CHAPTER 1

INTRODUCTION

Affirmative action refers to certain social policies set by the government of a country. These policies are largely meant to promote employment, and are aimed at the marginalised groups of people in a society. In India, most marginalised or discriminated groups usually consist of women, or sections of the population that are termed as 'educationally and socially backward'. The purpose behind these policies is firstly, to counteract negative effects that have been left behind on minorities and discriminated groups following years of oppression, and to encourage public institutions to represent this deprived section of our population more fairly.

These activities are usually carried out through targeted recruitment programmes, through preferential treatment given to applicants from socio-politically disadvantaged groups – and in certain cases – through the use of quotas. The argument from those who oppose or question these existing policies of affirmative action is that the method is based on collectivism, and that it eventually leads to merely another form of discrimination. Their argument is that the quota system is not based on merit, and that it results in qualified applicants being denied certain benefits, because they belong to a particular social group (Kumar, 1992: 290-91). In effect, the argument is that the action is being left to the individual applicant rather than to an organisation, which needs to take the responsibility to ensure equal rights to all individuals. This process demands a broad preferential hiring system is one of the main grievances against the reservation system (Lovell, 1974: 235-237).

Contemporary management theory today widely discusses issues such as the setting of operational goals, and of developing methods to measure the progress toward these goals. However, administrators tend to observe these ideas only in theory and they are seldom applied to situations practically. This happens particularly when there is a strong conflict between co-workers in objectives and values. Yet, goal setting, action
programmes, and evaluation are all important procedures in affirmative action. There is more to affirmative action than simply demanding that there should be no prejudice, or that there should be equal opportunities for every one. Operational affirmative action requires leaders to take action and a stand, re-order priorities, and allocate time and energy.

Doing this can be difficult, even the administrator is basically not prejudiced. Many see affirmative action as a diversion from other goals in an organisation that are considered more important or more “real”. There is a need for these questions to be addressed, and public managers need to broaden their perspectives and redefine the standards of performance if the values need to be upgraded. It is important that viewpoints should be shared between people if a working consensus has to be established. The process of communication should reach and actively involve as many people as possible (Glazer, 1975: 58).

1.1 Policy of Affirmative Action: International Experiences

There is a slight difference between the affirmative action policies in India and those at an international level. The presence of reservation laws, in the form of affirmative action, provides an opportunity for the ones in need to move ahead, and exist within mainstream society – and avail of personal development at a societal, political as well as economic level. Below is the example of the United States, as well as other countries – in comparison to each other, where affirmative action is being implemented for the marginalised sections of the society.

1.2 Affirmative Action in the United States

In the United States, ‘affirmative action’ is a term used frequently but often denotes different meanings. For some, the concept of affirmative action creates (or refers to) ‘positive discrimination’. The use of this term suggests that there is one kind of distinction between people that is justified or legitimate, and hence not really arbitrary, while there is another that is unjustified or illegitimate, and hence arbitrary. It is
important to note that the term ‘positive discrimination’ could be meaningless, because the general usage of the word ‘discrimination’ means something ‘arbitrary’, ‘unjust’ or refers to an ‘illegitimate’ form of distinction, and that this sort of term is contradictory in itself. On the contrary, a better usage could be ‘positive action’, which is equivalent to the term affirmative action. The term ‘positive action’ is often used in United Kingdom, and in many countries such action is referred to under ‘preferential policies’, ‘reservations’, ‘compensatory or distributive justice’, or ‘preferential treatment’ (Wilson, 1997: 147).

Affirmative action programmes have usually been for the benefit of African Americans, Hispanic Americans, Native Americans, and for women. Affirmative action in America originated as a response to the civil rights movement – against discrimination of non-whites in general at educational institutes and for job opportunities, and against African Americans and women in particular (Riccuci and Rosenbloom, 1989: 23-47). The earliest use of the term ‘affirmative action’ appeared in an Executive Order 100925 in 1961. It declared any discrimination during employment processes (based on race, colour, religion, sex or national origin) as unlawful. Similarly, President Lyndon Johnson’s Executive Order 11246 in 1965 made it mandatory for federal government and federal contractors – with fifty or more employees and a contract of the value of US $50,000 or more – to ensure that minority groups comprising of Blacks, Native Americans, Latinos, Asian Americans and women got adequate representation in the workforce (Crosby, 2003: 95).

