

Affirmative Action in India

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1 INTRODUCTION

Acts of discrimination towards a person or a group due to their race or socioeconomic status not only obstructs one's dignity but also affects their social mobility that leads to the decline of a nation. The lack of morale and public agitation can exacerbate the growing anger against the discriminatory authority. Unfortunately, the unfair treatment towards these groups in India have severely affected its productivity and most importantly its educational system. In order to address this issue, Affirmative Action became a tool to eradicate the polarization of race involving the law and its constitution. Affirmative Action policies in India were created to grant equal opportunities for these social groups who have been historically excluded in the job market and educational sectors. It was also intended to combat against discrimination so that the marginalized populations will have the opportunity to advance in society. Despite the efforts to end discrimination, Affirmative Action in India has been deeply criticized due its flaws and controversies. More forms of discrimination are becoming more accepted causing great oppression and disparity. This ongoing systemic discrimination in India has created massive inequalities and preferential policies that are still currently debated.

2 HISTORY

According to Sharma (2005), Affirmative Action in India began in the twentieth century during the British regime. The 'caste system' is used for Affirmative Action programs as a premise for occupation, status, and intellect. From de Zwart's (2000) definition, 'caste' is divided into several classes or clusters that sets up the overall social stratification in India: Brahmins (priests and scholars), Kshatryas (rulers and soldiers), Vaishyas (traders and merchants), and Shudras (agriculturists). The social hierarchy is based on ritual purity and caste members share the same status regardless of occupation, although it may still vary according to region (de Zwart, 2000). In addition, the current process of eligibility for receiving Affirmative Action parallels the British census in India to further expand and influence its caste system. These early Affirmative Action programs served as a way to pacify the lower caste in the 1920s and 1930s (de Zwart, 2000).

The lower caste stipulated Affirmative Action with its objective to abolish the monopolizing government in jobs run by the upper castes, and were granted eventually under the British rule (Zwart, 2000). India was not considered as a nation but as a cluster of communities by the British. Moreover, there were fears about minorities being outnumbered by the majority of the group, which led to a political conviction that the rights of these minorities needed to be protected (Sharma, 2005). The British government favored the interests of these minorities, particularly the Hindu majority over the Muslim minority. The interrelation between these two groups evolved differently later on because of this Affirmative Action process. Poverty and religion have been the benchmark for segregating classes

for decades. According to Dupper and Sankaran (2014) "Diversity in India has meant that the identification of beneficiary groups for affirmative action has been beset with problems. Multiple identities... intersect and these have implications for the design and impact of affirmative action programmes" (p. 184). One example is the treatment between low caste Hindus and Muslims. Yardly (2012) stated that since low caste Hindus receive preferential treatment, Affirmative Action was not readily available to Muslims due to their socioeconomic status. Because of India's caste-based system, Muslims today have fallen behind socioeconomically due to this reverse discrimination that revolves around the facet of India's caste system. Muslims are one of the most underrepresented groups in higher education and facing greater inequality (Fatma, 2018).

As the recognition for the lower castes grew and the support from the British government became formalized, the use of reservations served as a vessel for Affirmative Action (Sharma, 2005). However, there were suspicions that the motive was to divide and rule and not according to the interests of the lower classes at all. Johnson (1973) affirmed that these early policies were a political calculation rather than to achieve social justice. At the end of the British rule, India gained its independence and changed radically in the years ahead (Sharma, 2005).

