

Remedies Against Market Discrimination: Lessons from International Experience for Reservation Policy in Private Sector in India

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Introduction

Discrimination on the basis of race, religion, ethnicity, national or social origin exists in many nations under diverse social, economic and political system. In order to correct the imbalances in access to fixed capital assets, employment and education between sub-groups in their populations, countries have turned to practices of affirmative action, preferential treatment or equal opportunity policies. The great majority of these policies and programmes of intervention in use around the world operate in respect of population sub-groups identified by ethnic or racial characteristics or gender. The examples are not only most familiar in the west such as United States of America, Great Britain, Northern Ireland, Germany and Yugoslavia, but also in Latin American countries like Brazil, Bolivia, Peru; African countries like Nigeria, Sudan, South Africa and countries like Malaysia, Pakistan, China, Japan and India from Asia.

India has been no exception. Faced with intense inequalities associated with the caste system and the urgent need to correct these inequalities, the India state has made explicit use of affirmative action or reservation policy in employment, education and political spheres. Despite the very progressive character of the reservation policy (for Schedule Castes, Schedule Tribes and now for other Backward Castes), it has remained confined to a tiny government and public sector only and vast majority of private agriculture, industry and tertiary sector remained outside the purview of the action of reservation policy. More than ninety per cent of SC/ST, for which the reservation policy is used, are engaged in private sector without any protection against discrimination in the employment and other markets. Barring some isolated interventions in the private market, the reservation policy has never been extended to private sector. It is surprising that while the affirmative action policy in many countries in the world such as USA, Northern Ireland, Malaysia or South Africa, to begin with was used for both private and public sector, the India state never thought of bringing the private sector under the purview of reservation policy. However increasing narrowing down of already tiny public sector, due to privatisation of Indian economy, serious concerns have been expressed about the significance of public sector reservation policy. As a fall out of this back door de-reservation, there is a growing demand particularly by the dalits for some kind of reservation policy in private sector. Such views have been expressed not only by academicians but also raised by the dalit leaders in the Parliament. The government of Madhya Pradesh has infact taken initiative to introduce reservation for SC/ST in the government purchases. Views have been expressed both in favour and against reservation in the private sector. In view of the ongoing discussion, in this paper, I have tried to address some of the issues involved in the ongoing discussion on the reservation policy for private sector in India.

Discussion is divided into two sections. First section is mostly theoretical and addresses questions such as, why we are concerned about economic discrimination, consequences of market discrimination for growth and poverty and remedies against discrimination. Second section discusses the nature of caste based market discriminations and their implication for economic growth and equity, the different ways in which the issue of economic discrimination has been handled through policies in various countries of the world, and how India can possibly use international experience to develop affirmative action policy for private sector in India.

Why are we concerned about market discrimination?

The concern about exclusion and discrimination in developing and developed countries at the policy level is primarily because of its link with underdevelopment, inequality and deprivation that it particularly brings to the excluded and discriminated groups. Broadly speaking social exclusion has been defined as “the process through which individuals or groups are wholly or partially excluded from full participation in the society within which they live – in this sense it is opposite of social integration.”(Arjan Haan,1999) Two defining characteristics of exclusion are particularly emphasized, namely its multidimensional character – involving

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exclusion in economic, social and political spheres. Secondly and more importantly exclusion implies a focus on the relations and process that cause deprivations. The concept thus focus attention on social relations, the process that exclude some groups and the institutions that underlie this process. It is therefore, necessary to recognize diverse ways in which social exclusion can cause deprivation and poverty.

Amartya Sen (2000) draw 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 forced to be included – in deeply unfavourable terms and respectively described two situation as “unfavourable exclusion” and ”unfavourable inclusion”. The “unfavourable inclusion” particularly those with unequal treatment or unacceptable arrangement may carry the same adverse effects as the “unfavourable exclusion” does. This concept is quite close to the concept of “economic discrimination”, developed separately in recent economic literature related to race and gender, which recognized participation or access but with unequal treatment in the labour and other markets. The real relevance of an exclusionary perspective is, thus, conditional on the nature of the process of deprivation.

The concept of “economic or market discrimination” is however developed with respect to race and gender in modern economic literature on discrimination with some degree of analytical clarity. (Gary Baker 1960). For instance the labour market discrimination refers to the situation of unequal treatment of the workers, possessing the same education, training and employment experience or productivity level in hiring or in wage payment, but differing in some non-economic personal characteristics associated with race, sex or caste. The concept of “economic or market discrimination” has been extended to cover other market or non-market exchange as well. Discrimination thus manifests situations which involve exclusion or outright restriction on entry in market and/or “selective inclusion” with unequal treatment in participation in various markets

Consequence of discrimination on growth, equity and inter-group conflict

Why are the governments in developed and developing countries concerned about economic discrimination? Is discrimination only an equity issue, or does it also involve economic cost to the society? Are the costs it imposes on the society more social and political than economic? The conclusion of standard main stream theoretical economic analysis indicates that economic discrimination, particularly the market discrimination, does hamper economic growth, bring unequal income distribution and create potential situation for inter-group conflict. (Nancy Birdsall and Richard Sabot 1991)

In case of implications of discrimination on economic growth the standard main stream theoretical analysis indicates clearly the adverse impact on profits, wages and efficiency in the allocation of labour. Economic theory implies that the economic discrimination will slow down economic growth by reducing efficiency due to less than optimal allocation of labour among firms and economy (employing fewer than optimal number of labour who are discriminated as they received lower wage than their marginal product) by reducing job commitment and efforts of workers who perceive themselves to be victims of discrimination and by reducing the magnitude of investment in human capital by discriminated group and return on this investment.

