

AFFIRMATIVE ACTION IN PRIVATE SECTOR: WHY AND HOW

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1. Introduction

1.1 Faced with the intense discrimination and inequalities associated with the caste system and untouchability, the Indian state has made explicit use of affirmative and positive action (or what is called reservation policy) in employment, education and other spheres with respect to discriminated groups such as Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Castes (OBC). Unlike some other countries however this policy is confined to a small government sector and the vast private sector that includes agriculture, industry and tertiary activities has remained outside its scope. Therefore the 90% plus of the SC/ST population who are engaged in the private sector have remained without protection against discrimination, while various types of affirmative action policies in other countries are used in both the private and public sectorⁱ.

1.2 With the rapidly narrowing down of tiny public sector, due to privatisation and the general trend towards withdrawal of the state under the impact of liberalisation of Indian economy, serious concern has been expressed about the significance of public sector affirmative policy. As a result of this ‘de-reservation’, there is a growing demand for some sort of affirmative action policy in the private sector. Academicians have expressed such viewsⁱⁱ. The issue has also appeared in the election manifesto of political parties and have found approval in Common Minimum Program of the present government which has asked for discussion on this issue. Views have been expressed both in favour and against reservation in the private sector with the employers association in particular opposing this moveⁱⁱⁱ.

1.3 In the context of ongoing discussion and political desire to develop a common consensus we examine below the issues involved in the extension of affirmative action policy to the private sector in India. Drawing mainly from theoretical and empirical literature, in this paper we discuss the nature of caste and untouchability based market discriminations, highlight their economic consequences on economic growth, inequalities and the deprivation of discriminated groups, look at the alternative remedies against discrimination used in different countries in the world, and finally draw lessons from international experience for an affirmative action policy for the private sector in India.

2. Market Discrimination and its Consequences –Insights from Theories

2.1 Only a few economists have tried to grapple with the issue of caste and untouchability based economic exclusion and discrimination. Broadly speaking social exclusion is viewed as “the process through which individuals or groups are wholly or partially excluded from full participation in the society within which they live” (Haan, 1999). In this context two defining attributes of exclusion are particularly recognised. First is the multi-dimensional character of exclusion in various economic and social spheres. Secondly and more importantly are the social and economic processes or institutions involved in exclusion that causes deprivation and poverty among the discriminated groups. Amartya Sen (2000) draws a distinction between the situation where some people are being kept out (at least left out) and

where some people are being included (may even be included by force) on deeply unfavourable terms and describes the two situations as “unfavourable exclusion” and “unfavourable inclusion”. “Unfavourable inclusion”, particularly with unequal treatment or unacceptable arrangements, may carry the same adverse effects as unfavourable exclusion. The notion of unfavourable inclusion appears to be quite close to the concept of “market discrimination” developed in mainstream economic literature related to race and gender. (Becker 1975). Discrimination thus manifests a situation that involves exclusion or restriction on entry into markets and/or selective inclusion with unequal and unfavourable treatment in participation in various market transactions.

2.2 Why are the governments in developed and developing countries concerned about economic discrimination? Is discrimination only equity issue, or does it also involve economic cost to society? Are the costs it imposes on the society more social and political than economic? The conclusion of mainstream theories on economic discrimination (which in fact form the base and justification for most of the anti-discrimination affirmative action policies in the West) implies that market discrimination does hamper economic growth, bring unequal income distribution and create potential situations for inter-group conflict (Birdsall and Sabot 1991). Thus concerns about exclusion and discrimination are not only because of its consequences on economic inequality and the deprivation that it brings to the excluded and discriminated groups but also the adverse consequences on economic development.

2.3 In discussion on affirmative action policy in India, while the adverse consequences of discrimination on inequalities and deprivation of discriminated groups has been recognised, that on economic growth has been by and large ignored. The mainstream strands in economic research clearly indicate the negative impact of discriminations on economic growth through consequences in allocation of labour wages and profits. General reasoning implies that market discrimination slows economic growth due to less than optimal allocation of labour among firms in the economy. This necessarily happens because the firms involved in discrimination, hire labour at a wage rate lower than their marginal product. Since wages received by discriminated labour is lower than their marginal product, the firms involved in labour market discrimination end up using labour that is lower quality. The economic outcome of the firm is also affected by reduced work commitment and effort of workers who perceive themselves to be victims of wage discrimination. The discrimination also affects productivity by reducing the magnitude of investment in human capital by discriminated groups and return on this investment (Birdsall and Sabot 1991).

2.4 The consequences of discrimination on income distribution are quite obvious, in so far as market exclusion involves the denial of access to employment, and fair and equal wage payment to discriminated workers. Discrimination particularly in the labour market brings income losses to discriminated groups due to wages/salary lower than their productivity. Exclusion and discrimination in access to other markets for income-earning assets such as agricultural land, capital and other factors also reduce the income-generating capacities of discriminated groups. Further pre-market discrimination in access to education and skill development also keeps the discriminated group at a lower level of development and reduces the chance of employment. There are further consequences of unequal opportunities, namely that by exacerbating current income inequality between groups, and by contributing to its perpetuation from one generation to the next, discrimination and exclusion have led to inter-group conflict (Birdsall and Sabot 1991).

