

Affirmative action and caste dilemmas

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Indian businesses are taking a skewed view of 'affirmative action' in the U.S. to sell a strategy that is big on promises and low on accountability.

THE United States hardly ever gets good marks from Indian intellectuals. Its dog-eat-dog capitalism, its trigger-happy foreign policy and even its highly seductive and much imitated popular culture are held up as examples of what India should not emulate.

But at least on one issue of great public interest and debate in India - namely, the best way to provide upward mobility for historically oppressed social groups - America has found many admirers. Its affirmative action programme in particular has become an object of much admiration lately.

Affirmative action, or AA, refers to an Executive Order that President Lyndon Johnson signed in 1965 as a part of his Great Society initiative. The goal of this directive was to encourage private businesses and educational institutions to make aggressive efforts to recruit black applicants for jobs and college admissions.

Everyone in India claims to be in favour of AA these days. Many are looking at it for fresh ideas for "Dalit capitalism" which will embrace "caste diversity" in the private sector and in the institutions of higher learning that feed into it. Even those in the business community who are vehemently against reservations insist that they are perfectly willing to adopt American-style AA, which in their view, is "totally" voluntary and free of quotas. AA, in other words, is seen as a less intrusive, more voluntary mechanism for bringing about caste justice than state-mandated quotas.

This article will argue that this rosy picture of AA as voluntary and quota-free is only partially true, as are the rosy scenarios for the potential of Dalit capitalism to pull up the many historically oppressed castes.

A closer look at the American experience shows that Indian businesses are taking a superficial and biased view of the actual workings of AA in the United States in order to sell their own version of AA, which is big on promises and low on any accountability and enforcement.

But the American experience must also serve as a warning about the limits of identity politics and group rights. The colour-based inclusion of blacks in the great American middle class has been purchased at the cost of turning a blind eye to class-based exclusion of millions of poor blacks and whites from decent education, adequate health care and jobs that pay living wages. Yes, race-based positive discrimination has created a substantial black middle class. But it has also contributed to the creation of a desperately poor and deeply alienated black underclass living under the American version of apartheid. It has also created a large mass of poor whites who are simmering with resentment against the advantages they are denied.

Those concerned with social justice cannot afford to close their eyes to the shadow side of identity-based redistribution programmes.

Globalisation and private sector jobs

Affirmative action in the private sector is one of the two fronts in the current agitation for caste justice; the other being the so-called Mandal II.

Job reservations in the private sector are seen as central to the advancement of Dalits in the neoliberal global capitalist economy. The much-discussed "Bhopal Declaration", adopted by Dalit activists and intellectuals in January 2002, demanded that reservations be made "mandatory in the same proportion as in the public sector and government institutions". This issue found its way into the United Progressive Alliance (UPA) government's Common Minimum Programme, which promised to "immediately initiate a dialogue with industry and other parties on how best the private sector can fulfil the aspirations of Scheduled Caste and Scheduled Tribe youth". The current focus on AA is a product of this national dialogue. The corporate sector has opposed Mandal-style quotas. In its place, the captains of Indian industry have offered to adopt AA voluntarily for Dalits, modelled after the U.S. plan for African-Americans.

The second front in the reservations debate is the Mandal II, which seeks to extend the 27 per cent reservations for Other Backward Classes (OBCs) mandated by the Mandal Commission to Centrally-aided, private universities and institutions that offer professional degrees in engineering, medicine and management. Reservations for OBC, over and above the already existing 22.5 per cent reservations for Dalits and Adivasis, in Central government jobs was instituted in 1990, the Mandal I. Even though the government has tried to defuse the anti-Mandal II agitation by promising to increase the total number of seats in universities, street protests against reservations are still going on.

The current debate is taking place in the context of the increasing privatisation and globalisation of India's economy. Jobs in the public sector are drying up, while the ones that remain are losing their prestige and power. In the new economic climate, jobs in the private sector enterprises in Information Technology, biotechnology, advertisement, marketing and finance have become the new passports to prosperity. Indeed, the mere ability to speak in American-accented English has become an economic asset in our call-centre economy.

The vast majority of Dalits, Adivasis and the "most backward" among the OBCs face a legacy of thousands of years of prejudice, sanctified by religion and tradition, which blocks their entry into the new economy. Unlike their richer, 'twice-born' urban counterparts, they do not have the economic and cultural resources to buy their way into the kind of computer-savvy, English-speaking "merit" that the new economy calls for.

