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The Promise of Equality: A Comparison of India's Reservation Policy with Affirmative Action of the United States

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ABSTRACT

Reservation has always been a contentious issue in the national political discourse for its inherent discriminatory, albeit positive, nature. It's a subject that leaves even the most apparently neutral person in taking a favourable position. Despite a forward-looking vision of our constitution makers to create an undivided and equitable society, the issue of merit and positive discrimination, in favour of those standing at a differential status, continue to be at loggerheads, thus keeping the issue alive ad nauseum. This paper attempts to assess the efficacy of the extant Indian system of reservation vis-a-vis the affirmative action policy of the United States.

Needless to say that the United States is chosen for comparison due to parallels that both the nations enjoy in their national policies qua affirmative action. In both countries, affirmative action is provided as compensation for past injustices. However, their approach towards the policy is different in as much as where the US has adopted an individualistic approach, India has preferred a class-based approach in their policy of affirmative action. Notably, with the introduction of Economic Backward class reservation, the Indian policy is tilting towards an individualistic approach. The article applauds the state's policy. An individualist approach, the paper contends, can help India's Constitution framers achieve their goal of creating a classless society.

Despite some similarities, there remains a significant gap in the administration and implementation of affirmative action in both democratic states. This paper seeks to understand the affirmative action policy in the US and India, makes an attempt to evaluate their systems, and proposes changes that are required on dire premises.

I. INTRODUCTION

Justice is the end of any civilised legal system and is understood² in two senses - wider and narrower. In a wider sense, justice is synonymous with morality, and the same is given natural

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² Rohinton Mehta, 50 Lecture on Jurisprudence, (Snow White Publication 2000).

law interpretation by Aquinas and Augustine, who claim³ that “an *unjust law is no law*”. While in a narrower sense, it means impartiality or equality. It entails the fair and equal treatment of all. It was supported by Aristotle, who maintained⁴ that “*like should be treated as alike*”. Equality, as a term, implies being equitable. Equality is characterized as the condition of being equitable, particularly in status, rights, and so on. Salmond defines⁵ justice as “*giving every man his due*”. The idea of equality does not, subsequently, expect that things or individuals are precisely the equivalent or clones of one another. It⁶ has been rightly viewed that men aren't always made equal. True equality among citizens, however, is impossible to achieve because we all have natural inequalities. We recognize that one person may have superior beauty or power, as well as greater inherent literary or athletic ability. As a result, some degree of discrimination among people is reasonable and even necessary in a just society. Sen⁷ also famously argues that “*Equal consideration for all may demand unequal treatment in favour of the disadvantaged*”.

The word "affirmative action" refers⁸ to a series of policies adopted by a country's sovereign, specifically on the basis of race, caste, and gender, with the goal of fostering equal opportunities in jobs, education, public works, and health-related matters. Affirmative action seeks to achieve full diversity, i.e., adequate representation from all socioeconomic backgrounds. It is impossible to resist giving special treatment to specific groups of people who are considered to be "very backward" in this way. The basic logic⁹ behind affirmative action is that first, there is a disparity in the number of individuals that are qualified and the amount of money that the government is willing to distribute. Second, affirmative action incentives are unequally distributed to those that fall into the qualifying categories. Many nations have chosen affirmative action to alleviate discrimination against traditionally disadvantaged backward classes. In the United States, affirmative action seeks¹⁰ to mitigate the impact of past forms of discrimination in society, particularly in the workplace, by allocating jobs and resources to members of certain groups, such as minorities and women. The Indian constitution contains a scheme of quota reservations.

³ *Ibid.*

⁴ Paridhi Gupta and Subhadeep Chowdhury, Equality: Sameness and Difference, IGNOU (2020).

⁵ Rohinton Mehta, *Supra note.1.*

⁶ Nicole Lillibridge, The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and the United States, vol.13, William and Mary Bill of Rights Journal, (2004-05).