2.5 Overcoming market discrimination thus becomes a necessary condition to remove constraint (posed by market discrimination on mobility of production's factors, particularly labour) on economic growth, to reduce income inequality between groups and also reduce the potential for conflict to which inequality between groups may give rise.

2.6 What are the remedies against discrimination? Conclusions regarding the consequences of market discrimination on economic growth and income distribution are derived from the mainstream free-market economic theories. The same theoretical strand also predicts that, in highly competitive markets, discrimination will prove to be a transitory phenomenon as there are costs associated with discrimination to the firm/employer, which results in lowering the profit. Firms /employers who indulge in discrimination, face the ultimate sanction imposed by the markets. This theoretical perspective thus sees the resulting erosion of profit as a self-correcting dimension of discrimination. The free market solution however has its serious limitations and it may not work and therefore for a number of reasons, market discrimination might persist over long periods with or without prevalence of free market context. Firstly, not all markets are competitive and the persistence over decades of labour-market discrimination in high-income countries attests to that. Indeed, in developing countries, monopoly power is pervasive, which is a sufficient condition for continued prevalence of market discrimination. Secondly, even if competition in all markets exists the discrimination may still persist if all the competitive employers practiced market discrimination. Discrimination will also continue in situation in which the discriminated workers did not get the opportunity to prove their potential to the employer (Birdsall and Sabot (1991)).^{iv}

2.7 The policy implications of the standard neo-classical theory are fairly obvious. This calls for policy of market interventions to overcome the various consequences of market failure associated with market discrimination. This also implies that market interventions in some forms are necessary not in labour market alone but also in other markets like land, labour, capital, products, and social services such as education, and housing if certain groups face discrimination in exchange carried through markets and non-market channels. It is necessary for us to recognise that it is these insights from theory that induced and justified the adoption of various types of affirmative and positive action policies in favour of discriminated groups in US and other western countries in the world.^v

3. Castes and Market Discrimination

3.1 After having gained some insights mainly from mainstream theoretical economic literature which form the base for justification for policies against discrimination, on the process of discrimination in market economies, their consequences and possible remedies, we now turn to the situation in Indian context

3.2 When the anti-discrimination policy was first introduced in the 1931 and formalised later in 1950, at the time of the adoption of constitution of Independent India it was advocated mostly on the basis of violation of citizenship rights, particularly of low-caste untouchables. Ambedkar who pioneered the affirmative action policy, the efforts for which began in 1919, became formalized in 1931 under the Poona pact and finally got definite legal shape in 1950, based most of the arguments from human right perspective, drawing largely from theoretical development in political science. Therefore in the latter period, the discussion and debate on affirmative action

policy in India is largely devoid of economic logic and justification. There is a specific reason for the lack of theoretical input on affirmative action policy by Indian economists. Economists in India paid much less attention to the study of caste based market discrimination. This is in contrast to the large body of literature on economic discrimination by race, ethnicity, and gender in the western world (Darity 1994). Ambedkar developed a general theory of caste as back as 1916 but the economic underpinning was elaborated much later in the 1940's and 1950's (and appeared in the print only in the 1990's).^{vi} It is only in the 1980's and later that some attempts were made and surprisingly mostly by the western economists to provide the economic interpretation and consequences of the effects of the caste system (Akerlof 1976, Scaville 1984, Lall 1991).

3.3 We take a look at these theoretical attempts to get some insights in to the economic underpinning of the caste system, its consequences for economic growth, inequality and deprivation of discriminated groups. Since the main justification for affirmative action policy in the West emanates from the mainstream theoretical economics, we limit the discussion to this branch of writing. This theoretical manifests three underlying principles and customary rules that govern and structure production, organization and distribution under the caste system. These three unique features of the traditional caste system are (a) fixed occupation (property rights) for each member of caste by birth and its hereditary continuation, (b) unequal distribution of economic and social rights related to occupation, property, employment, wages and education among different caste groups, (c) and the provision of a strong system of penalties for enforcement of the system. Hence occupations under the caste system are hereditary, compulsory and endogenous. The caste system's characteristic of fixed and compulsory occupation (or property rights) with concomitant fixed economic rights for each caste, implies "exclusion" of one caste from undertaking the occupations of the other castes. Exclusion and discrimination in occupation and labour employment is thus an obvious and necessary outcome of the institution of the caste system.

3.4 In the framework of a market economy, the restrictions on occupational mobility operate through prevention on taking the occupation or economic activities of other castes. Exclusion and discrimination in market situations may thus operate through restrictions and/or discriminatory access to various markets such as agricultural land, labour, credit, other inputs and services necessary in starting any occupation. The restrictions may also prevail in the exchange of product and consumer goods between members of different caste.

3.5 Labour being a part of the production process of any occupation or economic activity, labour market discrimination is obviously a part of the exclusionary process of occupation. At a theoretical level labour market exclusion and discrimination manifests in (a) exclusion or complicit restriction on transferring employment from one caste-occupation to another and (b) unfavourable inclusion, that is, access or entry to labour employment in another caste's occupation but with unequal treatment in wage payment and other terms and conditions of work. This essentially means unequal and lower wages (lower than market or lower than the wages of other groups with same productivity level) for workers of discriminated groups, along with unequal working conditions governed by the caste-related coercive norms and obligations (Thorat 2000).

