

## On Reservation Policy for Private Sector

*Given the range of economic discrimination against marginalised groups like SCs, STs and OBCs the reservation policy for the private sector ought to cover not only employment, but also markets, agricultural land, capital, consumer goods, education, housing, government contracts, etc.*

### Sukhadeo Thorat

Faced with caste related discrimination against and deprivation of marginalised social groups like SC, ST and OBC, the Indian state has used reservation policy in selected public spheres. Such concerns are, however, confined to the government sector and the vast private sector where more than 90 per cent of SC/ST workforce is employed, remains without protection against caste discrimination. While affirmative action policies in other countries, have been used both for private and public sector from the very beginning, in India the privatisation process concomitant with the withdrawal of the state from many spheres under the liberalisation regime, have further narrowed and compressed the little space that the discriminated groups had gained till now. If the societal discrimination in private domain is the justification for reservation in public sectors, why cannot such a policy be extended to the private sector? Precisely because of this consideration, the Common Minimum Programme of the UPA calls for a national dialogue on reservation in private sector. Maharashtra and MP governments on the other hand have already approved the reservation for SC/ST in jobs in private sector and in government contracts respectively.

### Why the Concern?

When the reservation policy was first introduced in the early 1930s and formalised later in 1950, Ambedkar who pioneered this policy justified it primarily on grounds of citizen/human rights violation, drawing largely from theoretical development in political science. Since that time an extensive body of theoretical and empirical literature relating to economics of caste system has been produced, which now provide economic reasons for remedies against market discriminations. Theoretical interpretations uniformly recognise that the caste system's fundamental characteristic of ascribed occupations involve 'exclusion' of one caste from undertaking the occupation of another [Akerlof 1976; Scoville 1991; Lal 1984; Ambedkar 1936 and 1987]. Economic exclusion and discrimination is internal to the system and its necessary outcome. In a market economy the ascribed division of occupations operates through intercaste restrictions in markets like land, labour, capital, and in services necessary in any economic activity. Labour being an inherent part of the production process of any economic activity, the labour market discrimination is obviously a part of the exclusionary process of castewise division of labour. Immobility of labour and capital under castewise division then translates into segmentation by occupationally segregated and imperfectly (though not completely) mobile markets. Segmented and imperfectly mobile labour and capital markets in turn produce economic outcomes, which are less than optimum and thus, the economic efficiency of the caste economy is much lower than posited in model of perfectly competitive market.

Consequences of economic discrimination on intercaste disparities and deprivation of discriminated group are particularly severe as property and other rights under the caste system are assigned unequally across castes, and income distribution is generally skewed along caste lines. The unequal and hierarchical assignment of economic and property rights affects the low castes particularly severely as they face 'exclusion' from access to all economic rights, except manual labour. The restrictions on labour mobility also lead to high unemployment among the low caste untouchables. The economic and social impact is thus, far more devastating for 'low caste untouchables' than any other social groups in Hindu society [Ambedkar 1936].

These insights from economic theories clearly indicate that caste-based market discriminations concern policy-makers, not only because they enhance inequality and produce unequal opportunities, but also because they are retrogressive for economic growth [see Birdsall and Sabot 1991].

The customary regulatory framework of caste system has now been formally replaced by an egalitarian legal framework, under which the 'low castes' now have equal access to occupations, property rights, employment, wages and education. However, despite these provisions the caste system continues to manifest itself in its modified forms. Since the case for reservation is based on the persistence of economic discrimination and keeping in mind the limited availability of literature and the paucity of data on economic and market discriminations, we present indirect and direct evidence on economic discrimination and deprivation particularly experienced by the low caste untouchables.<sup>1</sup>

Official data provides indirect evidence of caste-based economic discrimination of untouchables' continuing unequal access to capital assets (land and non-land), human capital, heavy dependence on wage labour, low employment, and high poverty. We see a marginal shift away from the traditional occupation. In 2000 about 70 per cent of SC rural households were landless and near landless (owning less than 1 acre), only 16 per cent were self-employed cultivators (compared to 41 per cent for others), and another 12 per cent were in business. Together close to one-third of rural households had acquired access to land and non-land capital assets. In urban areas also only 23 per cent of households were engaged in petty businesses compared with 35.5 per cent for other households. Due to inadequate access to capital assets, an exceptionally high proportion of them continue to depend on wage labour – 61 per cent in rural areas and about 64 per cent (wage and salaried) in urban areas. Wage labour as a traditional occupation thus, continues to constitute a main occupation of the SC [Thorat 1999].

