

# **Affirmative Action in Comparative Perspective: Strategies to Combat Ethnic and Racial Exclusion Internationally**

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Affirmative action constitutes a set of positive antidiscrimination measures intended to insure access for members of groups who otherwise would be excluded or underrepresented in preferred positions in a society. It is intended as a strategy to address present day exclusion; it is not compensation for past discrimination, oppression, or injustice. It can function as a compensatory practice or offset for the effects of current racism or casteism. Thus, affirmative action promotes access for the dispossessed, but it does not provide redress for their historic dispossession. Policies of reparations are separate from affirmative action.

In particular, affirmative action often functions as a means of desegregating elites. It does not operate to alter the fundamental class character of a society, nor does it operate as a general antipoverty program. It operates to alter the demography of the elite, to make the elite more representative of the ethnic/racial composition of the society as a whole.

Characteristically, affirmative action takes two major forms best delineated by Thomas Weisskopf's (2004) useful distinction between "preferential boosts" and "quotas." Preferential boosts add explicit or implicit points for being a member of a target group. Quotas are fixed allotments designated for members of the target group. Elements of both approaches can be found in countries utilizing affirmative action; they need not be mutually exclusive. But one approach or the other usually dominates the system utilized in a specific country. For example, to the extent that affirmative action continues to be applied in the United States of America, it primarily takes the form of preferential boosts, while in India and Brazil it primarily takes the form of quotas or, in Indian parlance, reservations. Both approaches can be predicated on a set of minimum qualifications or threshold criteria for members of the target group to be eligible for affirmative action consideration; affirmative action need not – and generally does not — ignore (although may adjust or modify) qualification standards for the positions to which it is applied.

The quota system provides a more concrete and unambiguous basis for assessing whether the goal of demographic transformation of a specific institution or entity is being achieved. A quota system also makes it more difficult to transfer the positions designated

for members of the target group to others outside the target group, although this still can be a problem.

India has the longest modern history of affirmative action of any of the countries now practicing the policy. As early as the start of the twentieth century, while India still was subjected to British colonial rule three southern states of India, established a policy of reserving positions in the state level civil service bureaucracy for the untouchables. So, for example, one untouchable caste group, the Ezhava, has availed themselves of affirmative action for close to five generations. Many of the younger Ezhava contend that they no longer need the reservations policy, which may be true. It is noteworthy that no peoples of modern African descent have had access to affirmative action for five generations, nor have the vast majority of India's untouchables and tribals.

In 1948 a national policy of reservations for the untouchables (or Dalits) and tribals (or Adivasis) was written directly into the Indian constitution by B.R. Ambedkar, the brilliant Dalit leader. The political exigencies confronting India's Congress Party including the necessity of maintaining political support from the untouchables, who constituted upwards of 15 percent of India's population, led to circumstances under which Ambedkar was positioned to write most of the constitution for the newly independent nation.

Indian affirmative action establishes a total quota of 22.5 percent (15 percent for the untouchables and 7.5 percent for tribals) for the scheduled castes and tribes. The quotas apply to civil service positions, university student admissions and faculty posts and other institutions that receive public funds, and parliamentary seats. Law professor Lani Guinier's ideas about group based representational schemes were widely vilified when she was nominated to a high level administrative post during the first Clinton administration, but in the absence of such schemes under-representation of the dispossessed group becomes the norm. In the USA South during the Jim Crow period black political representation was virtually zero in state legislatures and in the national Congress because of black voter exclusion. The Indian scheme guarantees a threshold presence of members of the scheduled castes and tribes in the legislative arena.

There is a subtle and important issue in the India electoral system that must be noted. While a fixed proportion of seats are reserved for members of the scheduled castes and tribes, the general electorate consisting of persons from all caste and religious groups is eligible to vote for the individuals who contest for those seats. Therefore, general voter rolls control who among the scheduled castes and tribes is elected rather than a communal roll of their same caste or same tribe members. Ambedkar had a strong preference for the communal voter roll system but agreed to the general voter roll system under the pressure of one of Gandhi's numerous hunger strikes. The general voter roll system obviously constrains the extent to which persons holding the reserved seats speak exclusively for the Dalits or the Adivasis.