3.6 In terms of consequences the economic interpretation of Akerlof-Scaville-Lall implies negative outcome of caste based market discrimination for economic growth and income distribution. Fixed occupations (or economic activities) for caste groups essentially means restrictions on mobility of labour and other factors of production across caste

occupations. Complete immobility of labour and other factors particularly of capital would obviously mean an imperfect market situation and the fragmentation of economic activities around the caste groups, although there will be mobility of labour and capital within the caste. Immobility of labour and capital leads to economic outcomes, which will be less than optimum economic outcome realised in a competitive market situation. The Akrolof-Scoville-Lall model thus argues that given the segmented and imperfect character of labour market, the economic efficiency of the caste system is clearly lower than posited in model of a perfectly competitive market, a second-best alternative to the Parato optimum.

3.7 Ambedkar however, argued that efficiency and productivity of labour is adversely affected in a number of other ways also, namely the nature of customary rules that regulate employment, wages, education and dignity of labour under the caste system. In his view efficiency of labour suffers severely in another manner also. The economic pursuit in caste system is not based on individual choice, individual sentiment and preference. The principle of individual choice is violated in the caste system in so far as it involves an attempt to appoint a task to an individual in advance, selected not on the basis of training or capacity but on that of the social status of parent. The social and individual efficiency require us to develop the capacity of an individual to the point of competency to choose and make one's own career. This is almost absent in the overall scheme of the caste system. Furthermore, some of these occupations are considered polluting or impure and therefore socially degrading. The social stigma of impurity and pollution in fact reduces the social status of persons engaged in them. Forced into these occupations on account of their caste origin, people do not derive job satisfaction and indeed this constantly provokes them to aversion, ill will and desire to escape. Ambedkar observed:

“There are many occupations in India which on account of the fact that they are regarded as degraded by Hindus provoke those who are engaged in these occupations. There is a constant desire to evade and escape from such occupations which arise solely because of the blighting effect which they produce upon those who follow them owing to the slight and stigma cast on them by the Hindu religion”, Ambedkar added

“What efficiency can there be in a system under which neither men's hearts nor their minds are in their work?” As an economic organisation caste is therefore a harmful institution, in as much as it involves the subordination of man's natural powers and inclination to the exigencies of social rules”, (Ambedkar, 1936).

3.8 The caste system also puts a low value on “physical” work, as compared to ‘mental’ work, with the result that the dignity of physical labour is nearly absent in the work ethic of the caste system. Consequently, the lack of dignity of labour adversely effects the incentive to work. Thus, in view of the standard mainstream theories of discrimination (and also Ambedkar), judged by the standard criterion of economic efficiency, the caste system as an economic organisation lacks all those elements or assumptions, which are required to fulfil the conditions for economic optimum outcome.

3.9 The consequences on economic inequality of the distributive scheme involved in the caste system are particularly pronounced in terms of income distribution, employment and poverty experienced by the excluded/discriminated groups. Since property rights under the caste system are assigned unequally across castes, income distribution is generally skewed along caste lines. The unequal and hierarchical assignment of occupation and property rights

among castes implies that every caste, except those at the top, suffers in various magnitudes from an unequal division of social and economic rights, the ‘untouchables’ (Schedule Castes), who are located at the bottom of the caste hierarchy, suffer most as they face “exclusion and discrimination” from access to any economic rights, except manual labour or service to the castes above them. The institution of “untouchability” adds an additional dimension to the economic discrimination and exclusion of this social group as they are prohibited from social intercourse and participation in a variety of economic activities due to stigma of pollution associated with their caste as ‘untouchable’. The economic and social impact on “low-caste untouchables” is far more devastating than any social group in Hindu society.

3.10 Beside the general negative impact on income distribution, another negative impact of labour immobility across occupation and the social stigma associated with certain occupations relates to employment, which has been emphasized both by Ambedkar (1936) and Akrolof (1980). By putting restrictions on mobility of labour across caste occupation and thereby not permitting readjustment of employment, caste becomes a direct cause of much “voluntary unemployment” among high castes and ‘involuntary unemployment’ among the low castes. The high caste Hindu would generally prefer to be voluntarily unemployed than to take up an occupation not assigned to his caste. On the other hand for the low-caste untouchables the restrictions to take other castes’ occupation compel them to remain involuntarily unemployed. Insights from economic theories indicate the serious consequences of the caste system, particularly of exclusion and discrimination associated with it on economic development and income distribution, also on right to individual development, equal right to employment and wages, all of which have cumulative poverty-inducing consequences particularly for the low caste untouchable.

4. Evidence on Market Discrimination and Economic Inequality

4.1 The customary regulatory framework of the institution of caste system and untouchability has undergone considerable change over a period of time. After the adoption of the Constitution in 1950 in India, caste-based customary rules and norms governing occupation, property rights, employment and wages have been formally replaced by an egalitarian legal framework of property rights, under which the “low-castes” now have equal access to all occupations (although the process had began much earlier in the British period). However despite these provisions and the impact of a number of factors, the caste system continued in modified and changing forms. Literature on changing nature of the caste system and institution of untouchability is vast, but the one on economic and market discrimination is extremely limited. Within the limitations of data we present indirect and direct evidence on the economic discrimination and deprivation particularly experienced by the low-caste untouchables.

