



## Affirmative Action in South Africa: Key Debates and Discussions

Abhiruchi Ojha

(Research Scholar, Jawaharlal Nehru University, New Delhi, India)

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**ABSTRACT:** *Social inequalities were embedded in the apartheid system in South Africa. Social, political, and economic discrimination have shaped and continue to influence South African society even today. Hence, it is not surprising that priority has been given to social equity and redress of past disparities in order to build a more cohesive nation in policy discourses in post-apartheid South Africa. Some type of distributive justice is necessary for positive peace after negotiated settlement in societies like South Africa with a history of institutionalized discrimination. Of course, there is much debate around the redress strategies and the debates are polarized. A definitive conclusion can not be made on performance of the affirmative action policies adopted in South Africa after only a decade. It is a short time to analyze the effects of transformation exercises intended to redress effects of colonization and apartheid. South African constitution aims at providing level playing field to the people from margins to address the consequences of the injustices of apartheid. In such a context, this article has the limited objective of mapping the key debates and discussions regarding Affirmative Action in South Africa and grounding them in the historical context of the country. It argues that the intersection of class and race may be taken as a reference point for affirmative action in order to ensure a more justifiable distribution of the benefits of Affirmative Action in South Africa.*

**KEYWORDS:** *South Africa, Apartheid, Affirmative Action, Class, Race*

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### I. INTRODUCTION

Social inequalities were embedded in the apartheid system in South Africa. Social, political, and economic discrimination have shaped and continue to influence South African society even today. Hence, it is not surprising that priority has been given to social equity and redress of past disparities in order to build a more cohesive nation in policy discourses in post-apartheid South Africa. Apartheid left formidable challenges with respect to questions of economic development, social equity, and democratization. Therefore, the Bill of Rights holds in high priority the principle of non-racialism and non-sexism. The Bill of Rights prohibited unfair discrimination on the grounds of “race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth” (Bill of Rights, Constitution, Republic of South Africa, 1996). However, politics of equal recognition cannot negate continuing effects of the legacy of apartheid and continuing discrimination on racial grounds. Nor it can be assumed that just by the advent of democracy and prohibition of discrimination, exclusion and discrimination that has sustained inequalities for decades in all spheres of life in South Africa will be eradicated overnight (Badat, 2008). Badat (2008:11) argues that two kinds of injustice prevail in South Africa; one rooted in “...beliefs, prejudice, stereotypes, chauvinism, intolerance and fear of the 'other'- whether the 'other' are people of different 'races', social classes, sex, gender, sexual orientation, cultures, religions, languages, nationalities or live in specific geographical areas. Its effects are patterns of unjust social inclusion and exclusion and domain and subordination of particular social groups. The other is deeply woven into the society, which have ossified so as to be thought of as natural and pre-ordained, even though they are, of course, reproduced through human action and agency.”

It is an undeniable fact that small elites own most resources and power with deprivation for the majority in South Africa. These inequalities cannot be removed by simply invoking constitutional idealism (Sachs, 2006). Specific measures are necessary to promote social equity and redress inequalities. Affirmative Action is one such strategy adopted in South Africa to attain these constitutional goals. Affirmative Action should therefore be seen as an instrument to achieve equity to create transformation of wider structural inequalities. Any meaningful attempt to understand Affirmative Action policy and plan in pursuit of democratic and equitable South African future should be seen in the light of the complexity of historical conditions of South

Africa (Thaver, 2006). This article has the limited objective of mapping the key debates and discussions regarding Affirmative Action in South Africa and grounding them in the historical context of the country with a special focus on the intersection of race and class in South African society. It begins by discussing the impact of the legacy of the Apartheid system which is followed by a section that discusses the key theoretical debates on Affirmative Action. The subsequent section discusses Affirmative Action in the context of South Africa from varied perspectives which is followed by a brief conclusion.

## **II. THE APARTHEID LEGACY: BRIEF HISTORY**

*"A belief in the otherness and inferiority of blacks was prevalent already in Europe before Europeans first settled in South Africa."*(Glaser, 2001:7). South African apartheid regime took over power from colonizers in 1948. It becomes crucial to refer to apartheid in order to understand contemporary issues in South Africa, given the object of this study is affirmative action policies, it becomes all the more important. The social inequality that affirmative action aims at redressing is deeply embedded in and is a product of systemic exclusion under apartheid and colonialism (Badat, 2008). Under colonialism and later apartheid regime which was formally introduced in 1948, "separate development" of the country's four official ethnic groups (White, Black, Colored and Indian) were planned. Legislations thereafter forced blacks into homelands (Glaser, 2001). There were three ways in which the architects of apartheid designed South Africa; first, blacks were restricted in ten national homelands as citizens of their own Bantustans. Second, South Africa was compartmentalized into four racial groups of whites, blacks, coloured and Indians. Lastly, all these groups faced racial separations and they were restricted from entry into certain portions of the country. This creation of massive structures of exclusion ensured perpetuation of racial rule in South Africa. Laws were created to protect the white privilege, preventing any kind of interaction of blacks with white neighborhoods after normal working hours, compelling them to carry identification cards and leaving blacks exposed to search, seizure, and arrest. The creation of a series of homelands for was politically designed to keep the majority population out of the newly constructed imagination of White South Africa. These Bantustans were intended to be independent, there by denying blacks political rights within White South Africa. Thousands of blacks were given passes to live in peri-urban settlements. Blacks escaping from impoverished Bantustans proved to be a boon to white South African economy.