⁷ S Sarath Mathilal de Silva, the concept of Equality: Its Scope, Developments and International Legal Regime, vol.16, Royal Asiatic Society of Sri Lanka (2016).

⁸ Thomas Sowell, Affirmative action around the world, Gale University Press (2004).

⁹ Frank de Zwart, The Logic of Affirmative Action: Caste, Class and Quotas in India, Vol. 43, Sage Publications Ltd (2000).

¹⁰ Anthony F. Libertella, Sebastian A. Sora and Samuel M. Natale, Affirmative Action Policy and Changing Views, Vol. 74, Springer (2007).

The caste and quota-based affirmative action program¹¹ in India is called the reservation system. When we look at the historical history of the caste system in India and ethnic inequality in the United States, we find several parallels.

This article will first examine the idea of affirmative action in India and the United States from a historical context and then look at existing laws and policies in this regard. Third, it will look at how such policies are implemented in both nations, then in the fourth part; it will attempt to comprehend India's recent shift from a group-based to an individualistic approach as a result of the establishment of a new policy, namely the Economic Backward Class reservation policy (hereafter referred as EBC reservation policy) and finally, it will conclude with author's opinion.

II. THE CONCEPT OF AFFIRMATIVE ACTION IN INDIA AND THE US, ALONG WITH ITS HISTORICAL BACKGROUND

- **Case of India**

In India, affirmative action is granted on a preferential basis based on caste. The Varna system underpins the 2500-year-old¹² caste system. In the Varna scheme, the entire population is divided into four occupationally specific classes that are mutually exclusive. Brahmins, Kshatriyas, Vaishyas, and Shudras are the four Varnas. All of the menial and residuary positions that were not taken up by the three Varnas fell to the Shudras. Shudras were therefore regarded as "untouchables," and their existence was regarded as polluting. As a result, they were separated from the majority of the population and regarded as an undesirable class¹³. The upper class, which included three Varnas, accounted for 18%¹⁴ of the population, while Shudra made up nearly half of the population. It is obvious that a division dependent on jobs is inextricably linked to the economic factor. The upper Varnas grew stronger over time, while the untouchables grew poorer and were increasingly targeted for persecution, brutality, and exclusion. As a result of this, there was a significant social divide between these groups of people as time passed. As a result, in India, affirmative action is aimed at the 'Jati,' who come under the Shudra Varna.

In legal terms, these castes are now known as scheduled castes, but most Indians refer to them

¹¹ Durga P Chhetri, *POLITICS OF SOCIAL INCLUSION AND AFFIRMATIVE ACTION: CASE OF INDIA*, Vol. 73, Indian Political Science Association (2012).

¹² Nicole Lillibridge, *supra* note.5.

¹³ Ashwini Deshpande, *Quest for Equality: Affirmative Action in India*, Vol. 44, Indian Journal of Industrial Relations (2008).

¹⁴ Ashwini Deshpande, *EQUITY & DEVELOPMENT*, World Development Report (2006).

as "Dalit," which means "oppressed." Despite the fact that untouchability is abolished by legal means. There has also been no social integration of Dalits into the mainstream. Even today, the growing number of atrocities and hostility to Dalits demonstrate that the situation is far from ideal. Due to their stigmatised status and as a way out of bigotry and separatism, the 'untouchables' were forced to convert to other religions, such as Christianity and Islam, as the caste system is historically synonymous with Hinduism. Many low castes have adopted Buddhism in the hope of achieving social equality. This class of people converted to Buddhism, formerly untouchable, is called a 'Neo-Buddhist'.