4.2 We first present indirect evidence on the caste based economic discrimination and inequality. The impact of historical exclusion and discrimination of the low caste untouchables (who constitute about one fifth of India's population-equivalent to about 167 million in 2001), in terms of their limited access to capital assets (land and non-land), heavy dependence on wage labor, low employment, human development and high poverty is reflected in the official data. Under the customary rules of the caste system, the low-caste untouchables were not allowed to undertake occupations based on fixed income earning capital assets-agricultural land and non-

land. National Sample Survey (NSS) data on livelihood indicate a marginal shift away from the traditional occupation. In 2000, of the total SC rural households, about 16% per cent pursued cultivation as self-employed occupation, (compared to 41.11 per cent for 'other') and another 12% were engaged in some kind of non-farm self-employment activities (or business). Thus about 28% of SC households had acquired access to land and non-land assets in rural area. In urban areas as well, only 23 percent of the households were engaged in petty business compared with 35.5 % for 'other' (non SC/ST) households. So a small percentage of SC households had acquired access to fixed capital assets, consequently an exceptionally high proportion of them continue to depend on wage labour—61% in rural area and about 64% in urban area.^{vii} Wage labour as a traditional occupation thus continues to constitute the main occupation of SC population in India.

4.3. More than 61 per cent of SC household in rural areas and urban areas depend on wage employment, hence their earnings are determined by the level of employment and wage rates/salaries. The SC worker however suffers from higher incidence of unemployment and under employment. The employment rate of male worker turns out to be 46% for SC compared with 48.40% for 'other' workers. In urban area also the employment rate among SC are lower, it being 45.8% for SC worker compared to 49.9% for 'other' workers. Conversely the unemployment rates for SC are higher-5.0% compared to 3.5% for 'other' worker in rural area. Similarly in urban areas, it is 5.2%, for SC workers compared to 3.5% for 'other' workers.

4.4 Limited access to income earning assets, higher incidence of wage labour coupled with higher unemployment – all culminate into high incidence of poverty among the SC. In 2000, about 35.43 % of SC person were poor in rural areas as compared to 20% among 'other' – gap of 15 percentage points. Similar gap between the two groups exists in the poverty level in urban areas - about 39% of SC were poor as against only 21% among 'other' - gap being 18% points. The poverty level is particularly high among the wage labour households, it being 46 % in agricultural labour households in rural area and more than half among the casual labour in urban area.

4.5 Malnutrition and under nutrition is also relatively high among the SC, about 33% of SC women suffered from anaemia as compared to only 15% among non SC/ST in 1998-99. The incidence of anaemia among the SC children is nearly 56, compared with 49 percent among the non-SC/ST. Poor nutritional status, higher under-nourishment, and higher incidence of anaemia among children and women results in higher incidence of mortality among the SC children, which is one of the important indicators of health status. In 1999 the Infant Mortality, Child Mortality and Under Five Mortality among the SC children was 83, 40 and 119 respectively, which was relatively higher as compared to 61, 22 and 82 respectively for children from the 'other' group. The overall indicator of level of living is captured in "the life expectancy". In 1999 the overall life expectancy at national level was 65 years whereas it was about 62 years for SC and 66 for non-SC/ST. Thus the life expectancy of SC's was lower compared with non-SC/ST by about three years and four years compared to the all India average (Indian institute of Dalit Studies, 2004).

4.6 This overview brings out the possible consequences of past exclusion and discrimination of low caste untouchables reflected in unequal access to capital assets, (land and non-land), employment, human capital development, and greater incidence of poverty and deprivation. Persisting disparities in capital assets and human capital between former

‘untouchable’ and ‘others’ although provide indirect evidence on past discrimination nevertheless it does not provide insight on the nature of economic discrimination in the present. Systematic empirical literature by economists on economic discrimination is virtually non-existence. Sociologists and anthropologists in the course of studying discrimination in social and cultural domain have also captured the discrimination being faced by untouchables in economic spheres. We present the limited direct empirical evidence on economic discrimination in general and market discrimination in particular.

4.7 Studies such as those from Andhra Pradesh (Venketeswarlu, 1990) and Karnataka (Khan, 1995) and more recent study by Action Aid (2004) provide evidence on economic discrimination in occupation, agricultural land, employment, wages, credit markets and in other economic spheres. Andhra Pradesh study observed majority of SC being engaged in traditional occupation and faced restrictions in efforts to change their traditional occupation. Karnataka study revealed that nearly 85 per cent of the SC respondents continue to be engaged in their traditional occupations, and only 15 per cent could make a switchover from their traditional occupation. Orissa study (Tripathy, 1994) observed restrictions in change of traditional occupation through discrimination in agricultural land, credit and labour markets in rural areas. Nearly 96 per cent of untouchable respondents in one village and all untouchable respondents in the second village experienced discrimination in wage payment, 28 per cent in one village and 20 per cent in another village faced discrimination in rent paid for land taken on rent for cultivation from the higher castes. A recent study (Action Aid 2004), conducted in ten states, covering about 550 villages, revealed discrimination in hiring and wage payment in a significant number of sample villages during 2001. In about 36 percent of villages (out of 550 villages) SCs were denied wage employment in agriculture. In about 25 percent of villages, the SC worker faced discrimination in wage payment. The SC wage labourer thus received daily wages at a rate less than both the market wage rate and the wages paid to non-SC workers. Belief in purity and pollution also affects hiring of SC wage labourers in house construction – in about one third of villages they were excluded from employment for construction of houses. In a sizable number of villages, SCs were forced to carry on their traditional occupation – considered to be unclean and polluting. In about quarter of the villages the untouchables face exclusion or discrimination in various forms in the sale and purchase of consumer goods.