In case of income distribution it is quite clear that in so far as exclusion and discrimination is involved, the denial of access to resources, employment and common facilities that other have it can certainly impoverishes the lives that individuals from excluded groups can enjoy. From the human rights perspective, it essentially means denial of certain basic human rights. Discrimination thus becomes an issue not only of equity but also economic growth. By exacerbating current inequality between groups, and by contributing to its perpetuation from one generation to the next, discrimination and exclusion also leads to inter-group conflict.

Remedies against discrimination – Free market versus interventionist policy

Reducing economic discrimination thus is considered to be a worthwhile strategy because it is likely to increase economic growth, reduce inequality among individuals and between groups and also reduce the potential for conflict to which inequality between groups may give rise. Conclusions regarding the consequences of market discrimination on economic growth and income distribution are derived from the main stream economic theory. The same theory 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 profits. Firms/employers who indulge in discrimination, face the ultimate sanction imposed by the markets. This theoretical perspective thus sees the resulting erosion of profits as a self-correcting dimension of discrimination.

The free market solution is, however, not a final and practical remedy, as for a number of reasons market discrimination, particularly the labour market discrimination, might persist over long periods with or without prevalence of free market situation. First, not all markets are highly competitive. The persistence over decades of labour market discrimination in high income countries attests to that. Indeed, in developing countries, monopoly power is quite significant. Second, even if competition in all markets exists, it is not a sufficient condition for the elimination of discrimination if all the employers are discriminators. Therefore, discrimination will still continue. Thirdly, the discriminated workers may not have an opportunity to prove their productivity potential and eventual rise in the wage and therefore discrimination will still persist.

If these two theoretical positions on discrimination have some meaning then they also have obvious alternative policy implications. Those who believe that discrimination is indeed self-correcting would argue in favour of strengthening competitive market mechanisms. But if discrimination continues to persist despite the presence of competitive market process, (which in reality is the case) or for other reasons mentioned above the activist or interventionist policies will be necessary.

The perspective that competitive market mechanisms work against the perpetuation of discrimination is countered by alternative theoretical view on discrimination. I can not do better than quote Shulmen and Darity (1989) on this who have summarized the two views so precisely:

“The analytical stance of the main stream neo-classical economists is characterised as methodological individualism and it presumes that economic institutions are structured such that society-wide outcomes result from an aggregation of individual behaviours. It presumed that if individuals act on the basis of pecuniary self-interest then market dynamics dictate equal treatment for equal individuals regardless of inscriptive characteristics such as race. Consequently, observed group inequality is attributed to familial, educational, or other background differences among individuals who are unevenly distributed between social groups. The causes of a dissimilar distribution of individuals between social groups may be genetic, cultural, historical, or some combination thereof. The differences in cultural attributes include the value families and neighbourhoods place on education, attitudes, and work habits. The historical refers primarily to the impact of past discrimination on current inequality. In contrast, economists who may be classified as methodological structuralism do not accept this interpretation. Structuralism as an analytical method holds that aggregate outcomes are not the result of a simple summation of individual behaviours, but rather arise from the constraints and incentives imposed by organizational and social hierarchies. In this view, individual behaviour achieves its importance within the context of group formation, cooperation, and conflict. Economic and political outcomes are thus a function of the hegemony exercised by dominant groups, the resistance offered by subordinate groups, and the institutions that mediate their relationship. Discrimination, in this view, is an inherent feature of economic system. Competition is either not powerful enough to offset the group dynamics of identity and interest, or it actually operates so as to sustain discriminatory behaviours. --- Discrimination is due to the dynamics of group identification, competition, and conflict rather than irrational, individual attitudes. Market mechanisms, far from being relied upon to eliminate discrimination of their own accord, must be scrutinized and pressured to further the goal of equality of opportunity”.

The policy implications of this view on persistence of discrimination are obvious. Since the markets will continue to operate in imperfect manner the discrimination will persist. It will also persist even if market forces are competitive in nature under certain condition mentioned above as a normal phenomena. It therefore calls for intervention in the form of affirmative action policy and other measures as safeguards. The state interventions in the form of affirmative actions are required in various markets like land, labour, capital, produce, consumer and social services such as education, and housing as the discriminated groups face discrimination in exchange carried through market and non market channels.

