiment "all men are created equal" is contained in the Declaration of Independence but not in the US Constitution (Nesiah, 1997). The first stirrings of formal equality came only with the Civil Rights Act of 1866 that extended citizenship rights to 'all persons in the United States' and made it a criminal offence to deprive any citizen of these rights 'under the cover of any law'. Until the Civil Rights Act of 1964, the Fourteenth Amendment, which incorporates the Equal Protection and Due Process Clauses, was probably the most important milestone in the

emancipation of Blacks. However, by the presidential election of 1876, these rights were lost as the 'Black Codes' evolved to please white factions and Jim Crow laws had been established in most of the South.

Under Slavery, Blacks had no rights whatsoever, but the system that replaced slavery was only marginally better and also had several features similar to the Indian caste system. For instance, segregation, denial of education, restricting Blacks to low-paid, menial jobs, social and economic discrimination, negative stereotyping and violence: arson of Black properties, including churches, murder of Black individuals: the most organized expression of this was in the formation and activities of the White supremacist racist outfit, the Ku Klux Klan.

## II. The Case for Affirmative Action in India and the USA

The case for affirmative action for Blacks in the USA and the former untouchables, or Dalits, in India can be made both on account of historical deprivation as well as on grounds of persistent disparity and continuing discrimination. Thus, despite the differences between race and caste as institutions, the end result for Blacks and Dalits are very similar. Affirmative action can be, and is, viewed as a program of compensation for historical injustices and very few would argue with the contention that historically, Dalits and Blacks suffered deep injustices, disparity, deprivation and discrimination. However, the case for affirmative action on grounds of *contemporary* disparities and discrimination is highly contentious. In what follows, it will be argued that both in India and the USA, the current economic and social systems perpetuate patterns of caste-based or race-based disparities in all spheres of life: education, occupation/work, income/consumption, health indicators. The continued presence of social and economic discrimination aggravates these disparities.

### The case for caste based affirmative action in India

The logic for continuing affirmative action for SC and STs is based on the following set of arguments:

1. Inter group economic disparity: there are various standard of living indicators that establish persistent inter group disparity between SC/STs on the one hand and the rest

of the population on the other. In the absence of reliable income figures at the national level, monthly per capita expenditure (MPCE) is routinely used as a proxy for standard of living. Using NSS data, Deshpande (2005) provides a detailed account of levels and patterns of consumption expenditure for SC/ST and Others and changes therein over the last twenty years at the national and state levels. The SC-ST versus Others disparity in MPCE is seen unambiguously for each of the four NSS rounds (1983; 1987-88; 1993-94; 1999-2000). This disparity is seen both at the national and state levels. Each of the social groups has seen a rise in MPCE over the last two decades, but the rise is greater for Others than for SC-ST. Both in the rural and urban areas, the Others' MPCE is greater than for ALL: for 1999-00, the Others' MPCE at constant prices was Rs. 236 for urban areas and Rs. 143 for rural areas. The corresponding figures for ALL were Rs. 223 and Rs. 133 respectively. For SC, these were Rs. 159 and Rs. 114 and for ST, these were Rs. 178 and Rs. 108 respectively. Thus, rural STs not only have the lowest MPCE, but their MPCE has stagnated for most of the 1990s in real terms. In interpreting these figures, it needs to be kept in mind that 'Others' is a very large and heterogeneous category and includes castes that are not very different from SCs in social and economic position. If, despite this, we see significant gaps between SCs-STs and 'Others', it follows that the gaps between SC-STs and those at the higher end of the Others category must be much higher.

The disparities persist in rates of growth of MPCE for different social groups, details of which are discussed in Deshpande (2005). The only group that experienced a r.o.g. of real MPCE of more than 1 percent in the 1990s has been urban Others. For STs, the r.o.g. has either stagnated or declined and for SCs, the increase is marginal. For the gap in MPCE to close between social groups, the r.o.g. for SC-ST groups will have to be higher than that for the Others. The reality is the reverse, thus, there seems to be no basis to expect a convergence in consumption levels.