As a legal concept, ‘affirmative action’ may be a part of international law as well as a country’s national law. However, it is a concept without any generally accepted legal definition. But a serious discussion on affirmative action requires a working definition of what it actually means.

Marc Bossuyt’s definition of affirmative action explains the concept from the perspective of its immediate social goals. “Affirmative action is a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of
members of a target group in one or more aspects of their social life, in order to obtain effective equality.” (Bossuyt, Marc, 2002: 3).

Policies of affirmative action can be carried out by different actors belonging to the public sector, such as the Federal, State and Local governments – or by those belonging to the private sector, such as certain specific employers or educational institutions. It is important to note that it is always directed at a certain target group that comprises of individuals with a common characteristic – something on which their membership is based – and who find themselves in a disadvantaged position (Wilson, 1997: 148). This common characteristic – such as gender, colour of skin, nationality or membership of an ethnic, religious or linguistic minority – might be innate and inalienable, but affirmative action is not necessarily restricted to minorities who share a common biologic or natural characteristic alone. Its programme is concerned with minorities who share both innate, as well as cultural characteristics: women, blacks, immigrants, the financially impoverished, disabled people, veterans, indigenous peoples, racial groups, as well as various other specific minority groups.

The controversial question is: what are the parameters used to arrive at a decision on which groups are sufficiently disadvantaged to deserve these benefits. Although some international instruments (such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women) are particularly relevant, it is often a country’s national legislation that identifies who may benefit from the provisions of affirmative action and who doesn’t.

The aim of the affirmative action policy, set by the national legislation, is to benefit a certain specific disadvantaged group, though the policies do extend to other groups as well. But membership in certain groups defined by race, ethnic background or gender – can often be used as an advantage to avail of the benefits. The only way to test its genuineness is to find out to what extent race, ethnic background, or gender played a role as a cause of social oppression – it is only on this basis that compensation for past discrimination can be decided upon, and combated.
It is often possible that affirmative action benefits even those who were themselves never experienced disadvantages or discrimination in the past (Moens, 1985: 81-82). This has been discussed widely in the United States in particular (Newton, 1973: 311-12). While affirmative action in America was originally aimed at African Americans, these efforts were, over time, also directed to redress the inequality of other deprived groups, most of who were immigrants (Hamilton, 1992: 10-18). The question arose about whether these other immigrants, who came voluntarily to the United States, deserved the same protection as African Americans did – because the latter had arrived there mainly as a cause of being forced into slavery (Glazer, 1978: 198-200). In essence, the protected groups in the United States comprise of a range of individuals who have differing reasons to claim justice: they are descendants of either free immigrants, of conquered people, and of slaves.

The next issue is about the two class debate, which raises questions about who should truly benefit from preferential policies. Often, it is the most fortunate of the disadvantaged group who become beneficiaries, or who get the most out of affirmative action measures. For instance, affirmative action aimed at women may often benefit the women who are already relatively privileged: like, for instance, the white middle-class women, rather than the lower-class women of another ethnicity. When affirmative action benefits a broad category, such as the Hispanics or the Asian Americans, some ethnic groups within those categories tend to obtain more advantage than others do, because they are already high ranking in their economic, educational, and occupational status. In other words, beneficiaries of affirmative action programmes tend to be the wealthier or the lesser-deprived members of society.

This two-class theory may result in the creation of yet another ‘disadvantaged’ minority, within the minority. That affirmative preference programmes create new disadvantaged groups is something many might agree on, and indeed, it is perhaps the majority that misses out on the desired social good as a consequence of an affirmative preference programme. Those who suffer the flipsides of affirmative preference programmes are usually from the bottom of the white or male population, whereas the minority members who benefit from such programmes are likely to come from the top.
of the minority or female distribution (Moens, 1985: 82-83). Thus affirmative preference often is considered to be guilty of shifting the social burden merely from one group to another.

It is complex to establish which group an individual belongs to. For example, there is the question of how 'black' one needs to be to qualify as someone belonging to the 'black group'. Then there is the question of who might qualify as a first, second, third, or fourth generation-immigrant, and what community children born from mixed marriages should be attributed. Above all this, there are cases of individuals or entire groups who misuse the benefits of affirmative action, and claim a certain status, in order to avail of its benefits.