Caste and market discrimination – implications for growth and poverty

Historically the caste system has formed the economic framework for the material life of people in India. In its essential form, the caste system is based on certain unique customary rules and norms that structure production

organization and distribution. In economic spheres the three unique features of the traditional caste system include, (a) fixed occupation (or property rights) for each caste by birth and its hereditary continuation; (b) unequal distribution of economic rights related to occupation, property, trade, employment, wages, education, etc. related to different caste groups; and (c) hierarchy of occupation based on social stigma of high and low. Thus the caste system is based on three interrelated elements, namely predetermination of social and economic rights of each caste by birth; the hierarchical (graded) division of these rights among the castes; and the provision for strong social ostracism as a means of enforcement.

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 other castes. Exclusion and discrimination are thus an obvious consequence of this system. The unequal and hierarchical assignment of occupation and property rights among castes implies that although every caste, excepting those at the top of caste order, suffers in various magnitude 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 are excluded from access to any economic rights except manual labour or service to the castes above them (Ambedkar 1987). The concept of "untouchability" adds additional dimensions to the economic discrimination and exclusion of this social group as they are prohibited from social intercourse and participation in several economic activities due to stigma of pollution associated with their caste as untouchable.

The caste based economic order entail adverse consequence on economic growth and income distribution. The market failure associated with caste based market discrimination not only adversely affects economic growth, but also generate unequal income distribution and induced poverty particularly among the discriminated social groups. In the opinion of main stream economics an efficient functioning of markets for labour and other factors of production is of central importance in the development process. Fixed and compulsory caste-based division of occupations thus results in immobility of factors of production and imperfections in labour and other markets. Thus, far from promoting competitive market condition, caste based division of labour and occupation creates segmented and monopolistic market situations and produces less than optimum economic outcome (Akerlof 1976, Scaville 1984, Lall 1991, and Ambedkar 1987).

Negative consequences of the economics of caste system are particularly pronounced in terms of income distribution and poverty experienced by the excluded/discriminated groups. Since property rights are assigned unequally across castes, income distribution is generally skewed along caste lines. The impact on "untouchables" or Schedule Castes is far more serious as they are excluded from access to property rights and often from education.

Labour immobility also leads to unemployment. By not permitting re-adjustment of employment, caste becomes a direct cause of involuntary unemployment among "low caste" persons and voluntary unemployment among the "high castes" (Ambedkar 1987, Akerlof 1976).

Evidence on market discrimination

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 replaced by a more egalitarian legal framework of property rights, under which the "low castes" have equal access to all occupations. The government approach towards SCs draws primarily from the provisions in the Constitution. Overturning the customary rules of the caste system, the Constitution guarantees equality before the law (Article 14), makes provisions to promote the educational and economic interest of the SCs and to protect them from social injustice and all forms of exploitations (Article 46), and provides for special measures through reservation in government services, and reserved seats in democratic political institutions (Articles 330 and 335). It legally abolishes the practice of untouchability and caste-based discrimination (Article 17). Finally it provides for the establishment of a permanent body to investigate and monitor the social and economic progress of the Schedule Castes on an annual basis.

However, despite these Constitutional guarantees of equality and non-discrimination, the evidence indicates that in practice, SCs continue to suffer from widespread discrimination in access to various markets such as agricultural land, capital, consumer goods and social services. The most prominent, however, is the discrimination in the labour market. Limited evidence indicates that the Scheduled Castes not only suffer dis-

crimination in hiring for jobs, but also in wage payment and in working conditions. The latter types of discrimination are more indirect, with the result that it can be difficult to determine the extent to which equal rights and opportunities are denied. Caste based prejudices are deeply embedded in the social structure of Indian society. The study of caste-based economic discrimination is generally ignored in mainstream economic discussion in India. This is in contrast to the large body of literature on analysis of economic discrimination resulting from race, ethnicity, and gender in the western world. Consequently, although inequality and deprivation associated with caste is widely recognized and addressed in government policies (often by putting the policies ahead of theory and empirical research), insufficient evidence exists regarding the forms and mechanisms of caste-based discrimination in labour markets (and other markets) and their impact on economic growth and poverty of discriminated groups. The bulk of the evidence on economic discrimination in fact comes from studies by sociologists and anthropologists. Ignorance about economic discrimination is massive.

However, the limited macro and micro level evidence indicates the presence of discrimination – particularly against the Scheduled Castes (SCs). The macro level evidence that comes from official government sources clearly indicates the impact of historical (and continuing) exclusion and discrimination of the SCs (who constitute about one fifth of India's population), in terms of their having less access to capital assets (land and non-land) and heavy dependence on wage labour – their traditional occupation.

In 2000, in rural areas, of the total SC households (where more than three fourth of them live), only 28 percent were engaged in some kind of self-employed economic activities (either as farmer or business person) and as a result about 62 percent were mainly dependent on wage labour. This ratio is much higher compared with non-SC households, (for which only about one third are dependent on wage labour). Since more than 60 percent of SC workers in rural areas depend on wage employment, their earnings are determined by levels of employment and wage rates. The SC worker appears to suffer from discrimination in employment and wage earning in the labour market. Unemployment rates based on current daily status for SCs is about 5.0% in rural areas, as compared to about 3.5% for non-SC workers. SC wage labourers also receive a lower daily wage, particularly in the rural, non-farm sectors. For instance in 1999-2000, the average weekly wage of the worker (at 1993-94 prices) was Rs.174.50 for the SC worker as compared with Rs.197.05 for other workers (Dubey 2003).