Until the time when, to paraphrase Kancha Illaiah, a rich Brahmin child and a poor Dalit child can study in the same English medium schools, talk of "merit" will only keep the Dalit child out. Or as Lyndon Johnson said in a famous 1965 speech that laid the foundations of AA: "You do not take a person who, for years, has been hobbled by chains, bring him to the starting line in a race and then say, 'you are free to compete with all others'. It is not enough

just to open the gates of opportunity. All our citizens must have the ability to walk through those gates." Because the vast majority of "lower" caste kids who do not drop out and somehow make it to the starting line, arrive there without the benefit of adequate education and without the cultural capital that the "upper" caste kids take for granted, some kind of positive discrimination on their behalf is morally justified.

Private sector myths

The Indian private sector has vehemently rejected all Mandal-style quotas. But influential corporate leaders have indicated that they are willing to accept AA instead. They seem to believe that these programmes in the U.S. do not mandate quotas and are entirely voluntary. The following statement of Rahul Bajaj, chairman of Bajaj Autos, is typical: "People ought not to confuse reservation with AA. When people here talk about AA carried out by companies like IBM in the U.S., they are unfortunately unaware that AA is not mandatory there. It is totally voluntary. AA does not mean job reservation." A closer look at AA, below, will reveal that this view of AA is simplistic to the point of being false.

Let us first examine the private sector's reasons for rejecting quotas. The corporate sector has argued that caste-based hiring will "kill efficiency" and "weaken competitiveness". Caste criteria, it has been argued, "do not work" in today's "knowledge economy". Some have even claimed that caste-based reservations will not be acceptable to Western multinationals who will take their business to other countries.

The irony is that U.S. multinationals, whose competitiveness and efficiency Indian businesses are so keen to duplicate, have embraced racial, ethnic and gender diversity in hiring precisely because they have found it to be good for business. Poll after poll of American corporations has shown that an overwhelming majority (over 95 per cent) of CEOs embrace AA. They do that not out of the kindness of their hearts, nor out of a burning desire for social justice. They have adopted AA because it is good business policy and good public relations policy.

American businesses (and one must add universities, colleges and workplaces) have discovered that promoting racial and ethnic diversity - even at the cost of not always picking white male candidates with higher grades and stronger academic record - brings in many different perspectives and styles of thinking, which adds to innovation and creativity. American corporations have been able to make room for diversity while enhancing their quality of work by expanding the definition of "merit": they do not only look at the marks obtained in schools and colleges, but give plus points for other less formal, less tangible indicators of initiative, perseverance and originality. Far from "weakening competitiveness" and "killing efficiency", the world's most competitive firms have become so competitive by going out of their way to recruit actively African-Americans, Hispanics and women.

The second myth perpetuated by the private sector is that AA is voluntary and that it does not demand quotas. Even though it has won the enthusiastic compliance of big business, AA in the U.S. has never been voluntary. And even though the Civil Rights Act of 1964 and the Executive Order 11246 that created AA in September 1965 did not lay out numerical targets, enforcement agencies and corporations themselves routinely use numerical targets - yes, quotas - to judge if they are complying with the law.

Backed by the state

Let us first look at the myth of AA being voluntary. Enforcement of the provision of the Civil Rights Act and AA was never left to the good intentions and kindness of the private sector. Right from the start, both these laws were backed by the full might of the federal government. Any business, contractor or university that wanted to do business with the government, or get any subsidies, grants or tax-breaks, had to completely de-segregate their workplaces (as required by the Civil Rights Act) and had to take concrete, verifiable steps to recruit black talent aggressively for all levels of the hierarchy (as demanded by AA). A business could not meet its AA obligations by hiring more minority community members as janitors and unskilled labourers, for example. It had to make demonstrable, verifiable steps to find, train and hire suitable black candidates at all levels, including the management. Of course, businesses had a "choice" not to do this, but then the government, too, could "choose" not to do any business with them. With millions of dollars involved in government contracts and grants, there was not much of a free choice in the matter of complying with the law. The apparent "voluntariness" of the system has always been backed by the enormous power of the state treasury.