Some have been in favour of creating of a new law to identify a person’s personal, ethnic or racial status while others have felt that the group’s own self perception or the perception of the wider community in general, should be the channel for identifying and deciding this. But it’s not as simple as simply defining the identity for once; this perception of identity (of the group or of the wider community) would also, naturally, change with time. In this context, the General Recommendation VIII of the Committee on the Elimination of Racial Discrimination concerning the interpretation and application of article 1, paragraphs 1 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination – is particularly interesting. After considering the information in the state’s reports concerning the ways in which individuals are identified as being members of a particular racial or ethnic group, the committee stated that such identification should, if no justification existed to the contrary, be based upon self-identification by the individual concerned.

It is clear that selecting and defining a target group for affirmative action presents a major problem. This may bring us to the idea that affirmative action should not be based solely on group membership. There needs to be other factors taken into account, such as socio-economic conditions. A more individualised approach is needed in affirmative action. This can be done through measures such as awarding opportunities to an
individual on the basis of individual needs, rather than only on the basis of group memberships (Philip, 1993: 352-353).

There can be many distinctions that need to be made. The crucial issue here is, however, to differentiate between the general principle of affirmative action and the specific actions that courts and administrative agencies look into. The general principle behind affirmative action is that it is not sufficient for a court to “cease and desist” from harmful activities in order to undo the harm already done, or prevent additional harm being done. This general principle of affirmative action goes back much further than the civil rights legislation of the 1960s, and extends well beyond questions involving ethnic minorities or women. In 1935, the Wagner Act prescribed “affirmative action” as well as “cease-and-desist” remedies against employers whose anti-union activities had violated the law. Thus, in the landmark Jones & Laughlin Steel case which established the constitutionality of the act, the National Labour Relations Board ordered the company not only to stop discriminating against employees who were union members, but also to post notices to that effect in conspicuous places and to reinstate unlawfully discharged workers with back pay. Had the company merely been ordered to cease and desist from economic (and physical) retaliation against union members, the future effect of its past intimidation would have continued to inhibit the free-choice elections guaranteed by the National Labour Relations Act 1935 (Hogler, 2004: 143-144).

Racial discrimination is another obvious area where to “cease and desist” is not enough. If a firm has engaged in racial discrimination for years and has an all-white work force because of that, simply stopping explicit discrimination will mean little. Clearly, the area of racial discrimination is one in which positive or affirmative steps are necessary. This is not to say that the particular policies may actually be true.

Many different policies have been placed under the general label of affirmative action, and many different institutions – from courts, executive agencies, to even private organisations – have been involved in formulating or interpreting its meaning. The conflicting tendencies and pressures of these various institutions have shifted the meaning of affirmative action and produced inconsistent concepts as well. There is no
way to determine any ultimate meaning of affirmative action. All that can be done is to examine the particulars: the concepts, intentions, and actual effects.

In a society where people come from a wide variety of backgrounds and where some backgrounds have been severely limited because of past discrimination, the very definition of equality of opportunity has been elusive. For example, a seniority system in a company that may have previously refused to hire minority individuals implies discrimination in the present and future by default, because of that past discrimination. In 1969, the court of appeals struck down such a system on the grounds of its current discriminatory effect.

In another case in 1969, the Supreme Court implemented a mental test for voters in a community with a long history of providing segregated and inferior education for Afro-Americans. Again the rationale was that the test represented present discrimination, considering the community's past behaviour. This case touches the crucial question of what needs to be done when the effects of past discrimination are reflected in current individual capabilities. Is equal opportunity itself discriminatory under such circumstances? If so, is anything more than equality of treatment justifiable under the Fourteenth Amendment and corollary statutes and court rulings? As important as the question of whether a legal basis exists for any compensatory or preferential treatment is the question of who should bear the inevitable costs of giving some citizens more than equal treatment. A question may also be raised as to whether compensatory or preferential treatment really serves the interests of beneficiaries in the long run (Cahn, 2002: 5).

The legislative history of the Civil Rights Act of 1964 shows that many of these concerns and dilemmas had been brought up from the very beginning. Senator Hubert Humphrey (Democrat, Minnesota), in helping to steer this legislation through the Congress, pointed out that the act "does not require an employer to achieve racial balance in the work force -- or by giving any kind of preferential treatment to any individual or group." He said that the "intention to discriminate" should be present before it can be considered that an employer is in violation of the law, and that the
"express requirement of intent" was meant to prevent "inadvertent or accidental" conditions from leading to "court orders." Senator Joseph Clark (Democrat, Pennsylvania), another supporter, made it clear that the burden of proof was to be on the Equal Employment Opportunity Commission (EEOC) to "prove by a preponderance" that a "discharge or other personnel action was because of race". Senator Clark added categorically: "Quotas are themselves discriminatory (US commission on Civil Rights, 1995)."