Scheduled castes also suffer from high unemployment. In 2000 the unemployment rates for SC were 5.0 per cent compared to 3.5 per cent for other worker (non-SC/ST) in rural and urban areas. The daily wage earning of SC wage labourer tended to be low in rural non-farm sector. Inadequate access to income earning assets, lower employment and wages – all culminated into high incidence of poverty among the SC. In 2000 about 37 per cent of SC person were poor in rural areas as compared to 20 per cent among others. Similar gap between the two groups exists in the poverty level in urban area – about 39 per cent of SC were poor as against only 21 per cent among others. The low human resource development is also reflected in low literacy rate (about 37 per cent) compared with 57 per cent for others.

Although persisting disparities in access to capital assets, employment and human capital between scheduled caste and others provide indirect evidence on the consequences of past discrimination, nevertheless an insight into the nature of present economic discrimination is hindered by the lack of systematic empirical research by economists. Sociologists/anthropologists in the course of studying social and cultural discrimination have captured the discrimination in economic spheres to an extent.

Studies such as those from Andhra Pradesh [Venketeswarlu 1990], Karnataka [Khan 1995], Orissa [Tripathy 1994] and more recently a study of 10 states by Action Aid (2004) provide evidence on economic discrimination in occupation, agriculture (land), employment, wages, credit markets and in other economic spheres. The Andhra study observed that a majority of SC are engaged in traditional occupations and face restrictions in occupational mobility. The Karnataka study revealed that only 15 per cent could make a switchover from their traditional occupations. The Orissa study also observed restrictions in change of traditional occupation through discrimination in agriculture land, credit and labour markets in rural areas. Nearly 96 per cent of untouchable respondents in sample villages experienced discrimination in wage payment, 28 per cent in one village and 20 per cent in another village faced discrimination in land rent. The Action Aid (2004) study, covering about 550 villages observed discrimination both in hiring and wage payment in a significant number of sample villages. In 2002 in about 36 per cent of villages SCs were denied wage employment in agriculture and about 25 per cent of villages, the SC worker faced discrimination in wage payment. Belief in the concepts of purity and pollution also affected hiring of SC wage labourers in house construction – in about one-third of villages they were excluded from employment for construction of houses. In a sizable number of villages, SCs were forced to carry on their traditional 'unclean and polluting' occupations. In about a quarter of villages the untouchables faced exclusion or discrimination of various forms in the sale of consumer goods, like milk, vegetables and similar items.

For urban areas 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 mechanism, with untouchables disproportionately represented in poorly-paid-dead-end jobs. Discrimination is greatest in operative jobs, in which contacts are more important for recruitment, compared with 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". A number of other studies also brought out the influence of caste statuses on occupations in Indian cities [Scoville 1991].

### **Against Discrimination**

Empirical evidence on the persistence of caste discrimination in private sector against untouchables justifies the need for corrective measures. India has limited experience of affirmative action policies in private sector but it could draw lessons from the international experience particularly with respect to two aspects (a) type of the economic sector or markets for which the policies against discriminations are developed and (b) the strategies used to give practical shape to the policies.

As regards the economic spheres, countries like the US, northern Ireland, South Africa, and Malaysia, have developed legal and affirmative action policies for minority groups not only for labour markets, but also for

agricultural land, capital, and other markets. The US, for instance, has extended affirmative action policy to education, and government contracts for construction and purchases of goods from minority businesses. While in Malaysia, the affirmative action policy is also extended to agriculture land and capital market. Thus, broadly speaking in these countries multiple economic and social spheres are covered under the orbit of anti-discrimination and affirmative action measures.

As regards the strategies, these countries have used at least three kinds of measures. First is the legal protection against discrimination in the form of 'equal opportunity laws (EOL). These laws prohibit private or public employers from discrimination of workers based on group identities and provide legal safeguards to discriminated groups in the event of discrimination in employment and other spheres of economic activities. See for example Title VII of Civil Act, which established Equal Employment Opportunity as law (Executive Order 11246) in US and Fair Employment Act in northern Ireland.

The second method is the affirmative action measures of various types. In principle, at least affirmative actions can be distinguished from legal measures, the former require proactive steps to ensure fair participation of discriminated groups, and the latter in contrast only prevent discrimination of minorities in the labour market and other spheres by their employers [Holzer and Neumark 1999]. Therefore EOL, are supplemented by affirmative actions which indeed go a step forward and attempt to ensure a fair share to the discriminated groups in employment, and other spheres based on some reasonable criterion.

A third strategy is reparation or compensation. The affirmative action policies have been largely designed to address the question of present discrimination and do not, in general rest on the goal of compensation for past injustices [Darity 1997]. The instruments of 'reparation' on the other hand are specifically used in terms of compensation for the denial of property rights or injustices in the past. Therefore, some countries have selectively used 'compensation strategy' as one time settlement to pay to the discriminated groups. This include compensation to Japanese persons in the late 1980s subjected to internment during the second world war, land and monetary compensation to native Indian or tribes in the US and compensation to Jews in Germany and Austria for forced labour during the war. In the US several estimates of income loss during slavery of African-American have been worked out and claims put forth for compensatory payment.