The high incidence of wage labour associated with a high rate of under-employment and low wage earning capacity, means SC households often suffer from low income and high incidence of poverty – 60 percent in rural areas in 1993-94. Recent data on monthly per capita expenditure for 1999-2000 also points to similar disparities between wage labours from the two social groups (SCs and non-SCs) (National Sample Survey 1999-2000).

Micro level studies such as those from Andhra Pradesh (Venketeswarlu, 1990) and Karnataka (Khan, 1995) provide some evidence on economic discrimination in occupation, employment, wages, and the credit market as well as in other economic spheres. The Andhra Pradesh study observed that Scheduled Castes faced occupational segregation and restrictions in efforts to change their occupation. Similarly, the Karnataka study revealed that nearly 85 per cent of the SC respondents continue to be engaged in their traditional occupations, whereas only 15 per cent were able to make a switchover. The Orissa study (Tripathy, 1994) observed discrimination in land lease, 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 were discriminated against in wage payment, with 28 per cent in one village and 20 per cent in another facing discrimination in payment of rent.

A recent study by Action Aid (2002) revealed that in the labour market, exclusion and discrimination is practiced both in hiring and wage payment in a significant number of sample villages. In about 36 percent of villages (out of 550 villages) the SCs were denied wage employment in agriculture in that year. In about 25 percent of villages, the SC workers faced discrimination in wage payment. The SC wage labourers thus received daily wages at a rate less than both the market wage rate and the wages paid to non-SC workers. What is also striking is that in 37 percent of the villages, untouchability was practiced in the physical distribution of wage payment – SCs received wages in cash or kind from a “respectable distance” so that the dominant caste dispensers of wages could avoid physical touch with the SCs. Belief in purity and pollution also affects hiring of SC wage labourers in housing construction – in about one third of villages they were

excluded from employment for construction of houses. In a sizable number of villages the SCs were forced to carry on their traditional occupation – considered to be unclean and polluting. For urban area Banerjee and Knight (1991) observed that: "there is indeed discrimination by caste, particularly job discrimination" and that "discrimination appears to operate at least in part through traditional mechanisms, with "Untouchables" disproportionately represented in poorly-paid dead-end jobs. "Even if discrimination is no longer practised, 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".

Proposed affirmative action policy for private sector

The theoretical analysis of caste system clearly implies exclusion and discrimination of the SCs in various markets and non market exchange and its adverse consequences on their economic situation. The empirical studies also provide clear evidence on persistence of economic discrimination of SCs and its end result in lack of access to fixed capital assets, employment, human development and their ultimate culmination in high incidence of poverty and deprivation among them.

How and in which forms to extend the existing public sector reservation policy for SC/ST to the private sector is an important issue. The elements of reservation policy for private sector will be determined by the nature of market and non market discrimination suffered by the SCs. The empirical evidence clearly indicates that SCs suffer from discrimination in the private sector not only in employment market (labour market) and wages but also in capital market, agriculture land market (including urban land market), input or factor market, wholesale and retail consumer markets, in access to basic services such as private education, private housing and other. How to provide protection to the discriminated groups against these multiple forms of discriminations is the key issue which the participants in the discussion on reservation have not recognised. Any policy of reservation for private sector will have to address the issue of discrimination in various markets and come up with anti-discriminatory measures covering all markets exchange. In fact although there is no reservation policy in private sector, the government on small scale, has selectively intervened in capital market and (agriculture) land market, urban land market and other such spheres. Setting up of SC/ST finance corporation, preference in allocation of agricultural (surplus) land, and urban land for business are some of the examples of interventions which are in the nature of anti-discriminatory measures. Although the aim of these measures has been to improve the private ownership of fixed capital assets such as agriculture land, and other capital assets, the scope of these anti-discriminatory interventions has been extremely limited.

International experience of anti-discrimination policy

How do we develop the Reservation Policy for private sector to improve the access of SCs to the various markets by providing protection and undertaking some affirmative actions against discrimination in all markets and not only just in a single market? This is the main issue. In other word, what should be the nature of the reservation policy for private sector for SC/ST? It is precisely here, where the Indian state needs to learn from the reservation, affirmative action and equal employment opportunity policies in private sector of other countries in the world such as USA, Northern Ireland or Malaysia. In the following section I try to spell out the possible elements of reservation or affirmative action policy for the private sector in India. The purpose is not to come with exact policy instruments against discrimination in various markets but rather to give general guidelines which may form the base for more specific affirmative action measures for the private sector.

Measures against market discrimination however vary from country to country. Some distinguished features of these interventions need to be clearly understood. Two aspects need special consideration. These relate to (a) type of the economic sector or market which are covered or included for affirmative action policy and (b) the method of affirmative actions so as to provide access to the discriminated groups in various social and economic spheres or markets.