4.8 For urban area Banergee and Knight (1991) observed: "there is indeed discrimination by caste, particularly job discrimination and that discrimination appears to operate at least in part through traditional mechanism, with untouchables disproportionately represented in poorly-paid dead-end jobs". Even if discrimination is no longer practiced, the effects of past discrimination could carry over to the present. This may help to explain why discrimination is greatest in operative jobs, in which contracts are more important for recruitment, and not in white-collar jobs in which recruitment involves formal methods. The economic function which the system performs for favoured castes suggests that taste for discrimination is based, consciously, or unconsciously, on economic interest, so making prejudice more difficult to eradicate".

5. Remedies against Discrimination –International Experience

5.1 Given the intense nature of caste based economic discrimination suffered particularly by low caste untouchables, Indian state has developed affirmative action policies but only for the public sector. The vast private sector where more than ninety percent of minorities are engaged is excluded from the orbit of such a policy. In this context the main issue is how to extend the existing public sector affirmative action policy to the private sector. And also in the context of growing space of multi-national companies in Indian economy how to bring them under the preview of affirmative action policy of some sort under the equal employment opportunity provision of UN. Since India has limited experience of affirmative policy in private agriculture and industrial sector, it is precisely here the international experience is relevant. Number of countries in the world has developed policies against societal discrimination in private sector. The policies vary from country to country depending on the groups involved and the nature of discrimination. We take review of affirmative actions and legal strategies used by these countries to draw lessons for the Indian private sector.

5.2 In this context two aspects of anti-discrimination, affirmative action and other positive measures need to be clearly understood. These attribute relate to (a) type of the economic sector or market for which the anti-discrimination and affirmative action measures are developed and (b) the method or administrative procedures used in their application in practice for the private and public sector. Firstly as regard the economic spheres or markets, most of these countries such as USA, Northern Ireland, South Africa and Malaysia have mainly developed policies for religious, racial and ethnic minority groups for agricultural land, labour, capital, and other markets and non-market transactions covering multiple economic spheres. The specific economic sphere varies from country to country. In countries like USA and Northern Ireland wherein the non- agriculture sector constitute more than ninety percent of the work force, the focus is mainly on affirmative action policies for labour market, both in public and private sector. In some countries like USA beside labour market, anti-discrimination and affirmative action measures also cover education, housing, and government contracts for construction and purchases of goods from minority businesses. In developing countries like Malaysia and South Africa, where substantial portion of population is engaged in agriculture sector, and minority group suffer from restricted access to land and capital, in addition to the labor market, the affirmative action measures also extend to the agricultural land market and capital market. This is in addition to affirmative action polices for basic social needs like education and housing. Thus, broadly speaking in these countries, multiple economic and social spheres are covered under the orbit of anti-discrimination and affirmative action measures. These include labour, agricultural land, capital, product and consumer goods markets, as also supply of social goods such as education, housing and the transactions undertaken by the government with private minority businesses.

5.3 The second aspect relates to methods and procedure used to implement the policy of anti-discrimination and affirmative action measures. Countries have used at least three kinds of procedures or methods. First is the legal protection against discrimination in the form of “Equal Employment Opportunity Laws (EEOC). These laws prohibit any private or public employers from discrimination of worker or persons based on group identities like religion, gender, color, ethnicity, national and social origin and provide legal safeguards to discriminated groups in the event of discrimination in employment and other spheres of economic activities. In USA title VII of Civil Act that established Equal Employment Opportunity as law (Executive Order: 11246) and Fair Employment Act in Northern Ireland are some examples.

5.4 The second method is the affirmative and positive action measures of various types. In principle, at least affirmative action can be distinguished from other anti-discrimination measures requiring pro-active steps (hence the phrase “affirmative”) to ensure fair participation of discriminated groups (in employment and other spheres like education, housing and government contracts), in contrast to laws that only prevent employers from taking step that disadvantage minorities in the labour market and other spheres (Holzer and Neumark 1999). Given the limitations of EEOL in ensuring fair participation of discriminated groups, they are supplemented by affirmative actions and positive measures. Affirmative actions indeed go a step ahead and attempt to ensure fair share to the discriminated groups.

5.5 The principles (and methods) applied to judge “fair or just participation” in employment, educational admission or government contract and other spheres varies among the countries. Generally speaking while population share of minority group form the basis of fair participation; number of other variations is visible. In some cases just participation is viewed in term of fixed quotas (similar to India), while in the other it is expressed in term of, racial /religious minority balance, and “appropriate candidate pool” with numerical goals and timetables without quotas. Further these fixed or fixable goals or target are made legally mandatory or compulsory in some cases while in other they are pursued with an element of voluntary action on the part of firms. In both cases however some sort of enforcement machinery is set to monitor, goals or target. Office of Federal Contract Compliance in USA and FAIR employment Agency in Northern Ireland are some example.