The Mandal Commission in 1990 was very notable in the history of Affirmative Action in India (Sharma, 2005). This brought change in the entire system that is still needed to be carefully examined and evaluated. Bertrand et al. (2009) stated that the Supreme Court's decision gave incentive for the government to eliminate the 'creamy layer' from the reservations. Moreover, 'creamy layer' was defined as "when a person was able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade or profession of high status" (Sharma, p. 153, 2005). Social backwardness was a hindrance to the overall development of the society and became a major political factor behind these legal decisions. The criteria for identifying social backwardness depends on income, education, and occupation (de Zwart, 2000). Due to this caste system, the division of labor in the society has also led the upper castes to oppress the hardworking masses. The caste system is supported legally and religiously allowing the ruling classes to remain in power (Shah, 1991). The process of upward mobility in India operates within the caste system in which categories are ranked instead of individuals (de Zwart, 2000). The lower castes suffer from educational, economic, and social backwardness, but all members of backward castes do not suffer to the same degree. However, they suffer from discrimination and numerous disadvantages due to their caste status. When the program for Affirmative Action was incorporated into the Indian Constitution in 1950, it did not spark any attention (Sharma, 2005). When the program for Affirmative Action for Other Backward Classes (OBC) was undertaken, it created an uproar and

was presented as a legal action to rectify the issues of these targeted groups.

3 TARGETED GROUPS

The first Affirmative Action policies in India were in the form of quota systems for job positions and school admissions (Bertrand et al., 2009). Later on, political reservations soon followed in which reservations were provided under the British rule (Osborne, 2001). This quota system is reserved for disadvantaged individuals and other members of certain tribes or castes. In addition to the discriminatory factors imposed by the caste system, “Other than tweaking quotas (to reflect the local size of a ‘scheduled’ population) [*sic*] states have never experimented, nor completed, to find out whether their jobs policies have any wider, beneficial impact” (The Economist, 2013). One example is the reservation system practiced in India’s society. Bertrand, et al. (2009) stressed further that these two impoverished groups in India receive preferential treatment, namely the Scheduled Castes (SC) and Scheduled Tribes (ST).

According to Bagde (2016), SCs belong at the lowest ranking in the caste system (formerly known as the “untouchables”) and historically have suffered the most discrimination and exclusion. The Government of India Act introduced the SCs and was later legitimized by the British in 1935 (Sharma, 2005). STs are the tribal communities who practice distinct lifestyle and religious practices apart from the conventional Indian society (Bagde, 2016). They usually live remotely in inaccessible places, therefore making education quite impossible and hardly attainable. In addition to these two groups, OBCs are classified as the educationally or socially disadvantaged but are more advantaged than SCs and STs (Bagde, 2016). This is determined based on one’s educational background, position, and occupation within these classes. Because of these quota systems or reservations, caste members felt more excluded and marginalized.

One befitting example is the controversy of the Patidar Reservation Agitation, which was one of the largest protests against the reservation policies in India (Jaffrelot, 2016). *Patel* is an Indian surname derived from the term Patidar which means denoting partnership (Goyal, 2014). This community consists of successful land-owning farmers, businessmen, agriculturalists, and merchants who are strongly requesting to be a part of the OBC group (Jaffrelot, 2016). The Patels are overrepresented in the elite groups and proficient in many industries such as real-estate, media, and health (Jaffrelot, 2016). Moreover, they call for reservations in academic establishments and jobs for equal opportunity but a lot of work needs to be done. With this type of quota system that has special considerations for these disadvantaged groups, the rest of the population are forced to abide by this legal predicament causing many qualified candidates to be deprived of academic and employment opportunities. Thus, these scholars and other members have no choice but to leave their own country to work abroad. This type of reverse discrimination is often overlooked and needs to be thoroughly assessed by the branches of government as well as the higher authorities who have significant power to affect change.