Firstly as regard the economic spheres, most of these countries such as USA, Northern Ireland, South Africa, and Malaysia, have mainly developed anti-discriminatory measures for minorities or discriminated groups for labor market and other markets. However the specific economic spheres vary from country to country. The

countries where labour market affirmative action policies have been developed mostly come from developed world and this include USA and Northern Ireland. In these countries the non farm sector constitute more than ninety of the work force and therefore the focus of the affirmative action policy is on labour market. In some countries like USA some sort of affirmative action policy is also used for other economic and social spheres such as housing, education and various government contracts – latter include government contracts for construction and for government purchase of product and consumer goods. In the developing countries like Malaysia and South Africa where substantial portion of population is engaged in agriculture sector, in addition to labour market, the affirmative action policies are also extended to agriculture land market and private capital – domestic and foreigner capital market – in addition to social service like education, housing etc.

Secondly in these countries various “methods, legal or non legal practices” have been used to provide protection and equal participation to discriminated groups in various markets. These measures include (a) Reparation or compensation for the denial of property rights for long time in the past (b) legal provision against discrimination in labour market in the form of “Equal Employment Opportunity Act”. This act prohibits any firm from discrimination of workers unrelated to productivity or related to non economic considerations. (c) Affirmative action to ensure fair participation of minorities (or discriminated groups) in employment – either by promoting balanced (racial/religious) employment policy, with certain general bench marks without quotas or with fixed quotas in proportion of population of minority groups.

The difference in the purpose and mechanism of these methods however needs to be understood clearly. The policy of “Reparation or Compensation” is used to compensate for the denial of property rights to certain groups in the past. It is considered as compensatory payment for an acknowledged grievous social injustice to a group. In history there are examples where compensation or reparations have been used. Realized instances of reparations in the US include the agreement with Japanese Americans subjected to internment during second world war, Aleut Indian for war time losses and Passamaquoddy Indian tribe – latter were compensated with land and monetary contribution for settlement. Similar land agreements have been made with other Indian tribes. Similar precedents are to be found elsewhere in the world, which include compensation to Jews in Germany under West Germany and the World Jewish Congress agreement. Compensation were also given to Jews in 1995 by Austrian Parliament (Darity 1997).

The ex-untouchables in India were denied right to property, military, trade, agriculture and education by force for several centuries. This is reflected in the lack of ownership of agricultural land and capital and low level of education. The ex-untouchables are therefore a potential case for reparation or compensation for denial of property rights and other rights and injustice for a long period in the Indian history.

The second anti-discriminatory method is the enactment of the “Equal Employment Opportunity Act”(EEOA). Such acts legally prohibit the discrimination of a person in employment and other economic spheres and made it subject to legal action. Persons from minority groups could use this provision in the event of discrimination in hiring and other spheres.

The Equal Employment Opportunity Acts, however, do not involve any positive or affirmative action or steps on the part of government to guarantee or ensure equal participation of minority groups in employment and other economic spheres. Therefore several countries have taken an additional step and made provision to give share to the member of minority groups in government and private employment, government contract and educational institutes – public and private, housing and other. In such affirmative practices certain bench marks are fixed without quota or with quota to give adequate representation to the discriminated groups. While USA and Northern Ireland are the good examples of representation based on non quota method, Malaysia, Pakistan and India are the example of quota system. In Malaysia, however the quota system is also used for private sector while it is confined to only public sector in India.

Countries like Northern Ireland have also introduced system whereby all firm/industries are required to register with Equal Employment Office and to indicate their employment composition by religious groups to bring more transparency and to help to develop policies for religion wise balance employment pattern.

Depending on the nature of discrimination and exclusion the methods to overcome caste based discrimination in private sector should therefore consist of all the three practices, namely reparations, equal employment opportunity act and reservation/affirmative actions.

In background of international experience I spell out some suggestions for reservation for SC/ST in various economic spheres or market in private sector in India. We discuss the possible solution by taking each economic sphere and market separately.

Private sector employment market

The employment pattern of the SCs is such that the majority of them are mainly wage labour households. Of the total SC rural and urban workers more than sixty percent are wage labour – regular or salaried. The selective evidence indicates presence of significant discrimination of SCs in hiring and wage payment which is unrelated to productivity. At present, the private sector where majority of SC/ST worker are engaged include agriculture and private industrial and tertiary or service sector. Since there is a high involvement of SC/ST in agricultural sector, mainly as agricultural labour, their compulsive involvement in the labour market ensure large scale participation as such. There is no need of reservation in agriculture labour market for the SC. However given the selective discrimination in hiring and wage payment, there is need to have at least legal provision in the form of “Equal Employment Opportunity Act”(EEOA) so that clear legal protection is guaranteed against labour market discrimination to SC in hiring and wage payment.