Apartheid left indelible scars on South Africa. In 1994 South Africa saw its first free and fair election (Shoup, 2008). The 1996 constitution of republic of South Africa provided base for Affirmative Action. Before examining the debates about Affirmative Action in South Africa, it might be helpful to discuss some key theoretical debates concerning Affirmative Action.

## **III. AFFIRMATIVE ACTION: KEY THEORITICAL DEBATES**

Sikhosana (1993, 3) defines Affirmative Action as *"an active process that attempts to reduce (or more optimistically eliminate) the effects of discrimination, namely disadvantage... by way of special measures, for certain groups or members of such groups (typically defined by race, ethnic identity, or sex) for the purpose of securing adequate advancement of such groups or their individual members in order to ensure enjoyment of human rights and fundamental freedoms."* Sachs (2006) defines Affirmative Action as focused governmental intervention that takes race into account to overcome the problems associated with it. Badat (2008) claims that it's important to make a distinction between use of race to exclude social groups and the use of race to redress the effects of exclusion. Race is used in Affirmative Action to enhance social equity.

According to classical definition provided by Crosby and Cordova (1996:34), Affirmative Action *"...occurs whenever people go out of their way (take positive action) to increase the likelihood of true equality for individuals of differing categories. Whenever an organization expends energy to make sure that women and men, people of colour and white people, or disabled and fully abled workers have the same chances as each other to be hired, retained, or promoted, then the organization has a policy of affirmative action in employment. By the same token, whenever an organization expends energy to make sure that females and males, people of colour and white people, or disabled and fully abled students have same chances as each other to be educated, then the organization has a policy of affirmative action in education."* The meaning of Affirmative Action goes much beyond just providing 'same chance' as it is concerned with equity as well as redress. It raises notions of equality as well as justice. Affirmative Action calls for a proactive intervention on part of organizations and institutions not only to make sure that no discrimination is taking place during selection of candidates but also give preference to suitable qualified candidates of disadvantaged groups. *Compensatory justice* is one of the principles that the supporters of Affirmative Action evoke for defending Affirmative Action which can be seen in the light of what Aristotle calls as rectificatory justice. Unlike positive discrimination involving justified differentiation, McHarg and Nicolson (2006) argue that compensatory justice holds the idea of society repaying the harm it has done. A far more popular justification of affirmative action is appeal to distributive justice rather than of corrective justice. It's argued that in order to treat people equally it is sometimes required to treat them

differently. Optow (1996) claims *Equality* principle and *Non-Discrimination* are invariably linked if we talk about Affirmative Action. There are three concepts of equality that offer potential frameworks for anti-discrimination policies. The first model is that of equality of treatment. It is an expression of formal equality. Based on individualistic notion it ignores the disadvantages of different groups. The second model is based on equality of opportunity. Equality of opportunity moves beyond equality of treatment. The third principle which is concerned with Affirmative Action is that of substantive equality. As discussed earlier, Affirmative Action involves substantial form of equality as it recognizes that injustices of the past have led to inequalities and these cannot be treated by treating all equally at all times. A substantive approach to equality does not presuppose a just social order. It therefore allows affirmative measures to achieve equality. Substantive equality requires equality of outcome (Burrow & Robinson, 2006:27-28). Therefore, it is argued that nondiscrimination cannot serve its purpose by simply depending on laws that prohibit discrimination. Affirmative Action based on social justice and the principle of equality can serve the purpose. Moreover, in deeply divided societies like South Africa proactive measures are needed.

However, Affirmative Action is challenged on several grounds. Critics argue that it is reverse discrimination. Affirmative Action cannot serve the purpose of justice because it is unfair to non-target groups and creates innocent victims, i.e., those who did not cause any harm pay and those who were not harmed reap benefits. Moreover, it is argued that Affirmative Action undermines the merit principle and leads to stigmatization of target groups. These oppositions are based on a micro view of justice and if seen from macro level many such criticisms fail to have strong grounding. Critics fail to see that Affirmative Action is an antidote to discrimination and not its cause. Without any such positive measures, discrimination and disadvantages will continue in society. Commitment to democracy and social justice calls for positive intervention by the state in order to overcome unjust practices. It should be remembered that Affirmative Action deals with discrimination of past, present, and future. Eradicating past discrimination calls for compensatory/corrective justice, removal of present hurdles in advance of disadvantaged groups calls for leveling the playing field which will benefit their future and the overall cohesion of a society.

