

A COMMENTARY ON AFFIRMATIVE ACTION POLICIES FOR WOMEN IN INDIA IN THE BACKDROP OF INTERNATIONAL COMMITMENTS

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Affirmative action is often used as a tool by policymakers to promote women empowerment and gender sensitivity. This paper examines the affirmative action policies for women in India and highlights their impact on uplifting their social and economic status. India is a signatory to various international conventions on women's rights. This paper aims to study India's affirmative action policies to see whether they match with its global commitments under various frameworks like United Nations etc. An analysis of the existing research studies has been done to understand the benefits accrued to women as a result of affirmative action in the areas of education, politics and fiscal budgeting. A holistic picture of this issue has been presented so that relevant conclusions can be drawn about the efficacy of this programme.

KEYWORDS: Affirmative Action, Women, Reservation, Women Empowerment, Gender Equality

INTRODUCTION

Affirmative action refers to those positive discrimination policies which aim to provide certain benefits in education, employment or other such areas to people of a group based on their religion, gender, nationality, etc. The core target of these policies is to remove the prevailing inequalities in society due to which the beneficiary groups face discrimination, persecution or perceived low social status. These policies may be implemented by governments, schools and colleges, private organizations or any other institution depending on the necessity. Although different countries may use different terms for them, for

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instance, “positive discrimination” in India or “preferential treatment” in South Africa (Sowell, 2004), the essence of these policies remain the same i.e. a policy to improve the conditions of specific groups which are disadvantaged due to the past discriminatory practices against them (Yasin, 2013). A comprehensive definition of affirmative action is provided by Black's Law Dictionary (2019), which defines it as:

An action or set of actions intended to eliminate existing and continuing discrimination, to redress lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination, all by taking into account individual membership in a minority group so as to achieve minority representation in a larger group.

Affirmative action policies and their utility remains one of the most debated topics in India. Not only for the women, but any policy which aims to positively benefit a discriminated or deprived group is put under rigorous scan because of two important reasons. Firstly, because these policies give a sort of advantage to one group over the other and hence, they are treated with a cautious approach by those who do not benefit from them. Secondly, because it is very difficult to analyse the impact of these policies and hence any honest effort to review their efficacy is a challenge. The opponents of affirmative action raise questions about the need of such policies and in absence of any detailed result-outcome analysis, it becomes difficult to assuage their concerns.

Deane (2009) points out that there are broadly three types of preferences in India namely reservations (in jobs and resources), targeted expenditure (e.g. scholarships, grants) and special protections (in form of distributive schemes to prevent exploitation). With respect to women, the fundamental law, which allows preferential treatment in their favour is clause 3 of Article 15 of the Indian Constitution (Basu, 2018). It prohibits any discrimination on grounds of religion, race, caste, sex or place of birth except as stated under clause 3 of this Article i.e. for women and children (Indian Kanoon, n.d.). These are further propagated by the Directive Principles of State Policy, which under Article 39, 42, 46 and 47 advise the government to make policies for the improving the conditions of women and providing them with equal livelihood opportunities (Basu, 2018). Guided by constitutional law, central and state governments form policies for women, which aim to increase gender equality and women empowerment in the country. There is merit in implementing these policies considering the skewed position of women in India in almost all key areas. Women form almost 48% of India's population of which 62.8% are in the age bracket of 15-59 years (GOI, 2011). However, when it comes to the issue of gender equality, they do not enjoy parity with men. According to the Human Development Reports (UNDP, 2019), India is ranked as 129th out of 189

countries in Gender Inequality Index (GII), which is a matter of grave concern. According to the same report, females held only 13% of the senior and middle management posts in total employment in the country. Their major work is informal and remains unpaid (UN, 2018). In terms of educational attainment, India ranks at 112th among 153 countries with 66% female literacy rate and 150th in Health and Survival sub-index for women (WEF, 2020). According to the official government reports, the average annual drop-out rate of females in secondary school education is 17% (GOI, 2018) and female Labour Force Participation Rate (LFPR) dropped to 23% (for age 15 years and above)(GOI, 2019, p. 53). .