Deshpande (2001) constructs a "*Caste Development Index*" (CDI) based on five indicators of standard of living (land holding, occupation, education, ownership of consumer durables, and of livestock). The all India mapping of the CDI reveals that in the early 1990s, there was substantial regional variation in the status of SC/ST populations, but in no state of India was their CDI higher than that of the Others. Whatever the

improvement in their status over 50 years after independence, it has not been sufficient to reverse the economic gap. Deshpande (2004) maps the same index for 1998-99 and finds that the pattern persists. The belief that liberalization of the economy would lower inter-caste disparities is not borne out by evidence. In fact, some of the more pro-reform states in India have seen an increase in disparities.

2. Dalits continue to suffer from a “stigmatized ethnic identity” due to their untouchable past and there is corresponding social backwardness. Human Rights Watch (1999) amply demonstrates the various aspects of violence, exclusion and rejection that Dalits continue to face in contemporary India. There is evidence to suggest that this stigma can affect economic performance adversely, thus perpetuating caste based inequalities. Hoff and Pande (2004) provide experimental evidence that “a social identity – a product of history, culture and personal experience of discrimination – creates pronounced economic disadvantage for a group through its effect on individuals’ expectations”. They conducted controlled experiments in rural Uttar Pradesh where caste was publicly announced and groups were segregated by their caste affiliation. In controlled settings, in which any possible difference in treatment towards castes was removed, social identity affected behaviour largely because it affected expectations. Thus, their findings provide “evidence for an additional explanation, *beyond differences in access to various resources* (emphasis in the original), for the tendency for social inequalities to reproduce themselves over time”.
3. If equality of opportunity between castes is the objective, then affirmative action is needed to provide a level playing field to members of SC/ST communities.
4. Finally (arguably) social policy ought to compensate for the historical wrongs of a system that generated systematic disparity between caste groups and actively discriminated against certain groups.
5. Caste based discrimination in labor, land, capital and consumer goods markets (preventing SCs from entering, say, milk production and distribution) continue both in urban and rural areas. In labour markets this is manifested both as wage discrimination and job discrimination. Formal studies of wage and job discrimination are few (Banerjee and Knight, Bhattacharjea, 1985, Lakshmansamy and

Madheswaran, 1995). These studies are localized and dated (there is no all India study as yet), but they point to discriminatory gaps in earnings both in the formal and informal sector.

Founders of modern India, who gave the policy of affirmative action decisive shape, had two approaches to social justice. One was the principle of “equality in law” whereby the State should not deny any person equality before the law. The second was the principle of “equality in fact” which gives the State an affirmative duty to remedy existing inequalities.<sup>5</sup> Opponents of affirmative action see a contradiction in the two whereas proponents of affirmative action argue that the two constitutional doctrines supplement rather than contradict each other. True equality can be achieved only if the state maintains an integrated society but adopts unequally beneficial measures to help those previously disadvantaged.

The case for affirmative action in the USA:

Historically, the USA has been strongly committed to protecting individual rights. Affirmative action, because it speaks to group identities, is seen as undermining the notion of individual rights. However, given the persistently strong links between ethnicity and economic outcomes, remedies for inter-group disparity will have to focus on group identities. Racial inequality continues to be a major problem in American society. Labor market outcomes for Blacks continue to be lower than that for Whites, although it is important to recognize phases in wage inequality. After the Civil Rights Act of 1964, racial wage inequality declined for about a decade due to a variety of causes: strong economic growth and a tight labor market, improvements in quality and quantity of Black education relative to Whites and strong anti-discrimination and affirmative action enforcement. However, this decline in wage inequality has slowed down since the mid-1970s; the fact of the slow-down is not disputed, but its causes are. One school of thought believes that current wage inequality is due to the lower Black human capital characteristics and not due to discrimination (Heckman, 1998). A variant of this argument believes that discrimination is a minor problem (Loury, 1998). Here the role of pre-market factors, such as family structures and values, neighborhood quality, inherited ability, quality of

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<sup>5</sup> This latter principle gave shape to some directive principles of state policy, such as Article 46: “... the state shall promote with special care the educational and economic interests of the people, and in particular SC and STs and shall protect them from social injustice”....



schools attended etc, in shaping human capital characteristics is stressed. It is then asserted that Blacks have a relatively inferior set of these pre-market factors.