The issue of quotas in the U.S. system is also much more complicated than the spokesmen of the Indian private sector make it appear. It is true that Chapter VII of the Civil Rights Act expressly prohibits preferential treatment for any group or individual, black or white. The sole purpose of this Act was to remove any intentional and overt discrimination against non-whites. (Remember, this law was written at a time when black people were still forced to sit in the back of the bus, when white-owned restaurants refused to serve blacks, when housing, schools and universities were largely segregated. The Civil Rights Act of 1964 was enacted in response to the growing strength of the civil rights movement which culminated in the march on Washington and the famous "I have a dream" speech by Martin Luther King Jr. on August 28, 1963).

But it soon became apparent that just getting rid of overt discrimination would not be enough to get blacks their fair share in the economy or put an end to the second-class treatment they received in civil society. (India faces a very similar predicament: merely outlawing caste, as the Constitution does, has not put an end to caste prejudice in society.) Lyndon Johnson called for "equality as a fact and a result" and not just as a legal statement of good intentions. This became the basis for his Executive Order that laid the foundations of AA. On the surface, AA also did not impose numerical quotas. All it demanded was that those companies supplying goods and services to the government had to show that they were making extra efforts to locate black talent and to give it a chance to develop.

INDUSTRIALIST RAHUL BAJAJ. The Indian private sector has vehemently rejected all Mandal-style quotas.

But AA's emphasis on actual results was very quickly interpreted by the government

enforcement agency (EEOC, or Equal Employment Opportunity Commission), and businesses and universities as an imperative to hire by numbers. Any business whose workforce was not in proportion to the racial make-up of society faced the risk of lawsuits that the EEOC and the Labour Department has the authority to initiate. So, even without expressly demanding quotas, racial quotas have always been a part of the AA enforcement mechanism. The use of quotas is well known and has been challenged in the courts many times. Each time, the American courts have thrown out explicit quotas, but each time they have come back through the back door as the objective standards for enforcement.

The point is that the private sector in the U.S. has learned not only to live with, but also actually to thrive upon a state-enforced, quota-driven preferential treatment for the minorities. The private sector in India, in contrast, only seeks to render AA toothless by removing all enforcement mechanisms. It is basically offering to do some good old Dalit "uplift" here and there, now and then, but completely outside the reach of any state regulatory agency. One cannot help wondering where these captains of industry were all these years. Who was stopping them to "voluntarily" do what they are promising now? Given their dismal record, it is hard to take their sudden conversion to AA seriously.

Dalit-Bahujan myths

Dalits, OBCs and their allies have also become great admirers of the U.S. model. Two elements in particular seem to attract most attention: one, the apparently genuine and deep-seated commitment to racial and ethnic diversity one finds in the corporate boardrooms, workplaces and universities in America; and two, the federal and state governments' set-asides for minority-owned businesses for procurements and contracts. Both of these measures are - correctly - seen as key in creating a thriving black middle class in the U.S. Not surprisingly, both these elements are included in the Bhopal Declaration of 2002, the founding charter of Dalit capitalism.

A closer look at the black experience, however, reveals serious limitations of what AA has been able to accomplish for black people.

It is true that, thanks to AA, blacks have made substantial inroads into the corporate world in America and the number of black people in the middle class has grown tremendously. As Chandra Bhan Prasad, the tireless champion of Dalit capitalism, has documented carefully, major American corporations have indeed created boardrooms that reflect the racial diversity of America. To take just one recent example from Prasad's writings, Lockheed Martin, the aerospace manufacturer and a major defence contractor, employs 124, 000 workers, 21 per cent of whom are members of minority communities. The company also has a fair number of black senior CEOs and members of the Board of Directors. There are many other U.S. corporations whose workforce displays a similar degree of racial diversity.

Yes, AA has "worked" for black people, but not for all of them. Nearly half a century after the passage of preferential laws, black people today are divided into what has been described as an "Afristocracy" of black elites and professionals, and a "ghettocracy" of desperately poor blacks trapped in menial, minimum wage jobs. (Jobs in manufacturing and low-end white collar jobs in data-entry and call-centres used to be the mainstay of blacks and whites who

did not have college education and professional degrees. But most of these jobs have moved off-shore.)