In the industrial and service sector the discrimination in employment is possibly of high order in certain categories of jobs, if not all. Here the government should use both, the provision of Equal Employment Opportunity Act and supplement it by affirmative action or reservation in terms of quotas – identical to present reservation policy in public sector employment. The Equal Employment Opportunity Act will discourage the discrimination as it will act as deterrent on employers. The reservation with certain quotas in certain categories of jobs will ensure fair participation of SCs in industrial employment. In order to bring transparency in the employment pattern, all the firms should be asked to register with equal employment office with information on social composition of their employees. This is what is being done both in USA and Northern Ireland – to bring more transparency in the social composition of employees of the private industrial and service sectors.

Affirmative action in employment could be made particularly binding on the firms/industries which receive any kind of support from the government in one form or another. In other words, all those who get licence and registration from the government and some support could in one or the other form be required to have some kind of reservation policy in employment. In USA, for example, all firms which receive government contracts of one or the other type are required to follow an affirmative action policy in employment in terms of racial and gender balance.

In recent years the UN has also laid down some norms of employment for multi-national companies under the provision of “Equal employment Opportunity“. These companies are required to observe equal employment policy with respect to various groups. Indian government could develop an understanding with the multi-national companies to follow certain provisions of affirmative action policy on voluntary basis in their employment and other activities.

Agriculture land market

Over eighty percent of the SC/ST persons still live in rural area. Of the total SC households about three-fourth are either land less or near landless (that is: owning less than one acre of land). High incidence of landlessness among the SCs is the result of customary restrictions on ownership of agricultural land exercised in the past. In the present the SC persons suffer from discrimination and even exclusion from access to agricultural land. Evidence from the studies indicates that high proportion of atrocities and violence against them are mainly related to issues of land. So the problem of landlessness of SCs still continues with serious proportion. With the exception of some preference in allocation of surplus land under ceiling and public land no serious effort have been made by the government to correct the impact of the exclusion from land right in the past. What is the international experience in this regard? The policies of empowering the discriminated groups for historic injustice with respect to ownership of land in some of the countries has been generally treated within the framework “reparations or compensation“ for denial in the past. Affirmative action policy does not, in general, rest on the goal of compensation for past injustices or denial, nor does it provide a vehicle for redressing wealth disparities --- affirmative action programmes largely have been designed to address the question of present discrimination (Darity, William 1997). Therefore, land

questions have been dealt in some countries in the framework of “reparation or compensation” for the denial of right to land in the past.

The Malaysia programme of improving land ownership of Malaysians (or Bhumiputras) is quite important in this context. In order to improve the access to agricultural land the Malaysians were given special land right. The Malaysian “special right” include the reservation of large tracts of agricultural lands. More than 90 per cent of settlers under the massive programme of federal land development authority were the Malaysian community in Malaysia.

In India, giving priority in the distribution of land to SCs has not helped. In large number of cases, although the government has confirmed the right, the actual possession of surplus land under ceiling or public land has been problematic. What possibly is required, is settling of people on the land, the way Malaysia has done. The government should create a “pool of common land acquired under ceiling and other public land” free of legal problems and place such a pool of land under the control of a specific authority. Once the pool of land under “**State common land pool**” is created under the government, then this land should be distributed to the landless SC/ST households without bringing another party into picture. This may be one of the ways of distributing land in a conflict avoiding manner and doing some justice for the wrong done in the past. So in the case of agricultural land the method of reparation or compensation need to be used. Under a one time settlement the SC household should be given minimum agricultural land, as compensation for denial of land right for several centuries’. Other ways have not helped the SC to gain access to agricultural land.

Capital market

Traditionally the SCs were not only denied ownership of agricultural land but also debarred from undertaking any business. This reflected in the a low proportion of self employed households. In 2001 about 12 per cent of the total SC households in rural areas and 27 per cent in urban areas were engaged in some kind of self employed business activities. This ratio is much lower as compared with 41 per cent and 36 per cent for non SC/ST households in rural and urban areas respectively. Besides the SC households are mainly engaged in petty business with low turnover. Therefore the incidence of poverty among them is relatively high – in the early 1990’s about 38 per cent SC business households in rural areas and almost 55 per cent of SC business households in urban areas were poor. These ratios were again much higher compared with 29 per cent and 35 per cent respectively in rural and urban area for the non SC/ST households.

Engagement of SC households in petty business indicates their lack of access to capital for investment. At present the government has intervened through the public finance institutions such as nationalized banks and special institutions for SC/ST and the supply of capital for business and industry operated by SC persons. However, the private capital is completely free from any obligation towards the SC business who suffers from lack of financial capital.

Given the serious move towards privatisation of financial market it is necessary that the government should develop reservation policy for SC/ST for the capital market. The main issue is how to increase the participation of SC/ST in the private capital in the form of industry and business. Some of the countries in the world such as USA and Malaysia have developed an affirmative policy to improve the access of the discriminated groups to the private capital in industry and business. The Indian government can learn quite a lot from the policy in Malaysia and develop a strategy of providing access to private capital. The affirmative action policy can be developed on the following line.