### **Actions in Indian Private Sector**

Three alternative remedies, namely, equal opportunity laws, affirmative action measures and reparation that have been used by a number of countries to correct the imbalances in the sub-groups of their population. Adoption of some of these remedies against discrimination for SC/ST/OBC in private sector in India will be determined by the nature of economic discrimination faced by them in various markets. It is more than apparent that the low caste untouchables in India suffered from societal discrimination in multiple economic spheres. Therefore, remedies against past and present discrimination in the private sector should necessarily include multiple economic spheres and not just the labour market. Given the wider coverage of societal discrimination strictly speaking all the three measures are essential for remediation of market and non-market discrimination.

Considering the fact that in rural area more than 50 per cent of SC workers are casual agriculture wage labourers, there is an immediate need to enact an 'equal employment opportunity act' (EEOA), so that legal safeguards are in place against labour market discrimination in hiring and wage payment. In the non-farm private and cooperative (industrial and service) sector in rural and urban areas, the discrimination in employment is possibly of high order in certain categories of jobs, if not all. There is a need to utilise both the strategy of legal safeguards through EEOA and reservation policy – identical to the present policy in public sector employment. The EEOA will provide 'legal protection' against discrimination in hiring and the 'reservation' with fixed share in jobs will ensure fair participation of marginalised groups in private industrial/tertiary sector employment.

Measures against discrimination in the agriculture land market demand a different strategy. About three-fourths of SC population live in rural areas and a majority of them are engaged in agriculture. By 1997 only about 18 lakh acres of land was distributed to 18.50 lakhs of SC beneficiaries, with 0.977 acre per beneficiary. As result even today over three-fourths of SC rural households are either landless or near landless (that is owning less than one acre). It needs to be recognised that a high landlessness among the SCs is the outcome of customary restrictions on ownership of agricultural land exercised in the past. Indeed, in provinces like Punjab/Haryana the customary rules were converted into formal laws in 1901, banning the ownership of agricultural land by untouchables, the law remained in force up to 1947. The result is that even today about 95 per cent of SCs in Punjab are landless and near landless. The positive action policies based on some preferences have not helped to overcome improved ownership of agricultural land by the low caste untouchables. International experience shows that the empowerment of the discriminated groups for the historic denial of ownership of capital assets like agricultural land has

generally been treated within the framework of 'reparations'. The Malaysian programme to improve the ownership of agriculture land of the Malay community is a case in point. The Malayas were given 'special land rights', which included the reservation of large tracts of agricultural land for them. Also in the US Indian native and tribes were compensated by settling them on large tracts of land. In the context of this international experience the strategy of 'compensation' through one-time settlement is possibly necessary to improve the ownership of agriculture land of low caste untouchables. The government should create a 'pool of common land', acquired under ceiling and other public land, free of legal problems and redistribute it to the low caste in standard size to compensate for the denial of land right for a long time.

Like agricultural land the untouchables were also debarred from undertaking any business except some occupations considered to be lowly, impure and polluting, which is reflected in their low proportion in business. Government has used special measures, some of which are in the nature of positive actions and some are in the compensatory mode. The measures, which are in compensatory mode, include setting up of special financial institutions for the minority business. However, the private capital sector is completely free from any obligations toward the minority business that suffers from discrimination and lack of financial capital. In view of this firstly, there is a need to have a well-defined affirmative action policy both for public and the private sector financial institutions to supply capital to minority businesses. Secondly, some sort of compensatory policy of increasing the share of SCs in business and in corporate capital is necessary – as compensation for denial of right to business and trade for a long period of time. In this respect there is lot to be learn from the Malaysian experience. In Malaysia the legally sanctioned systematic redistribution of private capital ownership to the minority community was undertaken under the aegis of the New Economic Policy (1970-1990). The share of Malaysian corporations owned by natives Malay rose under this policy from 2 per cent to 20 per cent over the course of the two-decades [Darity 1997]. For this purpose the Malaysian government has set up special financial institutions to increase the equity participation of the Malay minority, which ensure that the minority community gets the appropriate share in the business, and in share capital of domestic and foreign companies.

Remedial measures are also required against discrimination in retail market. Affirmative action policy in the US has addressed this issue by providing shares to the African-American and other minority businesses in the federal contract. There are several activities of the Indian government, which range from the purchase of consumer and non-consumer goods, contracts for construction, etc, in which a specific share should be fixed for marginalised group's businesses. Besides, the government could also develop a policy for the purchase of agricultural products particularly vegetables, flowers, fruits, other products including milk, poultry, etc, as the marginalised businesses face discrimination in the sale of these commodities on account of the notions of purity and pollution. Similar EOLs and affirmative action policies are necessary for private education and housing sectors.

## Note

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1 Due to paucity of data we cover only SC but logically the same would apply to other discriminated minorities.

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