From the above facts, many argue that India needs affirmative action policies for women in order to improve their quality of life, employment opportunities and accessibility to key resources. However, this proposition remains heavily contested and even the supporters agree that the affirmative action policies need to be made more effective in their implementation (Deane, 2009). This debate has generated a lot of empirical research to provide evidence-based arguments on this topic. In her paper, Ashwini Deshpande (2012) analyses some of this evidence and on the issue of quotas in higher education, she says that in all caste groups, women have lesser participation than men in availing the available benefits. Badge et al (2016) in their study conclude that affirmative action policy in India works largely as expected, however, the gaps in participation are magnified especially for women. There are also others who point out that affirmative action policies cause multiple issues such as reverse discrimination, brain drain and deepening of the biases against the disadvantaged (Sharma, 2000). In view of this discussion, it is pertinent to examine the issue in depth. This paper discusses the developments regarding women's rights at the international level and how India's own domestic policies reflect in their light. There is enough literature available to show that the India's affirmative action policies comply with the global benchmarks.

INTERNATIONAL COMMITMENTS AND INDIA'S DOMESTIC POLICIES

The biggest platform which promotes women rights internationally is United Nations (UN). As early as its inception in 1945, UN dealt with the matter of gender equality and women empowerment by establishing the Commission on the Status of Women (CSW) under United Nations Economic and Social Council (ECOSOC) resolution 11(II) of 21 June 1946 (UN, 2020). The commission is very active and performs multiple tasks ranging from making language more inclusive to setting of standards for gender equal policies and

legislation globally. Its efforts in the past culminated to promulgate the legally binding Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 (UN Women, 2020). It also played important role in the adoption of Beijing Declaration and Platform for Action (1995) and formation of UN Women in 2011. CSW is the principal body of UN to find gaps in implementation of the global conventions, the most recent one being the 2030 Agenda for Sustainable Development, which features many targets towards this end (UN Women, 2020).

India is a signatory to the above conventions since the 1946 resolution itself. As mentioned above, India's Constitution adopted the principle to uplift the status of women in the country. Many domestic laws have been enacted to achieve this goal. These can be divided into civil laws and criminal laws. The civil laws aim to create an environment where women can access the resources freely and are empowered to claim their rights. The civil laws can further be divided into personal laws and livelihood related laws. Examples of personal civil laws include The Hindu Marriage Act, 1955 (which prohibits polygamy), The Hindu Adoptions and Maintenance Act, 1956 (provides for maintenance to women by their husbands), The Hindu Succession Act, 1956 (gives property rights to girls) and The Muslim Women (Protection of Rights on Divorce) Act, 1986 (which gives many rights to Muslim women). Examples of livelihood related civil laws include The Factories Act, 1948 (makes it mandatory for factories to give proper facilities to women like creches, toilets, etc.), The Maternity Benefit Act, 1961 (provides for child rearing rights to women) and The Equal Remuneration Act, 1976 (equality in pay of men and women).

The criminal laws are stricter in their approach as they have the backing of prosecution resulting in fines, jail or both. India has struggled with many social evils against women like dowry, sati, female foeticide, discrimination, etc. and this has resulted in enacting of many targeted laws to prevent them. Notable among them include Vishaka guidelines (to prevent sexual harassment at workplace), The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (prohibits determination of gender before birth), The Indecent Representation of Women (Prohibition) Act, 1986 (protects the modesty of women), The Commission of Sati (Prevention) Act, 1987 (prohibits burning of widows), The Dowry Prohibition Act, 1961 (prohibit taking as well as giving of dowry) and The Protection of Women from Domestic Violence Act, 2005. Many activists believe that since wide gender disparities are a reality in India and so, there is a clear need for policy initiatives to empower women (Sharma S. , 2016). Although these laws may be not direct affirmative actions, they form part of a whole system, which works for the same goals directly or indirectly.