The Congress also faced the question about groups whose historic disadvantages left them in a difficult position. Senator John Tower (Republican, Texas) cited a case in Illinois as an example of what he opposed to – where a state agency had forced a company to abandon an ability test which was considered "unfair to 'culturally deprived' and disadvantaged groups." Senator Clifford Case (Republican, New Jersey) replied that "no member of the Senate disagrees" with Tower on this point, and Senator Humphrey affirmed that ability tests "are legal unless used for the purpose of discrimination." Despite the clear intent of both the supporters and opponents of the 1964 Civil Rights Act, the actual administration of the law has led precisely in the direction which its sponsors considered impossible. The burden of proof has been put on the employer whose work force does not reflect the racial or sex proportions deemed appropriate by the federal agencies administering the law (Delgado, 1996: 54).

The commission's position is that any discussion of equal employment opportunity programmes is meaningful only when it includes consideration of their results, or the lack of it, in terms of actual number of jobs for minorities and women. The numbers and percentages have repeatedly shown "discrimination" without giving reference to any individual cases, or qualifications. The notion of qualified applicants has been expanded to mean "qualified people to train" that is, people lacking the requirements of the job – who the employer would have to train at his or her own expense.

The EEOC is only one of many federal agencies administering the Civil Rights Act in general, or the affirmative action programmes in particular. There are overlapping jurisdictions within the Department of Labour, the Department of Health, Education and
Welfare, the Department of Justice, the EEOC, and the federal courts. There are also regional offices of all these agencies which vary significantly in their respective practices. When one of these federal agencies approves of a given course of action, it doesn’t protect the employer from being used by another federal agency or private individuals, by following such an approved course of action. Federal agencies have sued one another under these conflicting and overlapping jurisdictions that fall under the same act. In short, the meaning of the act is not clear even to those intimately involved in its administration.

The courts have not gone as far as administrative agencies have – who’ve often imposed numerical “goals and timetables” on employers. But numerical specifications have been invoked by courts only where there has been a demonstrable discrimination by the particular employer in question – not simply where there are ‘wrong’ racial proportions. In this specific context, numerical goals are a starting point in the process of shaping a remedy for past discriminatory hiring practices by the employer to whom the court order applies. In the landmark case of Griggs v. Duke Power Company, the Supreme Court included the company’s past record of racial discrimination as a reason why the company could not use tests that eliminated job applicants whose skin was blacker than those whose skin was white, and secondly, had demonstrated a relationship to actual job performance. In general, the courts have rejected the notion that any person had to be hired simply because he was formerly the subject of discrimination (U.S. Supreme Court, Griggs v. Duke Power Co., 401 U.S. 424 (1971), No. 124, argued December 14, 1970, decided March 8, 1971),(Rose, 2000: 158).

Legal remedies under the Civil Rights Act and related executive orders of the president range from cease-and-desist orders, individual reinstatement, group preferential hiring, and cutting off all federal contracts to the offending employers. The latter is a virtual sentence of death to any leading research university, whether public or private, for they are all dependent upon federal money to maintain their competitive standing, and will sustain a massive loss of top faculty without it.
1.3 Necessities for Affirmative Action in the United States

While race is primarily based on skin colour (and other phonotypical attributes such as quality and colour of hair, nasal index, type of lips etc), and thus, is more easily identified, it needs to be emphasized that race is a social construct, in that, the presumed phonotypical similarities that unite its members are more imaginary than real. There is enough evidence to suggest that there is greater variation in each of the phonotypical characteristics within a race itself rather than between different races. However, since there are gross disparities between people of different colours in societies that suffer from racism, like the United States, it is an extremely real phenomenon in the everyday life of those who are its receiving end (Rothenberg, 2006: 102).