#### **IV. AFFIRMATIVE ACTION IN SOUTH AFRICA: DEBATES AND DISCUSSIONS**

Hartzell points out that “groups that fear for their safety have the immediate concern of ensuring that control of economic resources does not provide some group with the means to exclude. This is likely to entail the use of public policies and/or administrative allocations that direct resources, public and perhaps even private, toward any economically disadvantaged groups. Settlements seeking to achieve this type of distribution of material resources and economic opportunities are likely to rely on the use of preferential policies” (Hartzell, 1999). South African case is a distinct one where majority seeks preferential policy after a negotiated settlement that led to the end of apartheid. Affirmative Action has been surrounded with controversies since its inception in South Africa. Contestation is focused on the fairness of the policy and the notion of justice embedded in it. Understanding the debate becomes all the more important because most proponents and opponents of the policy in South Africa agree on certain common social values such as eradicating discrimination and equality of opportunity. At one level debates occur around Affirmative Action on policy level, which is theoretical in nature, i.e., how can equality be achieved, through equal opportunity or through Affirmative Action. On another level, debates are centered on Affirmative Action as a plan/programme and these are related to implementation of Affirmative Action. Those who criticize Affirmative Action from this perspective argue that it is possible that a principle that is good in principle may be poor in practice.

In case of the merit question, different views do exist, telling different stories and raising different concerns. Kanya Adam stresses on three points: “*First, the problem of treating citizens unequally due to their irrelevant skin color*” (an argument similar to that of reverse discrimination) “*and promoting under qualified at the expense of better qualified*” (meritocracy argument). She further explains the problem of class which occurs due to creation of a small group of elite from the marginalized who benefit from positive discrimination (creamy layer argument). She investigates details of the “anticipatory compliance” to potential legislation and policies of competitors. After putting forth the competing discourses on affirmative action, she assesses the racialized competition and suggests a policy that is non-racial and based on class. She argues that affirmative action being corrective measures for a limited period of time and not as a goal in itself. The goal of the policies could be ‘equitable representation’; therefore, equality with justice will be achieved. She raises the problem of justifying affirmative action with emphasis on group rights that is based race. (Adam, 1997). However, debate on individual and group rights is a long drawn one especially in the South African context. For instance, taking into account the legacy of Apartheid which discriminated Blacks as a group, one can also argue redress is needed on racial/group lines.

Another perspective can be found in the problems raised by Mabokela concerning faculty diversification programme in South African Universities and redress in Higher Education admission in South Africa which faces a continuing challenge to ‘include’ and ‘diversify’. The opposition to affirmative action has

stemmed from the misconception that such a programme will privilege Blacks over Whites and that it lowers the standards. This leads to feeling of alienation among those few blacks who manage to reach university campuses. A need is felt to examine the institutional culture of historically white universities. Most of the universities remain predominantly white. As Badat puts it, most universities do not have admission policies, without a policy it is obvious that public scrutiny is not possible. Students from the upper class are concentrated in historically White Universities. Despite initiatives to reshape the apartheid landscape, historical pattern of advantages and disadvantages continue to condition the universities, therefore, affecting outcome as well. There are other scales like drop out ratio and graduation rates quoted by Badat to strengthen his argument that positive change in outcome needs to be facilitated. This shows the need for affirmative action along racial lines.

There is an obvious coincidence between class and race in South Africa. This gives answer to questions and concerns raised by Kanya Adam, reproduction of South Africa's class based and racialized structures can be stopped through progressive measures there after forging of greater social cohesion is possible (Mabokela, 2000) (Badat, 2008). An attempt is also made to differentiate between past experiences of discrimination of apartheid among Blacks, Indians and Colored, and to find how these differential levels of oppression to be accounted for. Of course, there is much debate on various aspects of the strategies and the debates are polarized. It is a short time to analyze the effects any transformation exercise intended to redress effects of colonization and apartheid. If it was assumed that advent of liberal democracy will iron out all the social creases and market will level the playing field, then historical disadvantages will in reproduced in new forms in contemporary times. The constitutional priority is to create an equal playing field and address in a proactive way the consequences of the injustices of apartheid. For this to happen, intersection of class and race needs to be taken as an important point of convergence of marginality. The policy in its present form may be disproportionately benefiting black elites. So far, the ruling African National Congress (ANC) does not seem inclined to include class as an element in its affirmative action policies. While affirmative action based on race has sound ethical justifications as noted earlier, one cannot also discount the role of Class and therefore affirmative action may work better if class is also factored alongside race in principles of affirmative action. Prevailing social stigma concerning affirmative action also needs to change and for the positive awareness creating programmes need to be run by governmental intervention to make the case for affirmative action.

## V. CONCLUSION

Debates on Affirmative Action in South Africa bring forth very important questions. Some of which were discussed in this article. Also, the fate of any policy depends on how it is being implemented. The debates surrounding implementation have not been discussed in detail in this article. While it is undeniable that Affirmative Action is justified and needed for South African society, it's success and legitimacy might depend on how it is implemented in a manner that also addresses the class factor in South African society. So far, credible mechanisms have not been devised in South Africa to deal with the intersection of class and race in South African society in the context of Affirmative Action which might be the need of the hour.

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