

ECONOMIC LIBERALISATION, AFFIRMATIVE ACTION AND SOCIAL JUSTICE

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ABSTRACT: In the last decade or so, Affirmative Action as a concept in global political-economy has been in currency both in fora of developed nations as well as the United Nations. Affirmative Action could be defined as, .. *providing selective, discriminatory privileges to minorities and socially under-privileged classes in a society towards the goal of achieving equality and social justice.* Such classes of under-privileged are common to all large societies, arising out of historical or political reasons .. even smaller countries like Hungary or Fiji are no exceptions. Traditionally dictatorial regimes world over have suppressed privileges of minorities, often ruthlessly. However, democracies have been relatively more receptive though by no means over-arching. In fact, the failure of even older democracies like the UK or United States of America to address effectively the problem of minorities, whether the Flemish or Welsh language question or the American Indians or the Blacks have raised questions on the age-old democratic dictum of *equality* .. therefore, the question of protective discrimination, though this, pronouncedly goes against the principle of equality (before law) and thus, even a more complex issue.

The question of *protective discrimination* based affirmative action in India is not a new concept. The constitutional safeguards of the rights and privileges of Scheduled Castes and Tribes under Schedule 5 and 6 of the Indian Constitution and the policy of reservations in Government jobs and parliament and state legislatures have continued for nearly half-a-century of independent India. However, a water-shed was the question of reviewing the reservation policy for Backward Classes fostered by the V.P. Singh Government in 1989 based on the Madal Commission Report. The politics in the aftermath of the reservation policy has no doubt fragmented the Indian polity on caste lines. The results could, in a way, be viewed by the new phenomenon of hung-Parliament and hung-legislatures. Significantly, the Indian economy has embarked on a path of *Economic Liberalisation* and consequently, global-integration of the economy since 1991, with mixed results (and no doubt, a fair amount of hopes).

The objective of the paper is to analyse the linkages between the policy of *affirmative action and a liberalising economy*, .. would a policy of protective discrimination affect economic performance of the economy? On the other hand, does political economy and welfare economics provide efficient methodologies in tackling such complex political and social issues, especially for countries like India? Does economic liberalisation, for example, after all provide benefits to all? .. in which case, protective discrimination to a certain section, if it affects overall performance of the economy, may as well defeat the purpose by undermining welfare for all, thus, even to the particular section to which specific protection was provided.

BACKGROUND

Democracy is not all about *popular will or popular rule*, .. it is a process towards *a just society*; .. as counterposed to autocracy, monarchy or even fascism, it proposes to provide an alternative to *arbitrary action and discrimination*, .. a product of the *Enlightenment ideology* but never the less, imperfect one. The question of affirmative action emerged, in recent times, as the aftermath of the American Civil Right Act of 1964, .. an affirmative legislation itself on American race relations, especially in the context of post-Martin Luther King (Jr.) assassination. Affirmative action could be defined as, .. *providing selective, discriminatory privileges to minorities and socially under-privileged classes in a society towards the goal of achieving equality and social justice*. Such classes of under-privileged are common to all large societies, arising out of historical or political contexts and reasons. To quote Hugh Murray, one of the front runners of the American Civil Rights Movement, "The 1964 law was passed to end discrimination and implement equal opportunity. ... The civil rights community endorsed the 1964 legislation."¹ The American history is replete with bitter race relations between the whites and the blacks, with the backdrop of slavery and the civil war which proposed to eliminate the discrimination against the black, .. but., that continued and perhaps, continues. Many of the civil rights leaders, like Hugh Murray had pinned hope on the 1964 Act. ² Nothing really happened. Leaders like Murray, disillusioned, take quite the opposite position.³ Gonzales stated.

"The earth's most developed country, does not seem able to deal with differences in skin pigmentation, to the point that its best intellectuals systematically make fools of themselves in explaining it. Far from being

about peripheral policy detail, however, debates concerning race actually go to the heart of one of the most important political question today: the possibility of social engineering long standing racial conflicts out of existence. While there has been a wide consensus.... What has remained unsettled is what to do about the effects of past injustices. Can they be remedied and, if so how? Are these remedied through social engineering? Furthermore, if past institutional practices have caused great harm to some groups, should they not be compensated according to standard legal precedents? If these social injustices can be socially engineered out of existence and it is at all possible to compensate its victims, then measures such as affirmative action or even outright "reparation" would seem unwarranted.⁴