On the other hand, other observers point to the reduction in racial differences in educational quality both prior to and during the period of increasing racial inequality. Thus, part of the racial wage inequality would be due to labor market discrimination. Thus, Darity and Mason (1998) conclude that Blacks receive a 15 percent wage penalty and nearly half of the raw wage differential is caused by racial discrimination. Black (1995) shows that in a monopsonistic labor market with both prejudiced and unprejudiced firms and workers who engage in sequential job search, Blacks will have higher job-search costs than whites. Black also finds that White workers systematically receive higher wage offers than African Americans controlling for education, occupational experiences and age.

Darity, Dietrich and Guilkey (1997, 2001) find that in 1880, the human capital characteristics of African American men reduced their occupational status by nearly 30 percent relative to the average male. On the other hand, differential treatment in the market, i.e., rate of return to African American human capital, lowered African American occupational status by 31 percent. By 1910, the reduction in occupational status due to deficient human capital was just 19 percent, despite the Jim Crow years. Yet, the impact of labor market discrimination increased from 31 to 44 percent during this same period.

There is ample evidence to suggest that the quality and quantity of Black education has been expanding since the mid-1970s. Also, since the racial wage differential began to grow after 1973, but the rate of return to cognitive ability did not start growing until after 1979 (Mason, 2000), so rising skill premium could not have been a cause of the increasing racial inequality. Thus, discrimination against Blacks is a feature of contemporary American labor markets, leading to a very strong case for affirmative action.

Evidence on labor market discrimination comes not only from exercises that decompose the wage gap between the “explained” and “discriminatory” components, but also from interesting studies on name discrimination. Bertrand and Mullainathan (2003) conduct a field experiment by responding to job ads by sending resumes with Black and White names and find significant discrimination against Black names: White names receive 50 percent more callback

for interviews. They also find that race affects the benefits of a better resume. Amount of discrimination is uniform across occupations and industries and even federal contractors, and those who list “Equal Opportunity Employers” discriminate as much as other employers. They find little evidence to suggest that employers are inferring something other than race, such as social class, from the names.

It needs to be added that most of these studies address the question of earnings inequality between Blacks and Whites, reversal of which is also the stated target of the affirmative action program. However, what is substantial is the inter-racial wealth disparity that the affirmative action program does not address at all. This is the context in which the demand for a one-time reparation (that was promised at the time of abolition of slavery) is being raised by sections of the Black community.

There are audit studies of housing discrimination. For instance, Massey and Lundy (1998) find strong and persistent discrimination by landlords and rental agents, that is sometimes exacerbated by class and gender. Blacks, in general and lower class Black women in particular, are treated with less courtesy, experience less sales efforts, pay higher fees, and are more likely to be denied access at all to any rental housing.

### III. Affirmative Action Program in India and the USA

India:

The quota based affirmative action programme in India, called the ‘reservation system’, has two components: it is targeted separately towards SC/ST and OBC groups. It is best to examine them separately. 22.5 percent of all government jobs, seats in educational institutions that have complete or partial government funding and electoral constituencies at all levels of government are reserved for SC and ST persons. This quota is roughly proportional to their share in the population. While this was enshrined in the Indian constitution, adopted in 1950, via Article 15 (4) (reserve places for the under privileged in state run educational institutions) and Article 16 (4) (reservation of government jobs), this program has a history that precedes independence. In some areas, such as parts of present day Kerala and Karnataka, the British introduced quotas almost a hundred years ago. Dr. B.R. Ambedkar, an outstanding theoretician

and one of the most important leaders of the Dalit movement drafted the constitution of independent India. Making affirmative action for SCs and STs a part of the constitution, a move largely due to Ambedkar, ensured that it is mandatory and cannot be questioned in theory. However, in practice, due to the upper caste predominance in all these institutions, its implementation is indifferent and not free from legal battles and quotas often remain incompletely fulfilled.