In the past few years, India's affirmative action policies for women have been shaped by international developments relating to the Sustainable Development Goals (SDGs). These global goals were adopted by all UN member states in 2015 after the end of Millennium Development Goals (MDGs), which had limited targets (UN, 2020). Unlike MDGs, the current 17 SDGs are more holistic in approach because its 169 targets are integrated with each other. This is because the philosophy behind them believes that complete development is not possible unless all-round efforts are made to improve all the parameters relating to human life. With regards to women, Goal 5 of SDGs is dedicated to promotion of gender equality. There are total 6 targets and 3 sub-targets under Goal 5, and they cover many issues such as end of all discrimination, elimination of violence against women, valuing their unpaid work, enhancing universal access to reproductive health and giving them equal rights to economic resources (UN, 2020). In addition to Goal 5, there are targets in other SDGs, which are closely interlinked to women and these are presented in Table 1 as under:

Table 1**Various SDG Goals related to Goal 5: Gender Equality.**

Goal	Linkage
Goal 1: No Poverty	seeks to ensure that all men and women have equal rights and access to economic resources and basic services
Goal 2: Zero Hunger	aims to double agricultural productivity, particularly of women farmers
Goal 3: Good Health and Well-being	aims to provide better facilities for maternal relief
Goal 4: Quality Education	seeks to ensure inclusive and equitable quality education
Goal 6: Clean Water and Sanitation	aiming to provide sanitation and hygiene to women and girls
Goal 7: Affordable and Clean Energy	ensure access to clean and affordable cooking fuel, consequently improving the health of women working in the domestic environment
Goal 8: Decent Work and Economic Growth	aims to provide productive and decent job opportunities, helping enhance the economic condition of women
Goal 10: Reduced Inequalities	aiming to empower and promote the social, economic and political inclusion of women
Goal 11: Sustainable Cities and Communities	aims to provide access to safe, affordable, accessible and sustainable transport systems for all, with special attention to the needs of women
Goal 12: Sustainable Consumption and Production	aims at sustainable domestic material consumption
Goal 13: Climate Action	focuses on climate change mitigation, adaptation, impact reduction and early warning
Goal 15: Life on Land	aims at conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems
Goal 16: Peace, Justice and Strong Institutions	to ensure peace and justice – elemental in eliminating violence against women

Source: SDG India Index, Baseline Report, Niti Aayog, Pg. 64 (2018)

Table 1 highlights the fact that affirmative action policies for women also need to be comprehensive so that they are effective. Since, India has committed itself to the above goals, it is necessary that there exist policies which complement the targets set under SDGs. Government of India recognizes this and there are three key areas where it envisages preferential treatment for women namely – education, politics and fiscal budgeting. In education, there does not exist any reservation for women unlike in the case of Schedule Castes (SCs), Other Backward Castes (OBCs) and Scheduled Tribes (STs), for whom India runs the largest affirmative action programmes in the world (Cassan, 2018). However, positive discrimination in favour of women is achieved through other methods like relaxing the eligibility criteria for women, providing special scholarships or by implementing special schemes only for women. For instance, in the National Eligibility Test (NET) conducted by University Grants Commission (UGC), there exists a special relaxation of 5 years for women to be eligible for Junior Research Fellowship (JRF) (UGC, 2019). Similarly, Union Government implements the National Scheme of Incentive to Girls for Secondary Education (NSIGSE) to promote enrolment of girls, Central board of Secondary Education (CBSE) implements Merit Scholarship Schemes for single girl child and Ministry of Human Resource Development (MHRD) implements the Central Sector Scheme of Scholarship for college and university students in which 50% are earmarked for girls (GOI, 2019).

In the area of politics, women have fared poorly in terms of their overall representation in decision-making posts. At the national level, the data of Election Commission of India (ECI) shows that 17th Lok Sabha (2019) saw the highest number of women getting elected, but even then this figure stood at just 14.39% (ECI, 2019). In recent past, women movements have actively demanded reservation in decision-making bodies. This is a change from the previous trend when the report by Committee for the Status of Women in India (CSWI, 1974-75) did not favour reservation of women in state assemblies and Parliament (Kasturi, 1998). As a result of the women movements, government introduced The Women's Reservation Bill in the year 1996. However, till date it not been converted into an Act. This bill envisages reserving one-third of all seats in Lok Sabha and Legislative Assemblies within each state for women (GOI, 2010). It seems fair considering women form about half of the country's population but do not achieve even half of this number as legislators. However, every time this bill has been tabled, it has lapsed. Present situation is that Rajya Sabha passed this bill in 2018 (titled as The Constitution 108th Amendment Bill, 2008) and since then it has remained pending with Lok Sabha (The Hindu, 2018). Thus, at the national and state level, women do not enjoy any affirmative action in politics yet.