The affirmative action program in India is, however, concentrated on the Hindu lower castes, the SCs. In addition to this, there are more than 50 million people belonging to tribal communities called 'Adivasis' whose origins can be traced back before the Aryans. Such people, who speak different dialects and live on the outskirts of civilization, are excluded from mainstream society as well as from overall growth. As a result, the affirmative action policy is extended to them. Apart from these two categories, the OBCs (Other Backward Classes), who form the residual category and include anyone who is neither an SC nor an ST, are fundamental to the concept of affirmative action in India. The Mandal commission (Second National Commission on Backward Classes, first being the Kaka Kalelkar commission) classified 52¹⁵ percent of the population as belonging to the "Other Backward Classes," or "OBCs," and recommended a 27¹⁶ percent reservation in education and jobs.

As a result, the government expanded reservations towards OBCs, making caste-based reservation quotas available to SCs, STs, and OBCs. Persons with disabilities (PWD) and a quota for women are among the two additional horizontal-based reservations that have recently been introduced. Very recently, the Economic Backward Class (EBC) quota was introduced by the 103rd¹⁷ Constitutional Amendment of 2019.

- **Case of United States**

During the period of colonization in America, the idea of the Puritans¹⁸ was to establish religious freedom and form a Christian state. This religious freedom was based on the idea that there should be an establishment of a religious community. The transformation of this community-oriented view of the Puritans to one based on Individualism was a result of two

¹⁴ Mandal Commission: Reservation for Backward Class, (22nd May, 2021 7:30 PM) <https://www.yourarticlelibrary.com/essay/mandal-commission-reservation-for-backward-class/35168>.

¹⁶ *Ibid.*

¹⁷ One Hundred and Third Amendment Act 2019, Section 3, Acts of Parliament, 2019(India).

¹⁸ Nicole Lillibridge, *Supra* note.5.

prominent events one is the Great Awakening in the late 1730s and the other being the Enlightenment period (1685-1815) in Europe. Both of these changes shifted the puritans' community-centered view of a just society to an individual-centered one.

Even if the United States became an individual-centric society or became more conscious of individual rights, racial discrimination was still prevalent in US society. It is largely focused on skin colour and other readily identifiable phenotypical characteristics. As a result, it is self-evident that people with similar appearances or who belong to the same race will band together. Thus, color-based racial discrimination can be encountered in daily life in the United States, especially by those who are on the receiving end of racial discrimination. Historically, the US as a nation was discovered by white European settlers, dispossessing the Native Americans, who were then deprived of their land. The black slave labourers, which were cheaper than the slave labour elsewhere, were forcibly brought from Africa for economic development. Black slaves had no rights and no social standing. Ironically, this 'separate but equal' facility was upheld by the Supreme court in the case of *Plessy vs Ferguson*¹⁹. The condition of blacks after the ban on slavery did not change much as there was a humungous gap already created between the races, for example, restrictions of the blacks to low-paid jobs, lack of education opportunities, and social and economic discrimination. It took the Supreme Court to overturn the government-sponsored segregation maintained in *Plessy vs Ferguson*²⁰ by striking down the separate but equal practice in *Brown vs Board of Education*²¹, giving rise to the first hint of affirmative action in the United States.

III. CURRENT POSITIONS OF LAWS IN INDIA AND THE US:

- **Case of India**

The reservation system is enshrined in the constitution of India, unlike affirmative action in the US. It is important to take note of the intent of the Constitutional Makers while providing for affirmative action within the Constitution. It was *KT Shah* who suggested²² during the formulation of Article 15 that an amendment should be made in it in order to extend advantages and safeguards to STs and SCs, the intention being that such groups have been neglected in the past and their right to claim equal citizenship did not exist owing to their backwardness. Other members like *B.R. Ambedkar* were not in favor²³ of this as he was of the opinion that such an

¹⁹ *Plessy v. Ferguson*, 163 U.S. 537.

²⁰ *Ibid.*

²¹ *Brown vs Board of education*, L.A. No. 30485. Supreme Court of California, (1954).

²² Constitutional Assembly Debate, https://www.constitutionofindia.net/constitution_assembly_debates (Last access 10 May, 2021).