#### OBC Reservations:

There has been considerable debate, again going back to the British times, over whether reservations should be extended to the OBCs that have not suffered the stigma of untouchability. In a number of states in British India, educational benefits were given to the OBCs and in some major states, such as Madras, Bombay and Mysore, preferential treatment was given to OBCs that included reservations and welfare schemes.

Unlike in the case of Dalits, where identification of jatis is easier and non-controversial, the assignment of the OBC status to jatis is an exercise fraught with considerable difficulty. It is true that there are several jatis that are very low in the caste hierarchy and therefore face serious material deprivation. However, since the jati-varna link is fluid, it is not clear that each of the jati that tries to get the OBC status is, in fact, a descendant of the Sudra varna, or indeed, is *currently* facing serious deprivation, as several land owning, otherwise prosperous jatis claim OBC status. However, as Guhan (2001) argues, the position of OBCs reflects “graded inequality rather than a sharp distinction between SCs and caste Hindus”. He also points out that OBC status has meaning in local contexts. For the state lists of OBCs, the Central Government relied upon documents drawn up in 1949-50. In 1965, commissions were appointed in a number of states to identify the OBCs. However, since no caste enumeration has been done since 1931, these commissions had to rely on extrapolations and sample surveys to estimate the numbers and the social and educational backwardness of the OBCs. As Guhan points out, the problem is that preferential schemes cannot be accepted unless they are based on reliable data and reliable data cannot be collected for fear of exacerbating caste feelings! Government agencies do not collect data on jatis using the argument that the collection of data will promote divisive tendencies. However, other social categories, such as religion and language can be considered (and indeed are) divisive, but the government has not stopped collecting data on these.

Clearly then, the issue of quotas for OBCs has been on the agenda for decades. As a part of the same quest, in 1981, yet another report, called the Mandal Commission Report (MCR) was tabled. The announcement of its implementation was made in 1991 by the then Prime Minister, V.P.Singh. Under the recommendation of the MCR, reservations would be extended to include the OBCs with a quota of 27 percent, taking the total (SC/ST/OBC) to 49 percent. The announcement caused a huge public protest and widespread violent and virulent student agitations across university campuses in the country. Interestingly, despite the disruptions caused by the agitations, public sympathy was fully with the striking students. Also, while the agitation was caused by the announcement of the MCR and the extension of reservations to OBCs, the protest was against affirmative action in general, with openly derogatory casteist slogans directed against the Dalit castes<sup>6</sup>. V.P. Singh was widely demonized as having created the OBC monster. However, as the above discussion suggests, the problem existed independently of V.P.Singh.

## USA

The Civil Rights Act of 1964 introduced the principle of 'affirmative action' into the political, judicial and administrative spheres of American society. The institutions set up under the 1964 Act, together with other Supreme Court rulings, were to define the American affirmative action program, which is not quota based. The Civil Rights Act was followed by a series of executive orders, issued by the Lyndon B. Johnson administration, to promote equality in employment and education. The legal authority for affirmative action in its original form was embedded in Titles VI and VII of the Civil Rights Act of 1964. These two titles ban discrimination (whether negative or positive) on grounds of race, color, religion, sex, or national origin, in federally assisted activities and in employment, respectively (Weisskopf, 2004).