Notably to this date India does not apply affirmative action to employment in the private sector, although political pressure is mounting in that direction. The United States of America, in contrast, has applied affirmative action in both the private and public

sectors, albeit application in the private sector has been conditional on the size of the firm and its eligibility for federal or state government contracts. The intensity of its application has been contingent on the preferences and political mission of the regime in authority and the circumscriptions imposed by judicial decisions.

Affirmative action in the United States has a much shorter history than affirmative action in India. In 1971 the Nixon administration set “goals and timetables” to be administered by the US Department of Labor under an Executive Order pursuant to the civil rights legislation of the 1960s. In the politically charged activist climate of the early 1970s many colleges and universities adopted some form of affirmative action, at least paying lip service to the idea of having a more diverse student body.

Critics have made two central complaints – first, that the policy is unfair to the members of groups who are not targets for affirmative action and second, that the policy lowers productivity and efficiency in the workplace. The first criticism presumes that in the absence of affirmative action there would be no special advantages for the dominant social group(s) and members of the dispossessed groups would be evaluated on authentic meritocratic terms; it is a plea for the “race blind” or “caste blind” society that presumes an absence of white privilege or high caste privilege. Such an environment did not exist prior to the adoption of affirmative action, nor is it likely to exist in its absence.

In the Indian context, Ambrose Pinto (1999) has demonstrated that the general process of obtaining higher marks on university examinations has been grossly biased against applicants from scheduled castes and tribes who typically lack the income and resources for the special tutoring or the bribes that are used by higher caste students to guarantee their access. Pinto observes that more affluent higher caste students, regardless of their skills and with bare minimum qualifying marks, can gain admission to professional colleges by paying large capitation fees. He adds, “Universities and colleges churn out hundreds of graduates year after year without proper skills and yet because these students possess wealth and status they are able to enter the job markets due to the proximity they have to industrialists and businessmen. These are, after all, the very children of the landlords, bureaucrats, and industrialists.” As Ashwini Deshpande (2005 p.20) concludes, “The assumption that without AA [affirmative action], merit is the sole criterion for hiring/admissions is false.”

Thus, in the absence of affirmative action there would be preferential boosts and quotas only for the existing higher caste elite, de facto informal affirmative action for the privileged.. Furthermore, Pinto (1999) notes, the small number of young people of scheduled caste or scheduled tribe origin who manage to achieve high marks on qualifying exams still get excluded from employment consistent with their credentials in the absence of active affirmative action measures on their behalf. Bluntly put, discrimination persists. Similar conditions are evident in the United States (Darity and Mason 1998) and in Brazil (Htun 2004; Telles 2004) where white privilege substitutes for high caste privilege.

In the USA the most dramatic decline in estimates of discrimination against blacks, both in terms of occupational status and wages, took place in the interval 1965-1975. This was the decade immediately following the passage of federal civil rights

legislation. Nevertheless significant levels of discrimination persist, particularly discrimination directed against black males. Black men still incur 8-10 percent losses in measured occupational status and 12-15 percent losses in wages due to employment discrimination well into the first decade of the 21<sup>st</sup> century (Darity, Dietrich and Guilkey 2001). In Brazil, a recent study using the 1996 PNAD to examine a sample of 57,000 male employed workers finds discriminatory losses in wages for mulattos (pretos) and blacks (pardos) taken collectively on the order of 15 to 20 percent (Arias, Yamada, and Tejerina 2004).

In neither the USA nor India has affirmative action been sufficient in its scope or its implementation to eliminate discriminatory differentials in employment. Substantial gaps in labor market outcomes persist even after credentials, motivation, and work experience are taken into account. Consequently, it is not surprising that large numbers of nonblacks have not chosen to become black in the USA nor have large numbers of high caste Hindus in India chosen to live the lives of the Dalits for the purpose of taking advantage of affirmative action programs in each of their countries.