5.6 The third strategy is “Reparation or compensation”. The reparations and compensation is defined as payment for an acknowledged grievous of social injustice to a group.”(Darity 1997). It is necessary to recognize that the affirmative action policies of various types are generally used as a measures and safeguards against present discrimination. It has its limitations in overcoming the effects of discriminations and exclusion suffered by a community in the past for long period of time. In the context of USA, Darity observed that “Affirmative action does not, in general rest on the goal of compensation for past injustices, nor does it provide a vehicle for redress of wealth disparity---affirmative actions programs largely have been designed to address the question of present discrimination”. The instruments of ‘compensation or reparation on the other hand is specifically used as payment for the denial of property rights and other rights in the past, causing an intense deprivation to a particular group. The rationale for reparations is considered on three counts, compensation for slavery, for discrimination and exclusion and compensation for a cumulative disparity in wealth or gap in capital/asset ownership. Equal opportunity act and affirmative action programs of various kinds which intend to provide legal protections and ensure just participation in the present are inadequate to compensate for wrong done in the past, resulting in complicit resourcelessness. Therefore some countries have used selectively compensation as methods to pay and empower the excluded and discriminated groups with one time settlement. This include compensation given to Japanese persons in the late 1980’s subject to internment during world war II, number of such cases of land and monetary compensation to native Indians in USA and Jews in Germany for forced labour during the war. Similar payment was made by the Austrian parliament to compensate victims of Nazism. In USA several estimate have been worked out of income loss due to discrimination and loss of ownership of capital assets due to slavery of African-American and claims have been put forth for compensatory payment (Darity 1997).

6. Affirmative Action in the Indian Private Sector

6.1 The overview of strategies against economic discrimination used by different countries indicate three alternative remedies, namely equal employment opportunity laws, affirmative and positive action measures and reparation and compensation. The adoption of some or all of these remedies against discrimination of low-caste untouchables in private sector in India will be conditioned by the nature of economic discrimination. It needs no mention that the low-caste untouchables in India suffer from societal discrimination in multiple economic spheres. Therefore adopted remedies against past and present discrimination should cover multiple economic spheres and not just the labour market. The treatment cannot be partial; it has to address discrimination in its comprehensive coverage. In the remaining portion of the discussion I have attempted to spell out the nature of strategies against caste-untouchability based discrimination in the private sector in India. The intention is not to come up with an exact policy package but to lay down general perspective or guideline that may form the base for more specific measures. Given the wider coverage of societal discrimination, against low- caste untouchables, strictly speaking all the three measures are essential for resolving market and non-market discrimination. The strategy of reparation is necessary to compensate for denial of property right in agricultural land and other capital assets. Policy in the sphere of private or public education for low-caste untouchables probably needs to be considered in the framework of reparation or compensation, due to denial of right to education to untouchables for a long time. In case of present discrimination in labour, capital, product and consumer goods market and social services, the combine use of legal and affirmative and positive actions may be necessary. We discuss the nature of remediation against discrimination in various market namely agricultural land, capital, labour or employment market, market for product and goods and exchange or contract carried outside market in social services like education, housing and others.

6.2 Let us first discuss the likely remedies against discrimination in agricultural land market. About three-fourth of SC population live in rural area and same proportion are engaged in agriculture. The Indian government has used some positive policies to improve the ownership of agricultural land by SC under the land reform measures. However the experience of land reform in redistribution of agricultural land has been extremely disappointing. By 1996 only 2 percent of total cultivable land was redistributed under land ceiling, the ratio increased to only 8 percent if we add distribution of government land. As on September 1996, about 52 lakh acres were distributed to 151 beneficiaries. Of these about 18 lakh acres were distributed to 18.50 SC beneficiaries, with 0.977 acre per beneficiary.

6.3 As a result, even today over three-fourth of SC rural households are either landless or near landless (i.e., they own less than one acre of land). High incidence of landlessness among the SC is the result of customary restrictions on ownership of agricultural land exercised in the past. Indeed in province like Punjab and Haryana customary rules were converted in to formal law in 1901, banning the ownership of agricultural land by untouchables, the law remained in force up to 1947. The result is that even today about 95 percent of SC in Punjab are landless and near landless (owning less than in acre). Thus Indian experiences of positive policies based on some preference have not helped to overcome inequality in ownership of agricultural land by the low- caste untouchables.

6.4 In an earlier discussion on relevance of alternative measures we observed that various affirmative and other positive action measures (similar to the one used by Indian government in case of land distribution) are generally used as remedy against present discrimination, due to their limitations to correct the injustice suffered by minority group due to past discrimination. Empowering the discriminated groups for historic denial of ownership of capital assets like agricultural land, generally has been treated within the framework of “reparations or compensation”. Among other countries the Malayasia program to improve the ownership of agricultural land of Malaya (or Bhumiputras) community is a case in point. In order to improve the ownership of agricultural land the Malaya were given special land right. The Malaya ”special right “ includes the reservation of large tracts of agricultural land for them and in USA settling them on large tracks of land compensated the Indian native population. In the context of this international experience the strategy of “compensation” through one time settlement is possibly necessary to improve the ownership of agricultural land of low-caste untouchables. The Indian government should create a “pool of common land acquired under land ceiling and other public land’ free of legal problem and redistribute to the low-caste untouchables in standard size to compensate for denial of land right for long time. This is probably is the singular way of distributing land for correcting imbalances of past injustice.