- (a) **Government and public financial institutions** – The government and public finance institutions should have a specific policy of supply of capital to SC/ST businesses. A certain specific proportion of capital should be fixed for this particular group for business and industry and other economic activities.
- (b) **Private financial institutions** – The government should also develop some sort of reservation policy for the private financial institutions, including banks, such that they allocate or supply a certain amount of capital or finances to the SC/ST for industry and business.
- (c) **Government policy to increase the participation of SC/ST in the private capital** – At present the private capital is mainly in the form of companies and industries, reflected in ownership of shares, debentures and other financial instruments. How to increase the share of SCs/STs in the

share capital and equity in the private sector and improve their ownership in industry and trade. The Malaysia government has set up the Investment Foundation and National Equity Corporation for Malaysians which is used for minority equity investment. These institutions ensure that the minority community get the appropriate shares in the companies. Therefore, government should set up a National Equity Corporation and Foundation to help the SCs/STs to participate in the share capital of the various companies. In Malaysia, the government has also 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 reserve thirty per cent of the share capital for the minority community. The legally sanctioned systematic redistribution of private capital ownership based upon minority was undertaken under the aegis of new economic policy (1970-1990) in Malaysia. The share of Malaysian corporations owned by natives Malaysians rose under this policy from 2 per cent to 20 per cent over the course of the two decades (Darity 1997).

The SC/ST suffer from access to the factors of production both in agriculture and industry. The government should develop a policy of having some reservation and preference in supply of certain inputs of production by the government as well as by the private parties. This may include various inputs that are required in agriculture as well as in industry, particularly the public utilities and services.

Consumer market - durable and non durable

The SC/ST suffer from discrimination both in wholesale and retail market in consumer goods. This discrimination is in terms of (a) access to the infrastructure such as space, and other amenities, (b) in restriction on sale of the goods and (c) in restriction on purchase of goods and commodities. The government therefore should develop a reservation policy for the wholesaler and retailer from the SC/ST community on the following line.

(a) Government contracts of various types. The government's participation in the purchase and sale of goods is quite massive and the SC/ST suffer from exclusion. The Madhya Pradesh government has taken a major initiative in making a provision of certain quota in their purchase order to the SC/ST community. This is an important way to provide a market for the SC/ST businessman.

But there are several activities of the government besides purchase of items in which the government participates. These range from purchase of consumer and non consumer goods, contracts for construction of roads, buildings, irrigations and hundreds of other activities in which a specific share should be fixed for the SC/ST in the purchase and sale of goods, in awarding contracts, giving spaces for businesses and many other areas. A complete detailed policy will have to be worked out for the SC/ST vis-à-vis the government participation in various activities.

(b) The government should develop a policy for the purchase of agriculture products such as vegetables, flowers, fruits, other products including milk, poultry and others for the purchase by the government and the private parties, as the SC/ST farmers and retailers face discrimination in the retail and wholesale market in the sale of several commodities on account of untouchability and pollution.

(c) Public utilities and services such as private education, housing and electricity etc. The government should develop a reservation policy for admission to private educational institution, in allocation of space for housing of SCs/STs and supply of civic amenities as they suffer discrimination in the supply of these services. The reservation policy should be supplemented by "equal employment opportunity act" to provide legal protection against the possible discrimination of SC/ST households.

Concluding observations

Economic discrimination on the basis of race, religion, ethnicity, national or social origin exists in many nations under diverse social, economic and political systems. It is recognised that prevalence of market discrimination of certain social groups create adverse consequences for economic growth, income distribution and inter-group conflict. Market discrimination not only leads to income inequalities and a high degree of deprivation for discriminated groups and induce inter-group conflict but also affects economic growth. In order to correct the imbalances in access to fixed capital assets, employment and education between sub-groups in their populations, to improve the working of the market for better economic growth, and to reduce inter-group economic inequalities and thereby the potential conflict, countries have resorted to various anti-

discrimination policies. These policies mainly include reparation, or compensation, practices of affirmative action, preferential treatment and enactment of equal opportunity act. These policies have been justified and used by the government not only for the consideration of equity but also for promoting economic growth and development. However the protective and promotional safeguards against market discrimination vary between the countries both in terms of (a) economic and social spheres or markets covered and (b) the nature of safeguards against discrimination.

In some developed countries like USA and Northern Ireland the focus is on policies for labour/employment market. In these countries some policies are also used for other sectors like product and consumer good market, education and housing. Some sort of preferential methods are used in education, housing and government contracts of various types, such as construction, purchase of capital and consumer goods (durable and non durable) used by the government. In some of the developing countries like South Africa and Malaysia the affirmative policies are extended to capital market (domestic and foreign) and agricultural land markets.