The tragedy is that the black elites, as they move into the middle class, tend to adopt white middle-class stereotypes regarding the poor blacks: like most middle-class whites they, too, begin to blame the culture of poor blacks for their own poverty. The chasm between the Afristocracy and the ghettocracy has become so bad that in 2004, Bill Cosby, the legendary black entertainer, in a major speech supposed to celebrate civil rights, openly used negative and insulting stereotypes of poor blacks to blame them for their own backwardness - while his mostly rich black audience laughed and cheered. The black community that survived slavery together and fought hard battles for civil rights together is today split on class lines: the poor blacks are becoming as alienated from middle-class blacks as they have always been from middle-class whites. The tragedy is that because black advancement has been largely based upon colour-based preferences, poor blacks have not been able to build bridges of solidarity with poor whites, poor Arabs, poor Asians. The poor in each racial community suffer alone, while the rich are getting united across racial lines - and indeed, across national lines - in their quest for American-style hyper-consumerism. Race-based diversity has become an ideological tool to give the appearance of inclusiveness to global capitalism which, in fact, is excluding larger and larger chunks of working people from the wealth that is being created by working people around the world.

Most American scholars, black and white, agree that AA has helped enormously in creating a substantial and growing black middle class. But one must not lose sight of the fact that AA is colour-conscious but class-blind. When the proponents of Dalit capitalism cheer American corporations for embracing racial diversity, they forget that these companies are perfectly free to fill the diversity quota from the so-called creamy layer: American businesses and universities are under no legal obligation to look for, or nurture, black talent in the poor inner-city schools, which are literally falling apart. (Yes, many corporations give out scholarships and encourage some general "uplift" type volunteer work. This kind of voluntary "uplift", with no legal strings attached, is as far as the Indian private sector seems willing to go). When the proponents of Dalit capitalism cheer American-style government contracts and set-asides for minority-owned small businesses, they forget that many of these set-asides end up going to the already well-to-do minority businesses.

Likewise, those who look up to the U.S. for creative, market-oriented fixes for historical injustices of race and caste, must pay attention to the savage inequalities in American public schools that are getting re-segregated on black and white lines. America has one of the most unequal educational systems in the industrialised world. A state of apartheid exists between financially-strapped, resource-starved, technologically primitive schools that serve the poor inner-city districts with higher concentrations of blacks, and the fancy five-star public schools that spend more than 10 times as much money per student as the inner city schools, and which serve the richer suburbs where the professional and upper-middle classes of whites, blacks, Indians, Chinese, West Asians and every other nationality live. For all the growth of diversity in larger society, the harsh reality is that American schools are becoming more, not less, segregated on class lines which still, after all these years of AA, overlap the colour line.

Lessons of the U.S. model

What lessons can those fighting for caste justice draw from the American experience?

One thing is very clear: the Indian private sector has seriously misunderstood and misrepresented the ground reality of AA as it has evolved in the U.S. In the name of American-style affirmative action, the Indian industry and businesses are selling us a mushy, do-good, Dalit "uplift" type agenda, without any government oversight and enforcement and without any numerical targets that can be used to verify the extent of implementation of AA. This toothless version of AA is mere window-dressing.

How far should Dalit-Bahujan movements for reservations push for American-style affirmative action? If the goal is primarily to create a Dalit middle class, the American experience does have some valuable ideas. There is no reason why the Government of India cannot make good-faith, verifiable attempts at hiring poor Dalits and backward caste members a condition for businesses to get any subsidies and/or business contracts from the state. There is no reason why the Central and State governments cannot follow the American example and set aside potentially lucrative dealerships and supplier contracts for castes that need a helping hand. The federal and State governments in the U.S. have found creative ways to direct the trickle down to selected racial minorities and women. There is no reason why such mechanisms cannot work in India as well.

But insofar as the goal of the Dalit-Bahujan movement is to bring about a social transformation, to create conditions for "annihilation of caste", as Babasaheb Ambedkar envisioned, AA will always fall short. It will fall short because it lacks an impulse for justice for all regardless of the colour of one's skin, as in the American case, or the accident of one's birth in one caste rather than another, as in the Indian case. In principle, the concern for improving education and economic opportunities must extend to all poor and deprived people, equally, regardless of whether they are Dalits or the highest Brahmin. But because Hinduism has never accepted this principle of universal justice, and has defied it in actual practice in so many ways and for so many centuries, preferential treatment for caste disabilities has to be accepted for some time to come. The words of the U.S. Supreme Court Justice, Harry Blackmun, that "in order to go beyond racism, one must first take account of race", apply as much to race in the U.S. as they do to caste in India.

But we must be clear that affirmative action is not a panacea for all ills. It is rather a bitter pill that the Indian society must swallow for a specific purpose of pulling as many Dalits and other oppressed castes as possible out of their abysmal conditions of life. Without it, many more generations of Dalits and OBCs children will be denied their legitimate share of the country's wealth.