²³ Constitutional Assembly Debate, *Supra note.21*.

amendment would segregate backward classes from the general public. Therefore, it was not included initially. In the prominent case of *State of Madras v. Champakam Dorairajan*²⁴, a challenge was posed on fixing of a particular number of seats for different communities, including Harijans, which was violative of Article 15(1)²⁵ and 29(2)²⁶ hence void under Article 13. The court also held it was inconsistent and rejected the appeal. In order to cure the ill effects of this judgment, the first Constitutional Amendment Act 1950²⁷ was passed, which inserted Article 15(4)²⁸ into the Constitution.

Talking in the context of Equality of status and of opportunity in public services, initially, the Constituent Assembly was not in favor of incorporating such a provision. It was²⁹ *B.R. Ambedkar* who, from the very start, was in favor of it, and ultimately it was added to the Constitution (but not as article 16(4)³⁰ as it exists today). Further discussions on this inclusion took place primarily due that the term “backward classes” was ambiguous in nature. This ambiguity was ultimately settled by *Mr. Munshi*, who clarified³¹ that the use of the term class is not restricted to only backward classes but also STs and SCs. He also laid down that the backward class is one that is socially, economically, and educationally backward.

After the first Constitutional Amendment, the first case related to affirmative action was *Balaji v. State of Mysore*,³² wherein the order of the Mysore Government reserving seats for backward classes in medical and engineering colleges was challenged. The Court in the case rejected the appeal and held that Article 15(4) is an exception to Articles 15(1) and (2)³³. Talking in the context of the quantum of reservation, a passing reference was made that the reservation of seats should not be more than 50% of the total seats. Various other judgments were passed, which were in consonance with the Balaji verdict.

Later, in the case of *Indira Sawhney v. Union of India*³⁴ (famously known as the Mandal Commission case) wherein the 27% quota for Other Backward Classes and 10% economic reservation of higher classes was challenged. The court upheld the reservation of seats for OBCs but rejected the 10% economic reservation. Also, it was held that Art 15(4) is not an exception

²⁴ AIR 1951 SC 226.

²⁵ INDIA CONST, art 15 §, cl 1.

²⁶ INDIA CONST, art 29 §, cl 1.

²⁷ First Constitutional Amendment Act, Acts of Parliament, 1951 (India).

²⁸ INDIA CONST, art 15 §, cl 4.

²⁹ Constitutional assembly debate, *Supra no.21*.

³⁰ INDIA CONST, art 16 §, cl 4.

³¹ Constitutional assembly debate, *Supra no.21*.

³² AIR 1963 SC 649.

³³ INDIA CONST, art 15 §, cl 2.

³⁴ AIR 1993 SC 477.

to Art 15(1) or (2); rather, it is an extension of it. On the point of quantum of reservation, 50% reservation of seats was upheld, but a relaxation to this can take place in exceptional circumstances. Further, in the case of reservation in promotion in public employment, the same was not allowed, but the previous promotions made on the basis of the reservation shall not be done away with, in fact giving it a prospective effect. The concept of the creamy layer was also introduced within OBCs, which became a criterion for excluding certain sections that were economically, socially, and educationally more empowered.

Consecutively in the case of *RE. Kerala Education Bill*³⁵, *T.M.A. Pai Foundation v. State of Karnataka*,³⁶ and *P.A. Inamdar v. State of Maharashtra*,³⁷ the court held that states could not ask the private educational Institutions which are not aided by the government to reserve seats for the backward classes of citizens. This created frustration among reserved category candidates and the legislature. Therefore, the 93rd *Constitutional Amendment Act, 2005*³⁸ was passed, which added clause (5)³⁹ to Article 15, according to which the states have the authority to ask such institutions (whether aided or unaided) to reserve seats for backward classes. This Constitutional Amendment and 27% reservation for OBCs was challenged in the case of *Ashok Thakur v. Union of India*⁴⁰ on the grounds that it was violative of the basic structure of the Constitution. The court upheld Art 15(5)⁴¹ as well as 27% reservation.