With respect to the second concern, I am not aware of any systematic study of the productivity effects of affirmative action in India. It is far too early to examine the effects in Brazil due to the newness of the adoption of such policies. However, there are two types of studies that have been performed in the United States of America, studies at the macro and micro levels. The macro level study was performed by Cecilia Conrad (1995). Conrad demonstrated that there were no effects on USA growth or productivity from variations in the proportion of the workforce that was black or female. The best micro level study has been performed by Major Coleman (1999). Coleman has shown that black workers hired in firms that practice affirmative action in the USA display just as high a level of performance from the standpoint of employer evaluations as their nonblack peers.

Two other notable cases of affirmative action merit discussion here, Malaysia and Northern Ireland. Since the native Malays (or bumiputera) constitute a numerical majority in a country with a parliamentary system, there was no particular need for them to establish quotas in the civil service or in the legislative arena. But their relatively depressed status did lead to the adoption of affirmative action measures in colleges and universities and the adoption of subsidies for bumiputera owned businesses under the terms of the New Economic Policy of 1970.

Two types of issues have arisen. First, some of the positions set aside for native Malay students have gone unfilled because their schooling prior to the university level has been inadequate for a sufficient number of them to meet the minimum standards for admission. This has been an even more dramatic issue for scheduled caste and tribal youths in India. With slots left unfilled political pressures arise from the non-target groups to allow their sons and daughters to take up the empty quota positions. Second, the business subsidy, set-aside policy has led on occasion to the formation of enterprises that have a native Malay owner as a front person while the business actually is run by a Chinese Malaysian – the phenomenon of the so-called “Ali Baba” businesses. This also

has occurred in the USA where cases have occurred of businesses becoming eligible for minority set-asides by having a nominal black owner while actually being run by a nonblack entrepreneur.

But the most unique aspect of the Malaysian program of affirmative action has been a scheme of wealth redistribution that apportions via state purchase shares of Malaysian corporations to a trust fund on behalf of the native Malays. In 1970 native Malays who constitute close to 60 percent of Malaysia's population owned a mere 2 percent of Malaysia's corporate wealth. By 1990 that share had risen to 20 percent. No democratically engineered racial redistribution of wealth of that magnitude has occurred anywhere else in the world. A necessary condition was the political majority status of the native Malays. Malaysia's wealth redistribution policy was intended to move the country toward closing the wealth gap between native Malays and Chinese Malaysians, but it was not intended to correct for or compensate for historic oppression visited upon the native Malays. The most appropriate target of such compensation would be Britain for its colonial practices in Malaysia.

The Malaysian case brings into clear focus the fact that dispossessed status is not consonant with minority status. Similarly, this is evident in South Africa as well where the overwhelming numerical majority has been subjected to apartheid and continues to face labor market discrimination. That numerical majority position may make it possible to adopt redistributive measures, a la Malaysia, on behalf of South Africa's blacks that may not be part of affirmative action policies elsewhere in the world.

Furthermore, South Africa might be able to execute affirmative action based upon social class or socioeconomic status rather than race and still have policies disproportionately benefit South Africa's blacks. This is not only because poverty and race intertwine so strongly there but also because the numerical majority in South Africa is black. In the USA, in contrast, whites constitute approximately 75 percent of the nation's population and constitute the majority of the poor. Under those conditions class-based policies will not reach blacks to the extent that they would in South Africa.

A simple numerical example may be illustrative of the difference. Suppose we have a community of 100 people, 20 of whom are white and 80 of whom are black. The poverty rate among whites is 10 percent while it is 50 percent for blacks. This is a simplified representation of the South African case. "Race-based" affirmative action would render all 80 blacks and no whites eligible for the program. "Class-based" affirmative action – means- tested affirmative action dictated eligibility by the poverty threshold – would make 40 blacks and 2 whites eligible for affirmative action. Thus, the efficacious application of affirmative action would change the demography of the universe of institutions where the policy is utilized, even if it race is not used explicitly as a criterion for eligibility for the program.

Now consider a community of 100 people where 85 are white and 15 are black. Here the white poverty rate is 10 percent and the black poverty rate is 30 percent. This is the simplified representation of the USA case. "Race-based" affirmative action would render all 15 blacks and no whites eligible for the program. But in this case, "class-based" affirmative action would 5 blacks and 9 whites eligible for affirmative action.