Things are better at the local government level where one-third of the local body seats (i.e. in Panchayats) are reserved for women as per the provisions

contained in Article 243 D of the Constitution introduced by the 73rd Constitutional Amendment. In fact, some states like Andhra Pradesh, Bihar, Kerala and Maharashtra have increased this reservation to 50% for the post of members and sarpanches (GOI, 2011). The impact of this move will be discussed subsequently, but it is worth mentioning here that while majority people agree that participation of women in political process is indispensable for sustainable development, it is also widely acknowledged that reservation for women may not necessarily mean empowerment until women are encouraged socially and culturally to participate in the political process voluntarily (Das, 2007).

The third area where government endeavours to provide preferential treatment to women is fiscal budgeting. Incorporating a gender perspective in budget was first envisaged in the Seventh Five Year Plan (1987-90) but was fully developed in the Ninth Five Year Plan (1997-2002) as Women's Component Plan (WCP) (Das & Mishra, 2006). The WCP subsequently transformed into a full-fledged "gender budget" statement from 2005-06 onwards and has since then become a part of the annual budget where government lays out the resources earmarked for women and girls (Parvati, Jhamb, Shrivastava, & Rehman, 2012). Under gender budgeting approach, all ministries and departments at national and state level are directed to present information about the allocation of resources for women. These steps are a critical part of affirmative action as they provide women with resources and power to question the traditionally discriminatory values, without which they can never be adequately free (Drèze & Sen, 2002, p. 274).

From the study of the above three areas where India provides positive discrimination to women, we get a clear picture that its domestic policies are committed to achieve all the global targets for empowerment of women. These policies have taken shape under the international conventions relating to this issue since many decades. Of course, having laws and policies is just one face of the coin, the other being their assessment to find out whether they have any actual impact or not. This aspect is discussed in the next section.

IMPACT OF AFFIRMATIVE ACTIONS ON WOMEN IN INDIA

The impact of affirmative action for women has been widely debated around the world. The impact of these policies can be understood in by examining the three areas where they are presently applicable i.e. education, politics and fiscal budgets. In education, some evidence-based studies show that preferential treatment of fixing admission quotas for women increase their college attendance, thus increasing literacy rate (Bagde, Epple, & Taylor, 2016). This study also found that in absence of affirmative action program, the disadvantaged students would most probably get concentrated into colleges perceived as lesser-quality ones, which would in turn make them more

unattractive in the eyes of good faculty. Thus, affirmative action helped women to not only get admission in higher-quality institutions, but also had an added advantage by exposing them to better faculty and future life-opportunities. Many studies also show that in case of affirmative policies where both men and women can equally apply, it is mostly the males who get most of the benefits, since it is possible that "girls might be prevented from going to school in order to compensate for the opportunity cost of the boy's increased education" (Cassan, 2018, p. 19). Therefore, in such cases some additional steps need to be taken to complement these policies so that women may benefit equally from them.

The other method to study the impact of affirmative actions for women in the area of education is to analyse the performance of girl in this sector. As per the official report released by MHRD, there has been a remarkable increase in the Gross Enrolment Rate (GER) for girls up to secondary level and the main reasons for this are attributed to gender-specific schemes like Kasturba Gandhi Balika Vidyalaya (KGBV) (residential schools for girls) and financial assistance schemes (GOI, 2018, p. i). Table 2 shows a time-series depiction of this assertion which provides a more comprehensive analysis:

Table 2

Time-Series Data: Gross Enrolment Rate (GER) of Female Students.