The question that worries Gonzales is the end of *institutional racism* at one hand vs. continuance of *personal racist attitude*, the latter, impossible to remove through institutional reforms or means.⁵ The relevant view taken by Gonzales in support of Murray and in criticism of Gottfried and Ost et al,⁶ is the *social construct theory* proposed by latter, flowing from the deconstruction theology.⁷

The parallelism drawn with the concept of affirmative action in the context of the pluralistic American society and that of the Indian society is ample, though in case of the latter, the history of discrimination, subservience and oppression on lines of ethnicity goes back to, perhaps, a few thousand years. Independence movement brought the problem to focus, particularly the question of untouchability and also, the caste question.⁸ Independence, with the dream of constructing a welfare society based on the principles of equality, justice and fraternity, removal of age-old oppression,

exploitation and discrimination, led to shaping of the Constitution of India with specific reformist legislation on untouchability (Art. 19), the Directive Principles (Chapter IV, Art 36-51, particularly, Art. 46 for SC & ST and Art. 39-A)⁹ and various schedules, especially the Fifth and Sixth in relation to certain discriminatory privileges for the Scheduled Tribes.¹⁰ The constitutional provision, including those under the Fundamental Rights are non-discriminatory institutional provisions, .. they truly do not construe an affirmative agenda. Drawn parallel with the Civil Rights Act of 1964, the reservation policy of the V.P.Singh government (based on the Mandal Commission Report) towards the backward classes would come closer to the American legislation, because the *state intrevenes directly in engineering the discrimination out of existence*. The reservation policy has been an extremely contentious issue, .. daggers drawn by both the supporters of the policy and those who are sceptical about its wisdom. It is not the intention here, in this paper, to go into all aspects of the history of the backward class reservation policy, or for that matter, on the question of its successes or failures. The question before us, as a preliminary formulation, is about the possible effects of such a policy, if at all, on the efficiency of the Indian economy under the changed scenario of a reformist, globalising economic agenda.¹¹

WELFARE THEORY

Welfare Economics does provide alternative methodologies or options for adopting public policies that optimises the social welfare function, as essentially a choice in- between *economic efficiency*¹² and *equity*. While efficiency criteria are more direct and measurable, the *equity* is not, .. it is highly *subjective (normative)*, but never the less, could be pivotal to social policies of a nation,

as in the case of affirmative action policy.¹³ The equity, often is in conflict with economic efficiency. The resolution of such conflicts could be achieved by adopting such public policies that are both efficient and conform to the equity principle. One way of stating such a choice would be around the principle that while optimising social welfare, it is to be ensured that while 'A' gains, 'B' is not penalised.¹⁴ This is the bottom-line. Where rights of equality of opportunity and equality before law is fundamental to our constitutional provisions¹⁵, in the domain of public policy *such equality* is neither necessary nor desirable¹⁶, and the state is empowered to undertake declaration of desirable welfare policies. However, under the reservation policy, it is often argued that it would or could violate the Pareto optimality, e.g. the seat reservations in educational institutions or reservations in public employment¹⁷ for *some* may affect or is likely to affect the welfare of *others* of other groups of citizens. It is also argued that such reservations¹⁸ would *bypass merit*, thus could affect labour efficiency, therefore labour productivity and ultimately, the competitiveness of the economy.¹⁹ Under the changed circumstances of liberalisation of the Indian economy and its integration with the global economy (*globalisation*), increased labour productivity will hold key to its competitiveness and thus, a higher growth path.

AFFIRMATIVE ACTION POLICY AND THE INDIAN ECONOMY

As stated earlier, the job reservation policy (in public employment) can be classed under the affirmative action agenda. There is, of course, divided opinion (in the West) about both its efficacy as well as its intrinsic logic.²⁰ However, even if one accepts the social commitments to such a policy, it would be of interest to assess the economic interpretation of such policy.

1. If one accepts the inefficiency criteria under quota recruitments in public employment, one way it could be interpreted is as a *subsidy*, i.e. the difference between the expected service (value) and the actual service delivered. This could be perhaps, well justified under any such subsidy programmes for public good. However, such a subsidy could be dealt in an alternative manner, say by providing a direct subsidy than an indirect one, since a direct subsidy is a more efficient method.²¹
2. On the other hand, given that when 'A' is employed in public service under the quota reservation system and also, if one accepts that A is less efficient and therefore, suffers a lower productivity compared to 'B' who is recruited by open competition, the productivity of B is likely to fall to the level of A, since there would be no additional incentive for B to be more efficient than A. In an aggregative sense, then, the overall productivity will be pulled down to the level of A. Thus, loss to efficiency for the economy. This can, perhaps, be remedied, if actually the productivity of A can be pushed up to the level of B or more, say through (i) additional training and capacity building, (ii) incentives on promotional avenues, or, and (iii) linking salary and wages to productivity and not to position held. The last is intrinsically difficult in public sector or even private sector because of constitutional provisions and principles on *equal pay for equal work*²². It may be noted that the Supreme Court has also rejected the *carry forward system* in reservation for backward classes.²³
3. The third aspect to be examined is that under the process of economic liberalisation and consequently, globalisation, the actual component would get down-sized, both in government services as well as in public sector undertakings in the relative sense, if not, there is hardly any absolute cut-down in employment. In such a scenario, the job reservation policy, even if an inefficient one, will have only residual impact on the overall economy.