Now coming to the aspect of reservation in public services in which, there are many grey areas, such as reservation in promotion, consequential seniority, and the carry forward rule. After the 77th⁴², 81st,⁴³ and 85th⁴⁴ *Constitutional Amendments* were incorporated under Articles 16(4A)⁴⁵ and 16(4B)⁴⁶ of the Constitution, which settled all the turf in this field. In the landmark judgment of *M.Nagaraj & Others vs. Union of India and Others*,⁴⁷ the constitutional validity of the abovementioned amendments was questioned on the ground that they violate the basic structure of the Constitution. In this case, the court rejected the petition by stating that the carry forward rule under Art. 16(4B) does not violate the quantum of reservation that is prescribed to 50%. Moreover, both the provision Art. 16(4A) and (4B) have been carved out of Art. 16(4), which

³⁵ AIR 1958 SC 956.

³⁶ (2002) 8 SCC 481.

³⁷ AIR 2003 SC 355.

³⁸ Ninety Third Constitutional Amendment Act 2005, Acts of Parliament, 2005 (India).

³⁹ INDIA CONST, Art 15 §, cl 5.

⁴⁰ 2008 (6) SCC 1.

⁴¹ *Ibid.*

⁴² Seventy Seven Constitutional Amendment Act, 1995, Acts of Parliament, 1995 (India).

⁴³ Eight-First Constitutional Amendment Act, 2000, Acts of Parliament, 2000 (India).

⁴⁴ Eight-Fifth Constitutional Amendment Act, 2001, Acts of Parliament, 2001 (India).

⁴⁵ INDIA CONST, Art 16 §, cl 4A.

⁴⁶ INDIA CONST, Art 16 §, cl 4B.

⁴⁷ AIR 2007 SC 71.

enables the government to make provisions for reservation in public employment and appointment. The other important question which was considered in this case was the extent of backwardness. This extent of backwardness is to be determined on the basis of quantifiable data on the representation of backward classes in public employment. This extent has to be checked on the touchstone of Art. 335⁴⁸.

Recently, in 2018 this case was revisited by the apex court in *Jarnal Singh vs Lachhmi Narain Gupta*⁴⁹ that the requirement of obtaining quantifiable data for ST/SC in the judgment was quashed keeping in mind the fact that STs and SCs are historically suppressed communities, and therefore they are deemed backward which was subsequently backed by the Apex court in *B.K Pavitra vs the State of Karnataka*⁵⁰. A very recently interesting question regarding the possibility of sub-classification of Scheduled caste into “more backward” and “backward” for the purpose of providing reservation arises in the case of *The State of Punjab and Ors. Vs. Davinder Singh and Ors*⁵¹. The court observed that the sub-classification of SCs is a need of the hour to accomplish equality in its truest sense which appears in conflict with the earlier case of *E.V. Chinnaiah v. State of A.P. and Ors*,⁵² wherein the court viewed the contrary. The law of reservation in India has witnessed another change in *Dr.Jaishri Laxmanrao Patil v. The Chief Minister and Ors*⁵³ where the court, by a 3:2 majority, holds that only the President, after consulting the governors of the states, has the authority to name Socially and Educationally Backward Classes (SEBC) for constitutional purposes.

As of now, 22.5% of the quota is reserved for SC/ST and 27% for OBC groups in government jobs, seats in educational institutions, including the ones which have partial government funding, and also the electoral constituencies at various levels of government. Hence this quota-based reservation is clearly enshrined in article 15(4)⁵⁴ and Article 16(4)⁵⁵. The reservations for these classes are extended into three spectrums: Political arena, Education, and Employment.

1. Article 330⁵⁶ and Article 332⁵⁷ provide for the reservation of seats for SC and ST in the Lok Sabha and the Legislative Assembly of the State, respectively. Such a reservation is not applicable to the OBCs.