Level/ Year	Primary (I-V) 6-10 Years	Upper primary (VI-VIII) 11-13 Years	Elementary (I-VIII) 6-13 Years	Secondary (IX-X) 14-15 years
1950-51	24.8	4.6	17.7	-
1960-61	41.4	11.3	30.9	-
1970-71	60.5	20.8	44.4	-
1980-81	64.1	28.6	52.1	-
1990-91	71.9	51.9	65.9	-
2000-01	85.9	49.9	72.4	-
2005-06	105.8	66.4	91	46.2
2006-07	108	69.6	93.5	47.4
2007-08	112.6	74.4	98	53.2
2008-09	114	76.6	99.6	55.5
2009-10	113.8	79	100.4	58.7
2010-11	116.3	82.9	103.3	60.9
2011-12	107.1	81.4	97.6	63.9
2012-13*	107.2	84.6	98.6	67
2013-14*	102.6	92.8	99.1	76.5
2014-15*	101.4	95.3	99.2	78.9
2015-16*	100.7	97.6	99.6	81

Source: Ministry of Human Resource Development, Government of India / National Institute of Educational, Planning & Administration, New Delhi [as cited in (Educational Statistics at A Glance, 2018)] * Figures are provisional

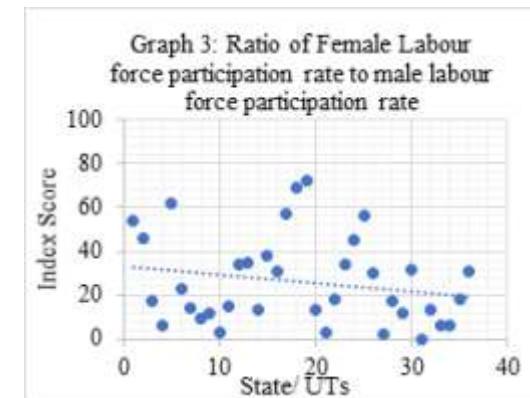
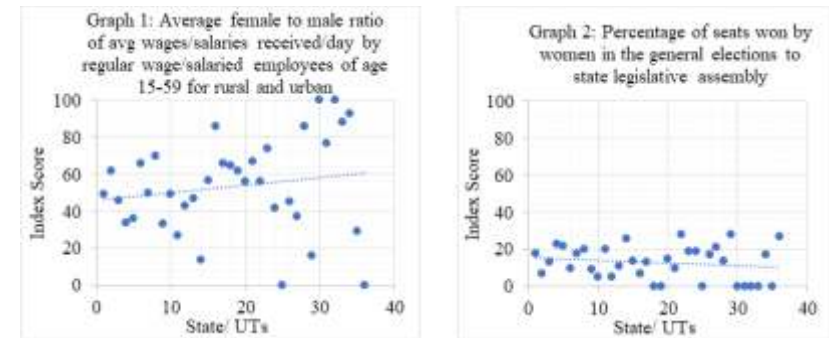
The second area which needs to be analysed to study the impact of affirmative action policies is politics. As discussed above, women in India get preferential treatment only at the local government level at present i.e. at Panchayat level and not at the state or national level. Reservation for women in politics are fiercely debated among various circles including those of women itself. Report of CSWI (1974), which was led by women parliamentarians, did not favour reservation for women in Parliament as they felt it would be a “retrograde step” and would go against the values of equality of all. Some others have expressed their apprehensions against the argument that women legislators are best suited to carry the agenda of women empowerment (Sharma, 2000). Giving one-third reservation to women at Panchayat level is often criticized for creating a culture of “rubber-stamp” female sarpanches, also known as “Mukhiyapatis” (literally translated to husband of the Head). However, it is also true that this provision has resulted in electing 1 million rural women to the decision-making posts for the first time in India's history (Narasimhan, 2002).

Chattopadhyay and Duflo (2004) in their study show that when elected, female leaders invest in creating infrastructure (like drinking water facility) which benefits women. They find that having a male or a female decision-maker affects the kind of policy decisions taken. Thus, enabling women to become decision-makers has a positive co-relation with achievement of gender goals of empowerment and equality, as women leaders are more likely to take decision to this effect. Another study shows that keeping seats reserved for females results in attitudinal changes in the village and it help to reduce the bias and gender stereotypes against women (Beaman, Chattopadhyay, Duflo, Pande, & Topalova, 2009). This study also finds that even though having women leader may not necessarily mean more effectiveness in the system, but it helps women to get exposed to local politics, changing traditional gender roles and an improvement in performance of the women leader if she gets elected for the second time. Therefore, all these studies show that affirmative action for women have many positive results in uplifting the status of women in India and hence, dismissing them as being retrograde or inconsequential is not correct.