6.5 Like agricultural land the untouchables were also debarred from undertaking any business except some occupations considered to be lowly, impure and polluting. This is reflected in their low proportion in business. In the year 2000 only 12 percent in rural area and 27 percent in urban area were engaged in some kind of business compared with 41 percent and 36 percent of ‘other’ households in rural and urban area respectively. Beside most of the self employed SC households are engaged in petty business and therefore the incidence of poverty is high, more than one third among them are poor. At present the government has used special measures of which some are in the nature of positive actions and other of compensatory nature. The measures of compensatory nature include setting up of special financial institutions like SC/ST Finance Corporations to support the minority business. The policies, which are in the nature of positive action, include preferential lending by the public finance institutions such as nationalized banks and other public institutions to the marginalized social groups.

6.6 However, the private capital market is completely free from any obligations towards the minority business that suffers from lack of financial capital. Given the discrimination in private capital market it is necessary to develop some affirmative action policy to improve the access of marginalized groups to the private capital market. There are two aspects of access of marginalized group to capital market –first is the access to private financial institutions for regular working capital and second is the improvement in ownership of business or share in corporate capital. Firstly there is a need to have a specific and well-defined affirmative action policy both for public and private sector financial institutions to improve the access of minority social groups to regular financial capital. Secondly a compensatory policy, which would increase the access of SC to capital market, which in turn will lead to an increase in their share in business and in corporate capital, is necessary. In this respect there is a lot to be learnt from the Malaysian experience. The legally sanctioned systematic redistribution of private capital ownership based upon minority was undertaken under the aegis of the new economic policy (1970-1990) in Malayasia. The share of Malaysian corporations owned by natives Malyas rose under this policy from 2 percent to 20 percent over the course of the two-decade (Darity 1997). For this purpose the Malaysia government has set up special institutions, viz., Investment Foundation and National Equity Corporation to increase the

equity participation of Malay minority. These institutions ensure that the minority community gets the appropriate share in the business and in share capital of domestic and foreign companies. It is necessary that government should follow the Malaysian strategy to help the minority business by developing an affirmative action policy for private and public sector financial institutions and also some sort of compensatory payment for the loss suffered by the untouchables in the past by setting up special financial institutions. The objective of these measures should be to improve the access of marginalized group to capital market and increase their share in business and ownership of corporate capital.

6.7 We now discuss the nature of affirmative action policy for private sector and employment market. The employment pattern of the untouchables for example is such that majority of them (more than 60 percent) are mainly wage labour-mostly as casual and small proportion as regular salaried. Vast majority are mainly in agriculture, private industrial and tertiary sector. Since there is a high involvement of untouchables as casual labour in agricultural sector and in urban industrial/tertiary sector, this compulsive involvement in the labour market ensures large-scale participation. However given the selective discrimination in hiring and wage payment and under most unfavourable terms and condition there is a need to have legal provision in the form of “Equal Employment Opportunity Act”(EEOA) so that legal safeguards are in place against labour market discrimination in hiring and wage payment.

6.8 In the industrial and service sector the discrimination in employment is possibly of high order in certain categories of jobs, if not all. Here there is a need to use both strategy of legal safeguards in term of equal employment opportunity act and affirmative action identical to present reservation policy in public sector employment. The equal employment opportunity act will provide legal protection against discrimination in hiring, and, the reservation with certain fixed share in certain categories of jobs will ensure fair participation of marginalized groups in industrial/tertiary private sector employment. To bring transparency and to monitor the program, administrative mechanism namely Equal Employment Enforcement office similar to in the US and Northern Ireland will be necessary.

6.9 Let us now discuss measure required against discrimination in product and consumer goods market in which marginalized groups suffer from selective discrimination both in wholesale and retail market. This discrimination is in terms of (a) access to the infrastructure such as space, and amenities, (b) in restriction on sale and purchase of the goods and service. Affirmative action policy in USA has addressed this issue by providing shares to the African-American and other minority businesses in the federal contract. There is a need to develop remedies against discrimination in these markets in sale and purchases of goods and services and in government contract. Strategy in this sector should provide both provision of Equal Opportunity laws (EOL) and affirmative action measures. EEL will provide a legal safeguard against discrimination in wholesale and retail market. In the affirmative action measures, the policy similar to that of USA in which certain share of business by marginalized group may be fixed. There are several activities of the government which range from purchase of consumer and non-consumer goods, contract for construction of road, buildings, irrigation and other hundreds of activities in which a specific share should be fixed for marginalized group and businesses. For instance government could develop a policy for the purchase agricultural products particularly vegetables, flowers, fruits, other products including milk, poultry from the marginalized groups as these groups face discrimination in the retail and wholesale market in the sale of these commodities on account of notion of

purity and pollution. Similar legal and affirmative action policies are necessary for education, health and other social amenities supplied by private sectors.