The program encompasses a large number of activities that are designed to improve the presence of minorities and women in the workforce and thereby raise their standard of living. Thus, an obligation to seek selection criteria that did not disproportionately screen out minorities and women was imposed on the employer. Starting with the inclusion of the label "equal

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<sup>6</sup> For instance, during the agitation upper caste student protestors blocked busy streets and started polishing shoes (imitating shoeshine boys) with placards that read "this is what we will be reduced to because of the reservation system". Notice the implication: the occupation that they (read upper castes) would be reduced to is a Dalit occupation. In other words, it is all right for Dalits to continue to do the menial jobs, but if upper castes have to descend to this low level, it is unacceptable. Needless to add, the belief that reservations would push the upper castes down to the menial jobs was only a presumption – not supported by any evidence.

opportunity employer”, measures to ensure that selection procedures incorporated compensatory correction to ensure adequate representation of minorities came to comprise the affirmative action program. Such compensation was held to be necessary even if the employer had no record of previous discrimination as long as there were disadvantages caused by inter-ethnic inequalities in society (Nesiah, 1997).

Under Executive Order 11246, issued in 1965, federal contractors who fail to take affirmative action to end discrimination risk being barred from competition for future contracts (Conrad, 1995). Typically, employers develop affirmative action programs in response to the activities of either the Office of Federal Contract Compliance Programs (OFCCP), that was also created as a result of the executive order, or of the Equal Employment Opportunity Commission (EEOC).

#### IV. Implementation of Affirmative Action

India:

Unlike in the USA, in India there is no national enforcement mechanism for the reservation system, even though there is a Ministry for Social Justice in the Central Government. While civil action is not an available remedy for denial of due benefits (Nesiah, p. 165), the alternative is in the form of a writ jurisdiction under Article 32 and 226 of the Indian constitution. However, given the dominance of upper castes in the judiciary, there is an upper caste/elite bias in the redressal mechanism. A formal writ application and subsequent appearances by lawyers in a court are too expensive for most potential petitioners. The central government does have a National SC/ST Commission, but so far it has not played a pro-active role in ensuring implementation of quotas.

In the evaluation of how many members of the target group have benefited from the quotas the following must be kept in mind. The quota-based scheme in India is similar to a guaranteed minimum scheme, in that quotas are supposed to be filled first and the rest of the seats are allocated on “merit”. Thus, the total number of SC-ST individuals in a job or educational institution will overestimate the actual amount of preference, if some members of the target groups get in without availing themselves of affirmative action.

The one area where caste based quotas are completely fulfilled is the electoral sphere. Thus, constituencies that are designated “reserved” can only elect SC/ST candidates as the case may be. Again a detailed analysis of the political changes is a task best suited to a political scientist. However, given the enormity of this change, a few generalized comments are offered here. The reserved constituencies have led to a noticeable change in the caste composition of the elected representatives that even 40 years ago were dominated totally by upper castes. There are major Dalit political parties as well as key political players, ensuring that Dalit issues remain in the foreground in some fashion. However, it would be wrong to assume that this represents a fundamental betterment in the material and/or social conditions of the majority of the Dalits. Several of those elected from reserved seats are members of mainstream political parties and thus, are committed to the overall agenda of their parties, which may or may not include the reduction of caste disparity. Also, even in reserved constituencies, the voters are both SC/ST and upper caste, and in order to appeal to the latter, the candidates often have to tone down their pro-Dalit agenda. Of course, along the political spectrum, there is a strong tendency to be opportunistic and self seeking, thus Dalit or not, often those elected work primarily to consolidate their own power rather than transfer any real benefits to the people that they seek to represent. Pande (2003) looks political reservations explicitly and finds that political reservation has increased redistribution of resources in favor of the beneficiary groups. Besley, Pande, Rahman and Rao (200?) find that reservations at the village-level local self government improve targeting of low spill-over public goods towards members of beneficiary groups.