⁴⁸ INDIA CONST, Art 335.

⁴⁹ SCC 2018, SC 1641.

⁵⁰ (2019) 16 SCC 129.

⁵¹ MANU/SC/0620/2020.

⁵² MANU/SC/0960/2004.

⁵³ MANU/SC/0340/2021.

⁵⁴ INDIA CONST, art 15 §, cl 4.

⁵⁵ INDIA CONST, art 16 §, cl 4.

⁵⁶ INDIA CONST, art 330.

⁵⁷ INDIA CONST, art 332.

2. Article 15(4) explicitly allows the State to enforce any special provision for the betterment of socially and educationally backward classes, and for SCs & STs, Article 15(3)⁵⁸ empowers to make special provisions for women and children, thereby getting them under affirmative action in India.

3. Similarly, Article 16(4), Article 16(4-a), 16(4-b) and 335. These articles empower reservation in education for the backward classes and delegate the government authority to amend and make changes whenever required. Another important aspect of article 16(4) is that it provides for reservation for the backward class of citizens in appointments to posts of public employment, which in the opinion of the state, are not adequately represented under these services of the state. Exercising the authority given by the constitution to the parliament has resulted in the enactment of various laws such as the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989⁵⁹, the establishment of several constitutional intuitions like the National Commissions for backward class⁶⁰, the National Commission for women⁶¹, the National Commission for SCs⁶² & ST's⁶³.

4. Newly inserted article 15(6)⁶⁴ and 16(6)⁶⁵ enables the state to make special provision for the advancement of the Economic Weaker Section in so far related to their admission in educational institutions and for the appointment or posts in the public services upto a maximum of 10%.

- **Case of United States**

The 14th⁶⁶ amendment was only successful in abolishing slavery. It states that the state shall not deny to any individual in its jurisdiction the equal protection of the law. It is the equal protection of law clause which governs the equality approach in the USA but didn't develop the condition of blacks in America. After the landmark judgment of *Brown vs Board of education*⁶⁷, which paved the way for further development but discrimination persisted eventually, the Civil Rights Act of 1964⁶⁸ was enacted.

The Civil Rights Act 1964⁶⁹ explicitly brought the principle of affirmative action to the spheres

⁵⁸ INDIA CONST, art 15 §, cl 3.

⁵⁹ The Scheduled Castes and Tribes (Prevention of Atrocities) Act 1989, No.33, Acts of Parliament, 1989 (India).

⁶⁰ INDIA CONST, art 338B.

⁶¹ National Commission for Women Act 1990, section 3, no. 20, Acts of Parliament, 1990 (India).

⁶² INDIA CONST, art 338.

⁶³ INDIA CONST, art 338A.

⁶⁴ INDIA CONST, art 15 §, cl 6.

⁶⁵ INDIA CONST, art 16 §, cl 6.

⁶⁶ 14th Constitutional Amendment 1868, Acts of Parliament, 1868 (United States).

⁶⁷ *Brown vs Board of education*, *Supra note. 20*.

⁶⁸ Civil Rights Act 1964, Acts of Parliament, 1964 (United States).

⁶⁹ *Ibid*.

of American society. The Supreme Court backed this new affirmative action program which was not quota-based unlike in India. The Lyndon B. Johnson's administration signed⁷⁰ several executive orders with the primary objective of achieving equality in employment and education. Title VI and VII of the Civil Rights Act 1964⁷¹ enshrines affirmative action in its raw form. Finally, these titles abolish discrimination on the grounds of colour, race, religion, sex, and national origin, in federally assisted activities and in employment, respectively. One cannot forget the *Bakke vs University of California*,⁷² where affirmative action policy received criticism throughout the country. The Supreme Court came to the rescue with a 5-4 majority ruling in favor of the affirmative action policies. Later on in the USA, the test of strict scrutiny evolved which was required to be applied to the policy of affirmative action. This test is articulated in various case laws, for instance, *Fullilove v. Klutznick*⁷³. The court stated that strict scrutiny requires that affirmative action has been extended only for compelling interests, and it should be narrowly tailored to serve the compelling interests. In employment cases, the compelling interest can be to address past discrimination by the agency that is providing benefits. In Higher Educational Institutions, diversity is a major compelling interest and using race as a factor, diversity can be achieved. It is to be noted that this does not hold true in the case of Primary and Secondary Education.