CONCLUSION

From policy objectives of a welfare society there is the need to address both the principles of efficiency and equity. Such a balance in the two principles in designing public policies would require credible economic evaluation and also assessment of implications of alternative strategies. It is not to take sides of one wisdom or the other. What matters ultimately depends on the credibility of alternatives based on hard facts. Very often, economic decision which prima facie may look irrational, could be acceptable, if the polity wishes so, .. but the cost could be well assessed prior to a conscious decision on the matter.

REFERENCES

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- Paul Gottfried (1996), "On the Civil Rights Movement: Reply to Murray", *Telos* (106), pp. 139-142. Also see, Seth Faber (1996), "Murray and the Revolt of the Elites", (*Telos* (106), pp. 142-146 and David Ost (1996), "Race and Bad Social Science: Reply to Murray", *Telos* (106), pp. 147-151.

Moshe Gonzales (1996), op. cit., pp. 161-62

Both, Mohandas K. Gandhi and Babasaheb Ambedkar fought against the caste and untouchability question but differed on solutions.

Added by the 42nd Constitutional Amendment Act, 1976.

Particularly, as under Art. 244(1), 244(2) and 275(1) of the Constitution.

A. C. Mohapatra (1996), "Marketing, Global Integration and Development: Scenario for Developing Countries with specific Reference to India", *proc. of International Seminar on Marketing & Development*, Saitama University, Japan, (ed) Dr. Kazuo Usui, Faculty of Economics, Saitama University, pp. 113-124.

Efficiency in the sense of Pareto Efficiency ("Economic efficiency can be said to exist, when it is not possible to change the allocation of resources in any way which makes someone better off, without at the same time making someone else worse off." See, P. Harwick et al (1982), *Introduction to Modern Economics*, ELBs & Longman, Essex. UK. p.116), that must fulfil the criteria of (a) efficiency of production, (b) efficiency in exchange and (c) efficiency of product mix. see, Harwick, op. Cit p.p. 122-124

Equity could be measured in light of four criteria, (a) egalitarian criteria, ... essentially dealing with redistribution of income and wealth, (b) 'social conscience' criteria, ... welfare of the rich, to some extent depends of the present generation, not at the cost of welfare of the future generations. See, Harwick et al, op. cit, pp 122-124.

Gary Fromm and Paul Taubman (1973), *Public Economic Theory and Policy*, Macmillan, New York, pp. 4-11 and 276-287.

Art. 14, 15 and 16 of Fundamental Rights (Chapter III) of the Constitution of India.

The provision of "reasonable restriction" under the above provisions.

Art. 15(4) of the Constitution regarding the reservation for Backward classes, read with the 1st. Amendment (1951), an enabling provision under Art. 46 under Chapter IV.

The Mandal Case, the Supreme Court limited all categories of reservation to the limit of 50 per cent in the given year. *Indra Sawhney Vs. Union of India*, 1993, SC 477. An interesting economic interpretation of the judgment could be that perhaps, the trade off between efficiency and equity is at the secular level of 50 per cent.

It may be noted that such reservation policy has on no more than 2 per cent of total employment in the economy.

For example, Gonzales states, "The problem here is that such remedial preferential policies would benefit individuals who are not the one the ones who suffered the original injustice. In addition, the people who end of bearing the costs of this "reparation" are not the same responsible for the damage." M. Gonzales (1996), op.cit.p. 157

A direct subsidy by way of an welfare cheque which is considered more efficient because the recipient puts it to the most efficient economic use.

Under Art. 16 of the Constitution, SC Judgment in *Randhir Singh vs. Union of India* (AIR 1982 SC 879).

SC over-turned its 1963 verdict on carry-forward system in the case of *Balaji vs. State of Mysore* (AIR 1963, SC 649). See, J.N, Pandey (1996), *Constitutional Law of India*, Central Law Agency, Allahabad, p. 116.

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