Coming to the two other spheres of affirmative action, government jobs and education, the picture is more complex. Xaxa (2002) attempts an assessment of reservations in the University of Delhi, one of the premier institutions in the country. In 1999-2000, of all the undergraduate students, only 8.6 percent were SC (with a quota of 15 percent) and 1.8 ST (quota of 7 percent). Of the post- graduate students, 5.5 percent were SC and 2 percent ST (with actual quotas the same as that at the under-graduate level). Thus, quotas are grossly under fulfilled and if this could happen in the capital city, things might be worse in other parts of the country. The situation in the teaching posts is even worse. Teachers in Delhi University have bitterly opposed the introduction of affirmative action, even though it is a constitutional provision. As a result, reservations were introduced as late as 1996. At that time, out of the 700 teachers in postgraduate departments, 7 were SCs and 2 STs. Out of the 4512 teachers in university affiliated undergraduate colleges, 11 were SCs and none ST.

The picture in the non-teaching posts conforms to the overall pattern in other government jobs: the higher the representation of SC/ST, the lower paying the job. Xaxa's figures for 1998-99 show that whereas only 3 percent of Group A jobs were filled by SC/ST combined, the corresponding proportions for Groups B, C and D were 7.4, 13 and 29 percent respectively. The menial jobs (cleaners, sweepers and so on) often are performed almost exclusively by Dalits, in particular those jatis whose traditional occupation was cleaning/scavenging. In all the opposition to affirmative action, there is never any protest against *over representation* of low castes in low paying jobs. In other words, as long as Dalits don't compete in traditional upper caste bastions or "stay where they belong", it is acceptable.

Coming to government jobs, between 1953-75, on the whole about 75 to 80 percent posts in lower levels were filled. However, in the higher categories of officers (called Class I and II), quotas remain unfulfilled, revealing a picture quite like Delhi University above. This can be attributed to "indifference/hostility on the part of the appointing authorities, insufficient publicisation of vacancies and the sheer expense of application". At the higher levels or promotion stages, formal and informal procedures had operated to keep out the SCs, such as ad hoc and temporary positions, elimination through personal evaluation procedures like interviews, personality tests and unfair adverse entries in confidential records (Guhan, 2001, p.213).

Galanter (1991) has attempted one of the most comprehensive explorations of the Indian affirmative action programme. A monetary cost-benefit evaluation is not possible because of the manner in which the Indian programme is formulated. However, he undertakes a crude assessment of the SC/ST affirmative action programme and some of his major findings are as follows:

- The programme has shown substantial redistributive effects in that access to education and jobs is spread wider in the caste spectrum than earlier, although redistribution is not spread evenly throughout the beneficiary groups. There is evidence of clustering, but Galanter believes that these reflect structural factors, since the better situated enjoy a disproportionate share of the benefits in any government programme, not just in affirmative action programmes.
- The vast majority of Dalits are not directly affected by affirmative action, but reserved jobs bring a many fold increase in the number of families liberated from subservient roles.

- In the short run, beneficiaries might get singled out and experience social rejection in offices, college hostels<sup>7</sup> and other set ups where they are introduced through affirmative action. However, in the long run, education and jobs weaken the stigmatising association of Dalits with ignorance and incompetence. Moreover, “resentment of preferences may magnify hostility to these groups, but rejection of them exists independently of affirmative action programmes”.
- Affirmative action has kept the beneficiary groups and their problems visible to the educated public, but it has not motivated widespread concern for their inclusion beyond what is mandated by government policy.

Thus, Galanter concludes that affirmative action has been a partial success. It has accelerated the growth of a middle class and SC/ST members have been brought into central roles considered unimaginable a few decades ago<sup>8</sup>.

## USA

The important difference between the USA and India is that affirmative action in the former is not enshrined in the constitution, nor is it quota-based. Thus, various executive orders and/or court judgements can either strengthen or dilute the affirmative action program with the passage of time. These are integral to the implementation of the affirmative action program in the USA.

Under the Johnson Administration (1963-68) and the Richard Nixon administration (1968-74), measures were initiated to strengthen the affirmative action program in the sphere of employment. For instance, in 1971, the US Labor Department issued regulations directing government contractors to adopt “goals and timetables” to hire minorities and women. In the same year, the US Supreme Court ruled that an employer could not require certain minimum credentials before hiring a person if such a requirement had the effect of a “built-in headwind” for minorities (Weisskopf, 2004).