The examples which shows how courts apply the test of strict scrutiny in Higher Education are *Gratz v. Bollinger*⁷⁴ and *Fisher v. University of Texas*⁷⁵. In the particular case of *Gratz v. Bollinger*, the Law School of University of Michigan refused admissions to students. These students challenged the race based admission policy, the compelling reason being diversity, being violative of their equal protection of right. The case made it to the US Supreme Court. It was held by the court that the compelling interest qualifies the test of strict scrutiny and the admission program was narrowly tailored to achieve the compelling interest. Hence, the affirmative action policy is not violative of the Equal Protection clause. In the latter case of *Fisher v. University of Texas*, Abigail Fisher, a white woman who was denied entry to the University of Texas, believes the school's two-part admissions scheme, which considers race, is unconstitutional. The university accepts approximately the top 10% of each in-state graduating high school class, a strategy known as the Top Ten Percent Plan, and then considers a variety of variables, including race, to fill the remaining spots. In a 4-3 decision led by Justice

⁷⁰ Affirmative Action, (10th May, 2021 5:30 PM) <https://www.britannica.com/topic/affirmative-action>.

⁷¹ Civil Rights Act 1964, *Supra note.68*.

⁷² *University of California v. Bakke*, 438 U.S. 265, (1978).

⁷³ U.S. 448, 1980.

⁷⁴ 539 U.S. 302 (2003).

⁷⁵ 579 U.S. --- (2016).

Anthony M. Kennedy, the Supreme Court found that the university's policies met the criteria of strict scrutiny, and that a school should be allowed fair leeway in the review process if it has considered other ways to achieve diversity.

IV. EVALUATION AND EXECUTION OF AFFIRMATIVE ACTION POLICIES IN INDIA AND THE USA

- **Case of India**

In India, the Ministry of Social Justice is in charge of enforcing the government's policies. A national regulatory agency for affirmative action initiatives does not exist in India. Although there is no remedy of civil action, for the denial of benefits, there is always remedy of writ jurisdiction under Article 32⁷⁶ and 226⁷⁷ of the constitution however the same is not effectual due to financial constraints, high pendency of cases and low literacy of litigants. Constitutional institutions such as the National Commission for Backward Class, the National Commission for Women, the National Commission for SC's & ST's have just remained mere spectators as there is no strong enforcement by them. The only arena in which the reservation quotas have been fulfilled is the electoral sphere. As a result, powerful Dalit political parties have emerged. This clearly demonstrates the ineffectiveness of affirmative action programmes in practice.

- **Case of United States**

In 1971, after several executive orders under Johnson's administration from 1963 to 1968 and the Richard Nixon's administration 1968 to 1974, the US Department of Labor has given government contractors instructions to follow "goals and timetables" for recruiting minorities and women. In the same year, the US Supreme Court ruled that an employer cannot impose a certain minimum certification until hiring an individual if such a requirement creates a "built-in headwind" for minorities⁷⁸. The main deal was the presence of enforcement mechanisms in the US program, for example equal employment opportunity commission⁷⁹ established under the Civil rights act, is a key enforcer of affirmative action policies framed under the act. The affirmative action policy in the United States increased the number of black students admitted to classes from 0.8 percent in 1951 to 6.7 percent in 1989. In the early 1970s, it was discovered that there was a 30% wage disparity between races, which was reduced by the Civil Rights Act. According to the EEO-1 results, women made up 29.9% of all officials and managers, compared

⁷⁶ INDIA CONST, art. 32.