In this context, “class-based” affirmative action would have weak effects, at best, in achieving a demographic transformation of the institutions where the policy is being applied. In general, “class-based” affirmative action becomes less effective as a substitute for “race-based” affirmative action as a means of changing the racial composition of institutions the greater the extent to which the dispossessed group is a numerical minority and the less wide the gulf in poverty status between them and the dominant group.

Moreover, the case for affirmative action, an antidiscrimination, to be anchored on class or socioeconomic status rather than race (or caste) weakens further if enhanced educational status among its members does not insulate them from discrimination. There is evidence that relative discriminatory deficits increase slightly for nonwhites with a university degree in comparison with nonwhites with secondary education in Brazil, (Arias, Yamada, and Tejerina 2004). Although the former do earn more than the latter, the university degree holders are even more underpaid compared to whites with university degrees than the nonwhite secondary degree holders. This finding is consistent with the functionality hypothesis as an explanation for variations in the degree of discrimination faced by members of a subaltern group; the hypothesis has been described as follows:

A dominant group can seek to structure and control access to the credentials required for preferred positions to insure admission to their own and to keep out members of the subaltern group. This could involve, for example, deprivation of subaltern group members of schooling, both in quantity and quality. In the rhetoric now popular in economics the dominant group can take steps to influence the “premarket” characteristics of the members of the subaltern groups to the disadvantage of the latter.

But suppose some members of the subaltern group “premarket” characteristics despite the obstacles set by the dominant group. Then the dominant group can take steps to exclude members of the subaltern group despite their qualifications. Indeed, as members of the subaltern group become more competitive for the preferred positions, the degree of outright discrimination exercised by the dominant group will intensify. Thus, in-market discrimination comes into greater play on a functional basis by a dominant group. It is used when exclusion on the basis of “premarket” attributes no longer is sufficiently effective to maintain the “color” bar. (Darity 2001 pp.980-981)

Finally, to the extent that affirmative action is used to desegregate elites, that becomes more difficult to do with class-based policies. It is the “middle class” of the subaltern group that is more likely to have the pool of individuals most able to enter and engage in elite positions immediately.

Affirmative action in Northern Ireland with “fair participation” standards that have to be met by employers for Catholics and Protestants constitutes a mechanism for defusing communal tension and violence there (see, e.g. McCrudden 1992 and Sheehan and Tomlinson 1999). By mandating that the composition of workforces be representative of the religious/ethnic composition of the population as a whole may mitigate the degree of animosity between the groups. Affirmative action is sometimes charged with inflaming interethnic hostilities, but in Northern Ireland it is seen as a way of reducing such hostilities. In countries with large religious or ethnic subgroups, affirmative action of the type that insures proportional representation in the workplace and in other politically important settings may be useful. It may be the case that in a country like Guyana which is deeply divided along ethnic lines between its Afro-Guyanese and Indo-Guyanese populations, affirmative action in the style of Northern Ireland may be of worthy of consideration.

Being alert to tactics of evasion that have emerged in countries adopting affirmative action is important as well. In both India and the USA steps have been taken to extend affirmative action beyond the original target groups in ways that dilute the benefit for the target group, e.g. to Other Backward Classes in India and to other “minorities” in the USA. The definition of the target group can be left sufficiently imprecise that previously unintended beneficiaries can replace the original target group. For example, in the USA the use of the notion of blacks as the target group rather than Afro-descendants native to the USA has led colleges and universities disproportionately to admit students from black families who have newly immigrated to the USA from the African continent or from the Caribbean and count them as equivalent to African Americans.

The rhetorical question this pattern raises is the following: Should affirmative action be used to provide a preferential boost for students whose families have chosen to voluntarily migrate to a racist society? Since affirmative action is an antidiscrimination technique, in principle it should be applied to all persons who are likely to be subjected to discrimination. On the other hand, if reparations for slavery and Jim Crow practices in the USA ever were to be adopted, that should only apply to native blacks.

Finally, note that it is sometimes argued that affirmative action stigmatizes the members of the recipient group. But it is their stigmatized status, independent of the presence of affirmative action, that has facilitated their exclusion from a representative share of the society’s fruits. Hence, affirmative action is a corrective, when exercised with force and effectiveness. It is a potential antidote for the effects of stigma rather than an essential source of stigma.

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