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<sup>7</sup> There is no explicit affirmative action in college hostels; affirmative action in colleges leads to entry of SC/ST students in college hostels.

<sup>8</sup> However, even this crude calculation will not work for assessing OBC reservations because of the much more complicated nature of the problem.



Through the 1970s, however, affirmative action policies have been increasingly contested. Until recently, the most critical case in the sphere of education was that of Alan Bakke, who sued the University of California at Davis Medical School for denying him admission even though his qualifications were superior to the Black students who were admitted. The Supreme Court issued its decision in 1978 that ruled out the use of quotas in admissions. However, it allowed for other forms of preferences for minority students, provided that race/ethnicity is only one of the factors taken into account in the admission process and the institution has a compelling interest in a racially/ethnically diverse student body. Thus, the Bakke ruling diluted affirmative action but did not rule it out completely.

From the mid-1990s, however, some university regental actions, a few state referenda and several federal lower court rulings struck down affirmative action in admissions – not just quotas but also other forms of preferences. However, in 2003, the Supreme Court gave its ruling on two lawsuits filed against affirmative action admission policies at the University of Michigan. The court voted 5-4 in favor of the system of admission preferences for under-represented minorities, while simultaneously noting that the policies adopted by the Uof M undergraduate office to increase minority representation were “too mechanistic and formulaic to pass muster” (Weisskopf, 2004, p. 10). This judgement was crucial since it provided unequivocal support for affirmative action policies in the sphere of education.

#### Assessment of the affirmative action program in the USA:

The most comprehensive assessment of the AA program in the sphere of education was the “Shape of the River” (Bowen and Bok, 1998).<sup>9</sup> The study finds that the increase in black students from 0.8 percent in 1951 to 6.7 percent of the entering class in 1989 can be attributed to race-sensitive admissions. Bowen and Bok estimate that race-neutral admissions would have reduced the number of blacks to between 2.1 to 3.6 percent for all schools in the study. The decline would be the greatest at the most selective schools. They note that it would be a serious mistake to assume that these “retrospectively rejected” blacks were unqualified for the education they received, since the difference in the SAT scores of black students admitted and the lowest

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<sup>9</sup> William G. Bowen, president of Princeton University and Derek Bok, the former president of Harvard, analyzed an enormous database of records, called the College and Beyond database, compiled by the Mellon Foundation, of which Bowen was the president. This database contained information about each of the more than 80,000 undergraduates who matriculated at twenty-eight selective colleges and universities

decile of the scores of whites admitted was very low. They further address the question: do blacks waste the opportunity they are offered? Their sample shows a lower dropout rate for Blacks than the national average, especially in the more selective schools. Would it have been better for blacks to have been in schools where they 'fitted' better? They find that Blacks as a group do not suffer, financially or otherwise, when they have attended a more selective school. At each SAT level, blacks earn more after having attended a more selective school, and report themselves as more satisfied with their careers. Nor do most blacks who attended more selective schools report any discomfort or regret when they reflect on their undergraduate experience, or otherwise suggest that they were "sacrificed" by the affirmative action program.

At least 30 percent of the racial wage gap was estimated to be due to discrimination in the early 1970s. This differential has declined, partly due to the equal opportunity legislation (Conrad, 1995). While Blacks continue to be under-represented in the higher paying jobs, workforce diversity has increased due to affirmative action policies. Leonard (1984) finds that, between 1966 and 1977, an increase in women and minorities in the workforce was accompanied by an increase in their relative marginal productivities. The US government claims that "in general, AA programs helped many Fortune 1,000 companies and other major corporations break the glass ceiling for women and minorities. In 1970, women accounted for 10.2 percent of the officials and managers reported on the Employer Information Report (EEO-1) form submitted by federal contractors. In 1993, women were 29.9 percent of all officials and managers, according to the EEO-1 data" (<http://www.dol.gov/esa/regs/compliance/ofccp/aa.htm>).