⁷⁷ INDIA CONST, art.226.

⁷⁸ Thomas Weisskopf, *Affirmative action in the United States and India*, Routledge Tylor and Francis Group(2004)

⁷⁹ *Supra note.68*

to 10.2% for men in 1970⁸⁰

V. CONCLUSION

Therefore, it can be contended in the comparative analysis of India and the United States that past history plays a very important role in shaping the policies in a nation, and in this case the right equality. The USA sticks to an individualist approach to equality. Through proper scrutiny of the 14th Amendment, it is clear that the American Constitution is tilted towards securing individual freedoms rather than securing the right to equality. Also, in the case of *Plessy v Ferguson*,⁸¹ Justice Harlan described America as a state which is classless and color blind. On the other hand, the Indian constitution presupposes inequality in the caste hierarchy. India's constitution represents a group-based approach to equality however it would not be wrong to say that India is now tilting towards an individualist approach for reservation policy specifically after this 103rd Constitutional Amendment Act of 2019 which provides reservation in India not on the basis of quota system but on the basis of economic backwardness. It might be a significant step forward if India improves its infrastructure to ensure that economic reservation is implemented as efficiently as feasible. Everyone should be required to reveal their incomes and assets, and a genuine database should be built to keep track of each individual. Economic reservation can contribute to the creation of a "casteless society," which was the goal of the Indian Constitution's framers.

Furthermore, due to a lack of supervision, accountability, and sanctions, it has been observed in India that the implementation of programmes in government jobs and educational institutions has remained ineffective. Owing to the many loopholes in the quota restrictions, this is the case. Privatization on the other hand is playing its part in making the reservations redundant, which showcases a need for a reservation into the private institutes. The United States, on the other hand, is seen as being more successful than India in terms of policy execution, owing to citizens' voluntary efforts. These voluntary efforts bolstered the laws, resulting in more creativity. Unlike India, the United States has a higher level of awareness of rights and safer ways to pursue legal recourse. In the United States, affirmative action can be implemented against a private employer; however, this is not the case in India. Economic inequalities are shrinking as a result of better implementation⁸².

⁸⁰ Bineet Kedia, *AFFIRMATIVE ACTIONS*, Volume 2, *International Journal of Law and Legal Jurisprudence Studies* (2015).

⁸¹ *Supra note. 18*

⁸² Harry. J. Holzer, *The Economic Impact of Affirmative Action in the US*, 14, *Swedish Economic Policy Review*, 2007

The main reason for improper implementation of quota based reservation policy in India is the uncertainty in the caste system, the data relied upon for the reservation is based on the caste-based census carried out in 1931⁸³. A caste-based census is the most pressing need of the day in order to get a better picture of the situation. The reasons for not conducting a caste census, according to the author, may be political. The uncertainty surrounding castes, sub-castes, the size of the population, and a lack of public knowledge are all major impediments to successful execution. Another important reason for ineffective implementation may be politician's ignorance. In simple terms, people belonging to the SCs, STs, and OBCs make up the majority of voters in India, and extending reservation to them helps them win elections again and again. The author does not want to suggest that quota based reservation backed by constitutional provisions in India have been altogether failed, it has been effective specially⁸⁴ in emancipation of women, have given representation to the minorities and depressed groups in important places so that their voices could also be heard but it is equally true that it does require progressive changes on dire premises. The author agrees with Ashwini Deshpande who claims⁸⁵ that in India, affirmative action needs to be implemented more effectively. Quotas should be seen as the beginning, not the end, of Affirmative Action.

⁸³ Caste census 1931, https://censusindia.gov.in/Census_And_You/old_report/Census_1931n.aspx (Last Visited 10 May 2021).

⁸⁴ Durga P Chhetri, *supra note.10*

⁸⁵ Ashwini Deshpande, *Supra note.12*