The third aspect which requires analysis is the concept of gender budgeting and its utility as a tool for affirmative action for women. Social changes manifest very slowly and so, it is not realistic to expect dramatic results immediately. Even then, there are studies which show that allocating financial resources for women and increasing expenditure for women-specific schemes results in better performance of gender equality indicators. Chakraborty and Singh (2017) in their comparative study of gender budgeting and non-gender budgeting countries find out that the former shows better impact in reducing gender disparities in health, education and labour force participation. One more study by Stotsky & Zaman (2016) show that even though all states

showed progress in gender equality parameter, states with gender budgeting showed better performance than those with none in equalizing enrolment of females in primary school. Thus, proper allocation of targeted financial resources can be used as an effective tool in affirmative action policies by states.

Despite the gains made in previous decades, fact remains that India still needs to make a lot of efforts to uplift the status of women. NITI Aayog recently published a report on the performance of States and Union Territories on indicators for SDG Goal 5: Gender Equality (NITI Aayog, 2018). The All-India SDG5 index score was a poor 36 out of the target of 100.



Based on this report, graph 1, 2 and 3 show the performance of individual states and UTs on three specific parameters of SDG5. The trend line analysis of the above three graphs shows that most states and UTs in India are performing very poorly and do not cross even the halfway mark. This establishes the fact that India needs to implement much more concerted efforts to improve its performance for achieving SDG Goal 5 as per the international benchmarks.

CONCLUSIONS

Affirmative actions are most often proposed as temporary measures to help the disadvantaged groups such that once the inequality is removed, the need to continue affirmative action policy also disappears. However, it is a proven fact that once a benefit is given to any group, especially in a democracy, it is almost impossible to take it back. Evidence can be gathered from the history of reservations in jobs, which were meant to be temporary provisions to end caste discrimination but have adopted a permanency in their nature now. This holds true for affirmative actions for women also. Understanding this nuance is necessary to understand why some preferential policies for women get implemented and others not. Most people do not have strong disagreements with preferential policies for women in education or health and therefore, these are easily accepted and implemented. Even the Government finds it easy to launch women specific schemes and policies with special funds earmarked for them every year in Budget. However, when it comes to giving political reservations to women, the situation reverses. Since, one-third reservation in national and state legislatures directly cuts into the limited seats available to men, it results in a very strong push back, the manifestation of which is seen in the repeated lapse of The Women's Reservation Bill for more than two decades now.

Another concept which is now emphasized internationally is that of 'substantive equality'. CEDAW explains that it is not enough that women are treated equally with men, rather states must proactively try to achieve "equality of results". This means women must be equipped with resources and enabling environment so that they get an equal start. Mere equality with men will not produce equality of results because of the historic biases and discriminations against women. In this respect, states must have some affirmative action programs for women which give them a boost to reach the similar start line in the system as that exists for men. Since India has ratified these international conventions, it is duty-bound to adopt measures to this effect.

There is no doubt that gender inequality is a pressing issue in India considering numerous skewed statistics. What needs to be given more thought is which methods should the country adopt to address it. Giving reservations to women may not be feasible in all areas. Besides, there exist doubts about their efficacy and whether they create genuine decision-makers or dummy leaders as in the case of 'Mukhiyapatis'. Therefore, alternate methods need to be explored. The most effective tool among these is education. Educating a girl child empowers her to seek more opportunities for herself. In addition, an educated woman has a positive effect on her entire family. Thus, education not only benefits one single individual but also starts a chain reaction in the society. Another useful tool is mass information campaign and constructive use of social media. These have the power to spread the word very quickly across a

large audience. Using them to propagate the concept of gender equality, women empowerment and most importantly the benefits they can generate for everyone in a society are key to success of affirmative action programs.

In the context of India, sufficient evidence and literature exists to show that affirmative action programs have already cast a wide net. However, considering the scale of the problem, it is necessary that bureaucracy, which is the implementing agency for affirmative action is trained better and held accountable for its performance. A transparent and responsive system must exist which enables the women to break the glass-ceiling of gender barrier in India.

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