4 PRACTICES

As reservations and quotas continue to be practiced along with government support, the majority are in constant conflict experiencing these great ramifications affecting India’s democratic society. Dudley and Moses (2014) mentioned a very important point that: “The legacies of past caste discrimination as well as ongoing discrimination continue to shape the life chances of many people by impacting where they live, with whom they socialize and marry, or what types of schooling and employment they can access” (p. 33). Exams were mandatory for job openings and school admissions; however, standards were lowered for these disadvantaged groups resulting in extreme competition. According to a study by Lee (2019), the reservation system is heavily correlated with the members’ economic background or status in which the data for literacy was very low among these targeted groups. The poverty rate among disadvantaged groups is about twice as high than the rest of the population in India and the most underrepresented in job and educational sectors (Gupta, 2006). Public sectors of employment are the most desirable and have more demand than private employment because of its long-term benefits and overall job security; however, applicants must undergo written exams that are highly competitive making it harder to get in (Lee, 2019). Those who scored high and were admitted are called the general quota. The admissions process is done according to the highest score descending to the lowest, until the positions are filled or no one can no longer qualify. Regardless of the low exam results, the lower caste had no issues getting admitted. However, it is very costly and expensive because the income for the rejected upper castes has bigger losses than their counterparts (Bertrand et al., 2009). Another prerequisite to be eligible for quota is the use of caste certificates to show proof of their caste status (Bagde, 2016).

In Indian higher education, quota reservations can result in exclusion due to caste targeting. Dudley and Moses (2014) stated that the “rhetoric of diversity as a justification for affirmative action is spreading to India, too, and appears most notably in proposals for a ‘diversity index’ as an alternative to affirmative action organized by caste” (p. 38). Examining the Affirmative Action policies in engineering colleges in India, Bertrand et al. (2009) asserted that utilizing caste-based admission policies reduces the general wide variety of females in these schools. This concludes that these Affirmative Action policies can be an important measure in improving diversity with proper allocation to disadvantaged groups, but not in terms of gender diversity. Meritocracy is the rationale for India’s quota system in order to expand it to central universities and professional schools (Gupta, 2006). Upon expansion, inequalities in higher education did not subside and continued to persist (Fatma, 2018). The Indian educational system is largely supported by the private institutions which helps many people to attain higher education; however, it is much costlier than the government institutions resulting to more inequality and discrimination (Fatma, 2018). According to a study by Fatma (2018), the enrollment rate of eligible OBCs remains low even after the Affirmative Action policies had taken effect. While there are still ongoing apprehensions about the efficacy of Affirmative Action policies in colleges and universities, another burgeoning issue is the potential harm that may cause students. Positioning them in a setting where they are not suitable or

adequate to cope up, a 'mismatch' may most likely to happen and this weakens their preparation academically (Bagde, 2016). In addition, standards in grading may depend on the institution itself. The policy resulted in increased attendance among these disadvantaged groups, but there were large gaps in college preparation as well as the lack of student achievement (Bagde, 2016). Education is an important vehicle for the advancement of an individual, but in a big and diverse country like India education is based on the factors of demographic standards resulting in growth lag and economic decline.

5 SUPREME COURT

Affirmative Action has been approved by law that are specifically targeted to lower castes and India became the testing ground for experimentation involving positive discrimination policies. Law in India is deemed essential to determine one's social standing and hierarchy in the society. The irony of the so-called positive discrimination in India through the system of reservations aims at its social transformation to create a political impact (Jaffrelot, 2006). With putting such great importance on the reservations in the constitution, India initiated two different types of reservation policies: 1.) national level; and 2.) state level preferences for lower castes (Parikh, 1997). During the colonial period, the congress had been fighting against the British government to gain control of its political motives (Parikh, 1997). After independence, the congress remained as the only political power in India but their policies were continuously challenged and questioned. The parliament eventually agreed that they wanted a strong Supreme Court that would protect the constitution upon its clear power of judicial review (Parikh, 1997). However, even if the government had the authority to give opportunities for the OBCs, it was ruled that caste could still not be substituted.

According to Dudley and Moses (2014), "India's Constitution abolished untouchability and discrimination on the basis of caste but... this amendment makes it much more difficult to use anti-discrimination clauses to challenge affirmative action" (p. 39). In the case of *State of Madras v. Champakan Dorairajan*, a student argued in the court with regards to the reservation policy that schools should not base their admissions policy on caste or classes (Galanter, 1984). The student sued the institution for the policy violation of Article 29(2) from the Indian constitution: "No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language or any of them" (Parikh, p. 160, 1997). The student won the case because it was proven that there was a violation of the constitution and that the student's denial was strictly on the grounds of caste.