India is one such country which has used reservation policy for the discriminated groups. However one of the major difference between India and other countries in the world is that, while from the very beginning other countries have used various affirmative action policies both in public and private sector, but curiously enough, India for unknown reasons confined the reservation policy only to tiny state and public sector and excluded the vast private sector, where more than 90 per cent of SCs/STs still earn their livelihood. In this sector there is no protection against the economic discrimination of SCs/STs. Due to narrowing down of already tiny public sector, (due to privatisation of public sector), there is a growing demand for some kind of reservation policy for the private sector. In the proceeding discussion we have argued that due to discrimination of SC/ST in various markets and non market exchange, there is a necessity of reservation or affirmative action policy for private sector to provide safeguards against discrimination. It has to be recognised that the SCs suffer from discrimination in multiple ways in various markets. Therefore the reservation policy for private sector should cover all markets. First it is necessary to enact the "equal employment opportunity act" so as to provide legal safeguards against discrimination. And this will have to be supplemented by more positive action in term of reservation in some categories of jobs. The EEOA provision will have to be extended to other markets as well. Some kind of reservation policy will be necessary for other markets such capital market, produce and consumer market including the social service sector – on the pattern suggested above. In agriculture sector, however SCs will have to be compensated by giving land for agricultural use through a one time settlement, as compensation for the denial of property rights and injustice for a long period of time.

References

0. Action Aid, Delhi(2004) "The Untouchability in Rural India"(ongoing study)
1. Akerlof, George (1976) "The Economic of Caste and of Rat Race and Other Woeful Tales" Quarterly Journal of Economics, XC, 4,Nov. 1976
2. Akerlof, George (1980) "The Theory of Social Customs, of which Unemployment may be one consequences, Quarterly Journal of Economics XCIV, 4, June 1980
3. Ambedkar, B.R. (first published 1987) "Philosophy of Hinduism" in: Vasant Moon (Edit), "Dr. Babasaheb Ambedkar Writings and Speeches" Vol.3, Page 1-94
4. Ambedkar, B.R. (first published 1987) "The Hindu Social Order - Its Essential Features", in: Vasant Moon (Edit), "Dr. Babasaheb Ambedkar Writings and Speeches", Vol.3, Page 95-115, Dept. of Education, Govt. of Maharashtra, Bombay
5. Ambedkar, B.R. (first published 1987) "The Hindu Social Order- Its Unique Features", in: Vasant Moon (Edit), "Dr. Babasaheb Ambedkar Writings and Speeches" Vol.3, Page 116-129, Dept. of Education, Govt. of Maharashtra
6. Banerjee, Biswjit and Knight J.B. (1985) "Caste Discrimination in Indian Urban Labour Market" Journal of Developing Economics.
7. David Romer (1984) "The Theory of Social Custom: A Modification and some Extension", in: Quarterly Journal of Economics

8. Haan, De Arjan, Extreme Deprivation in Remote Areas in India: Social Exclusion as Explanatory concept, Manchester Conference on Chronic Poverty, April 2003, session "Social Exclusion, Rights and Chronic Poverty"
9. Haan, De Arjan (1997), Poverty and Social Exclusion: A Comparison of Debates on Deprivation. Working Paper No. 2, Poverty Research Unit at Sussex, Brighton: University of Sussex.
10. Jamaluding, Faridah, "A Study of the Malaysian Economy: The New Economic Policy (1971-2000) and National Development Policy (1991-2000)" Journal of Social Science and History, Fall 1988.
11. Lal Deepak (1984) "Hindu Equilibrium", Cultural Stability and Economic Stagnation, Vol. I, Carendon, 1988 Oxford
12. Nancy Birdsall and Richard Sabot (1991) "Unfair Advantage - Labour Market Discrimination in Developing Countries" World Bank Studies
13. Randive, B.T. "Caste, Class, and Property Relations", EPW, Annual No., Feb. 1997
14. Scoville, James G.L. (1996) "Labour Market Under Pinnings of a Caste Economy – Failing the Caste Theorem" in: "The American Journal of Economics and Sociology" Vol.55, No.4, Oct. 1996
15. Scoville, James G.L. (1991) "Towards a Model of Caste Economy" in James G. Scoville, (Editor) "Status Influences in Third World Labour Markets, Caste, Gender and Custom, (Berlin and New York, 1991)
16. Sen, Amartya, 2000 "Social Exclusion: Concept, Application and Scrutiny", ADB Working Paper
17. Thorat, S.K. (1999) "Caste and Labour Market Discrimination" (With R.S. Deshpande) Indian Journal of Labour Economics, Conference Issue, November
18. Thorat, S.K. (2002) Oppression and Denial : Dalit discrimination in the 1990s, EPW, February 9
19. Thorat, S.K. (1996) "Ambedkar on Economics of Hindu Social Order: Understanding Its Orthodoxy and Legacy" in: Walter Fernandes "The Emerging Dalit Identity" Indian Social Institute, Delhi.
20. William Darity, Jr. (Edit) "Economics and Discrimination" Vol. I, An Elgar Reference Collection (U.S.)
21. William Darity, Jr. & Steven Shulman, (1989) "Question of Discrimination – Racial inequality in the U.S. labour market", Wesleyan University Press, Middletown, Connecticut
22. William Darity, Jr. (1997) "Reparations" in: Samuel L. Myers, Jr. (Edit), Civil Rights and Race Relations in the Post Reagan-Bush-Era, Praeger, London