However, the affirmative action program needs to be strengthened since income disparities continue to be important. About half of the progress in the median income of people of color from 1996 to 2000 was wiped out in the following three years. For the first time in 15 years, the average Latino household now has an income that is less than two-thirds that of the average white household. After slowly increasing from 55% of white income in 1988 to 65% in 2000, black median income fell again to 62% of the white median in 2003. (<http://www.civilrights.org/issues/labor/details.cfm?id=27761>)

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in 1951, 1976 and 1989. These institutions are representatives of elite schools that have used affirmative action, and with a wide range in their selectivity of admitting students.

## V. Strengths and Weaknesses of the Affirmative Action Program in India and the USA

To sum up, in India, affirmative action policies have a much longer history than the US, are constitutionally guaranteed (for SC-ST), and take the form of quotas in government jobs, educational institutions, and electoral seats at each level of government. In the US, the program is around 40 years old, not constitutionally guaranteed, and quotas are ruled out. The strength of the Indian program is that being constitutionally enshrined, it cannot be challenged legally and is practically irreversible. Also, its applicability to government seats has ensured SC/ST representation in the political sphere much more strongly than in the US. Several important political leaders, chief ministers of states, ministers in the Central government cabinet (and indeed, the previous President of India, Mr. K. R. Narayanan) are Dalit. However, the implementation of the program in government jobs and educational institutions is mechanical and insincere. Most institutions get away by simply stipulating the mandatory quota; given the lack of a monitoring agency, there is neither the accountability to fill the quota nor penalties for loopholes used to circumvent quota restrictions. Follow-up support programs to enhance the performance of quota entrants are non-existent. Thus, mandating the requisite number of seats is often the beginning and end of the implementation of the Indian affirmative action program. Further, with liberalization of the economy, quotas in government institutions are becoming increasingly redundant because of the drive towards privatization. Thus, there is now a strong demand for reservations in the private sector that is predictably being opposed by the corporate world.

The US program is much younger than its Indian counterpart and relies a great deal on voluntary efforts. While in principle, the quasi-voluntary element could lead to innovative measures to further strengthen affirmative action, in reality, the result could be exactly opposite. Plus, litigation can be, and has been, used to effectively dilute affirmative action. However, the presence of an enforcement mechanism is an important strength of the US program. Also, while the black middle class has grown substantially as a result of AA in education and jobs, black representation in government bodies, is insignificant.

Despite differences in form and structure, the opposition to affirmative action is very similar in the two countries. The major standard objections are (as elsewhere in the world): merit/efficiency is lowered as a result of less qualified (AA) candidates; preferences dilute

incentives for self-improvement among the target groups; benefits of affirmative action do not reach the 'real' beneficiaries, but are cornered by the better-off sections of the target groups; AA divides society along race/caste lines (a version of this argument is that AA *increases* discrimination); historical deprivation does not warrant the current AA program, since contemporary society has moved away from the historical pattern of disparity; finally, class matters more than ethnicity, so all preference schemes must be only class driven and ethnicity neutral.

All these questions are, and have been, easily answered by proponents of AA in both countries. The assumption that without AA, merit is the sole criterion for hiring/admissions is false. International evidence on inter-group disparity suggests that neither growth nor a strong market orientation can guarantee a reduction in inter-group disparity and discrimination (Deshpande and Darity, 2003). Thus, pro-active policy measures, such as affirmative action, are essential to reduce inter-group disparities in earnings. To the extent that these programs have redistributive effects, hitherto dominant social groups will be strongly opposed to AA. Thus, effective implementation of AA requires a strong political will. While this cannot be generated overnight and will be bitterly challenged, the Indian experience suggests that political reservations are essential to build a core group of legislators committed to strengthening affirmative action.

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