The congress may have protected the rights of the people but they were not pleased by the outcome of restrictions implemented by the state. The parliament voted to revise Article 29(2) and include a new section that states: "Nothing in Article 29(2)... shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes" (Parikh, p. 161, 1997). In the case of *Indira Sawhney v. Union of India*, the Supreme Court validated a reservation for the OBCs to some extent, but the 'creamy layer' was still excluded under this ruling (Gupta, 2006). The reservation policy was granted to the private districts and income limits were adjusted later on, but the results were not successful (Gupta, 2006). Another

case of *P.A. Inamdar vs. State of Maharashtra*, the Supreme Court barred the state from imposing its reservation policies in colleges and universities based on the applicant's caste or status (Gupta, 2006). This triggered a problem between the executive and judiciary branches of government. Dupper and Sankaran (2014) pointed out that "The moral justification for the proactive role that the State was to play was often settled in the political realm in the course of the anti-colonial struggle... moral justification was not dependent upon judicial elaboration" (p. 171). Judicial review is considered as a great responsibility in the Indian Supreme Court; and while the court can enfeeble the acts of parliament, it cannot easily prevent them from revising the constitution (Parikh, 1997). If the parliament constantly changes the constitution, it will undermine the legitimacy of the law and may be damaging to their political party (Parikh, 1997). The Supreme Court made these crucial decisions about what is legally accepted and what is not, but these constitutional changes made by the congress served as a major drawback. Since no political party can afford to lose the vote bank, the parliament had great efforts to rewrite the constitutional amendment. Thus, the court was forced to accept these changes and interpret policies under these new terms (Parikh, 1997).

6 CONCLUSION

Affirmative Action remains in question: Is Affirmative Action a problem or a solution? With its mounting controversies and imperfections, it is still a relatively unsteady solution with many setbacks involved. The rapid expansion of diversity along with its widening socioeconomic gap has become an obstacle to India. The purpose of Affirmative Action was to open the doors of opportunity for these suffering groups, but rather than boosting equity in the society, reverse discrimination became a disruptive norm. Placing discrimination into different categories is not going to improve the situation.

Universities around the globe play a vital role in fostering personal and socioeconomic development. The exponential demand for higher education is passing through a difficult time undergoing constant pressures. In class-based Affirmative Action, it is under the assumption that all people belonging in certain groups are poor and disadvantaged. This creates microaggression and discrimination towards these underrepresented groups. Class-based Affirmative Action creates greater socioeconomic diversity on campus but higher education institutions must do more proactive outreach to ensure that students of all backgrounds receive a better education. Access and equity are still an ongoing problem as we see it today. Affirmative Action not only benefits the underrepresented groups but also the elites as well.

Depending on what lens it is viewed from, Affirmative Action has been beneficial to a certain extent yet it is still an imperfect formula that further widens the economic and social divide. Another question to ponder is, how is the Supreme Court currently perceived in terms of its judiciary system? Are people being given fair treatment as far as Affirmative Action regulations are concerned? Affirmative Action is utterly a complex topic from a legal perspective and the Supreme Court has been extremely careful on its rulings while dealing with cases that are filled with contention. The Supreme Court should safeguard the Indian constitution and implement the law in a fair manner, but the power vested in the parliament remains as a biggest challenge. The congress remains to be dominant in Indian politics due

to their unlimited power as well as their leaders. The Indian system is very weak in its implementation of Affirmative Action policies and programs in places of employment and other educational sectors. The lack of social justice in India has worsened these inequalities that are passed on from one generation to another. Perhaps what it needs is to shift its focus on the sole objective to empower people. The aim of Affirmative Action should be to help people and not politicize it. If this is applied as a resolution to end discrimination, its true motives may be proven at its core.

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