7. Affirmative Action and International Companies

7.1 In recent years the UN has also laid down certain provisions and norms for multi-national companies particularly in employment to follow in the countries of their location. The Global Compact provide for multi-national companies to observe the Equal Employment norms and follow the policy of non-discrimination. To elucidate, Global Compact is a voluntary corporate citizenship initiative, which aims to strive towards a more sustainable and inclusive global economy. At the core of Global Compact are the ten principles in the areas of human rights, labour and the environment. The principle 6 of the Global Compact is especially relevant in the context of caste system. This principle requires the supporting companies to make an effort for ‘the elimination of discrimination in respect of employment and occupation’. Global Compact and its principles have been supported by as many as 1,775 companies. Participating companies have set in motion changes in their business operations so that these principles become a part of strategy, culture and day-to-day operations. To name a few of the companies that have participated in the Global Compact are Cadbury Schweppes, Chrysler, H&M, Gap, UBS AG and L’OREAL. In India, companies engaged in providing IT services in consulting, chemicals and in textiles have made commitment to support the Global Compact and its principles. The UN commission on Human Rights as well has prepared draft norms on the responsibility of transnational corporations and other business enterprise with regard to human rights. Likewise, OECD guidelines ‘are recommendations addressed by governments, for multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, taxation, and science and technology’.^{viii} Some companies have also signed up to the Global Sullivan Principles which emphasize the importance of human rights and equality of opportunity. ILO too has adopted the ‘decent work’ agenda which involves equality of opportunities and treatment for all women and men and better prospects for social integration amongst other things. ‘Decent Work’ agenda is promoted by ILO through its work on employment, social protection, standards and fundamental principles and rights at work. Importantly, rights at work include the prohibition of forced labour and child labour, freedom of association, the right to organize and bargain collectively, equal remuneration for work of equal value and the **elimination of discrimination in employment**.

7.2 The Indian government could develop an understanding with the multi-national companies to follow positive policy on voluntary basis in their employment and other activities. Some countries have pursued certain norms for multi-national companies. In Malaysia, the government has developed a policy to increase the participation of the minority community in the foreign companies. In fact, it has made it mandatory for the foreign companies to allocate certain portion of their share capital to the Malaya community. The state, through specialized institutes, helps the member of minority community in this effort. With increase in the participation of international companies in India under globalization there is a need for the Indian government to develop policy of positive action in employment and other spheres for participation of marginalized social group under the provision of Global Compact and other provisions of UN.

8. Concluding Observations

8.1 Economic discrimination on the basis of race, religion, ethnicity, national or social origin exists in many nations under diverse social, economic and political systems. Economic discrimination in general and market discrimination in particular not only leads to income inequalities, high degree of deprivation for discriminated group and induce inter-group conflict but also affects economic growth. Therefore many countries have resorted to various remedial measures against discrimination and inequality to correct the imbalances in access to fixed capital assets, employment and education between sub-groups in their population. These policies mainly include reparation or compensation, practices of affirmative and positive actions, and enactment of Equal Employment Opportunity laws (EEOC). The legal provisions, affirmative and positive actions and reparation and compensation have been developed not only for employment market but also for capital, agricultural land, education, housing and other spheres for improvising their access to sources of livelihood.

8.2 India is one such country that has used legal and affirmative action policy for the discriminated group. However, one of the major difference between India and other countries is that while from the very beginning other countries have used various affirmative action policies both in public and private sector, curiously enough India for unknown reasons confined such policy only to minuscule state and public sector and excluded the vast private sector where more than 90 percent of low-caste untouchables and tribals still earn their livelihood. In this sector there is no protection against economic discrimination. Due to further narrowing down of public sector, there is a growing demand for some kind of affirmative action policy in the private sector. In the preceding discussion we have argued that due to discrimination of minority social group in various market and non-market exchange, there is a necessity of affirmative action policy in the private sector to provide safeguards against discrimination. It has to be recognised that this group suffer from societal discrimination in multiple economic and social spheres. Therefore, the legal safeguard and affirmative action policy for private sector should cover all market and not just the employment market. Additionally, the measures should cover social needs like private education and housing. First, it is necessary that the government enact the 'Equal Opportunity' Laws" to provide legal safeguards against discrimination. The legal safeguards then should be supplemented by more positive and affirmative action to improve their effective access to employment and various other spheres such as agricultural land market, capital market, produce and consumer good market, and to education and housing. In the sphere of agricultural land, the low-caste untouchable will have to be compensated by giving land for agricultural use through one-time settlement as compensation for the denial of property rights and injustice for long period of time.

ⁱ Ambedkar who is a pioneer of the policy continued the demand for affirmative action policy both for private and public sector till 1947 (Ambedkar 1947).

ⁱⁱ Jogdand(1999).

ⁱⁱⁱ Economic Times 26th March 2004

^{iv} See for detail discussion on this theme Birdsall and Sabot (1999)

^v The examples are USA, Britain, Northern Ireland, Germany and Yugoslavia, Latin American countries like Brazil, Bolivia, Peru, African countries like Nigeria, Sudan, South Africa, Kenya and Asian countries like Malaysia, Pakistan, China, Japan, and India.

^{vi} Ambedkar, 1916, 1936 & 1987 (first published)

^{vii} Significantly low access to fixed capital assets –land and non-land is captured by the aggregate value of assets per households. In early 1990's in rural area the SC households on an average owned assets of Rs.49,189 as compared with Rs. 1,34,500 for 'others' – they possessed about two and half time more assets. In urban area the SC household possess Rs. 57,908/ of assets per households as compared with Rs.1, 59,745 by 'other' households. These bring out the disparities in the ownership of capital assets and wealth in rural and urban area between SC and 'others'. (Thorat 2000).

⁸ http://www.oecd.org/department/0,2688,en_2649_34889_1_1_1_1_1,00.html

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