The history of ethnic conflict in the United States goes back to its foundation as a nation, or by its ‘discovery’, by the white European settlers. Native Americans were subjected to violent dispossession as the settlers moved in and gained control over the land – a precious natural resource. The subsequent economic development was based on black slave labour forcibly brought from Africa. The sentiment “all men are created equal” is written in the Declaration of Independence, but not in the Constitution of the United States.

The first stirrings of formal equality came only with the Civil Rights Act of 1866 that extended citizenship rights to ‘all persons in the United States’, and made it a criminal offence to deprive any citizen of these rights ‘under the cover of any law’. Until the Civil Rights Act of 1964, the Fourteenth Amendment, which incorporates the Equal Protection and Due Process Clauses, was probably the most important milestone in the emancipation of Blacks. However, by the presidential election of 1876, these rights were lost as the ‘Black Codes’ evolved to please white factions and Jim Crow laws had been established in most of the South (Glazer, 1975: 49-51).

Under slavery, blacks had no rights whatsoever, but the system that replaced slavery was only marginally better and also had several features similar to the Indian caste system. For instance, segregation, denial of education, restricting Blacks to low-paid,
menial jobs, social and economic discrimination, negative stereotyping and violence: arson of Black properties, including churches, murder of Black individuals: the most organized expression of this was in the formation and activities of the White supremacist racist outfit, the Ku Klux Klan.

The roots of affirmative action can be traced back to the passage of the 1964 Civil Rights Act where the legislation redefined public and private behaviour. The act stated that discrimination within private interaction would be legal, but that business or public discrimination would be illegal. There were two reasons why this kind of a conflicting affirmative action had failed. Firstly, the nobility behind the cause of affirmative action was to help others. Secondly, affirmative action was a great starter for equality in the work place. The most prominent variable that decided whether affirmative action was right or wrong was whether society was going to treat people as groups or as individuals. Affirmative action is a question of morals. The simplistic formation of two morals that could be both correct, but in conflict with each other was one of the reasons for the division of the nation on affirmative action, according to Paul (Paul, 1985: 12).

The necessity of the affirmative action programme in the United States is rooted in this history. There are various reasons to justify the affirmative action programme of the United States. When introducing an affirmative action policy, states will try to justify it vis-à-vis public opinion. The grounds given as justification will mainly depend on the specific social context of the state in question. Some of the most common justification grounds will be discussed below, as well as the counter-arguments made against them (Pitt, 1986: 219-43).

The aim is to compensate for intentional or specific discrimination in the past that still has repercussions today. Certain disadvantaged groups have been subjected to discrimination for long periods, which has put their descendants in an underprivileged position because of, for instance, poor education and training. This justification was and is mainly used in the United States to support the public policies intended to “overcome the present effects of past racial discrimination” against African Americans. The United States’ affirmative action programmes originated in Executive Order 10925 of President
John F. Kennedy in 1961 and Executive Order 11426 signed by President Lyndon Johnson in 1965 (Cahn, 1995: xii) As such, the United States Commission on Civil Rights maintained: “Affirmative action encompasses any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future (Annals, 1992: 31).” The same rationale is, for instance, used by the Government of Australia in its affirmative action policy towards Australian Aboriginals.

The fact, that disparities continue to exist within educational, social, economic and other statuses, indicates that the granting of equality for all before the law can be established formally, but is insufficient to adequately address practices in society that lead to structural discrimination. In essence, the notion of structural discrimination encompasses all kinds of measures, procedures, actions or legal provisions that are at face value neutral from race, sex, ethnicity, etc., but which adversely affect disadvantaged groups disproportionately, without any objective justification.

Recently, American critical race theorists and other scholars set out another theoretical basis for affirmative action, namely the importance of having racial and ethnic diversity within the academy and workplace, in order to create a just society (Lawrence and Matsuda, 1997: 78). In fact, they maintain that a racially and ethnically diverse environment reflects the larger society and promotes a more representative and enriched sense of community. “Positive Diversity” seems to them a better approach to achieve compensatory justice for racial and ethnic minorities, and they therefore argue that diversity as a rationale for racial preferences needs to be separated from affirmative action.

Nevertheless, both practices result in indirect or covert discrimination. For example, where the first instance is concerned, the requirement of a minimum height disproportionately creates disadvantages for women and Asians, and may be an unjustifiable job requirement, when there is no objective need for it, in the same way as physical tests and writing tests. Such discrimination is not always detectable on the
surface. The traditional concept of the non-discrimination principle only takes a neutral stance i.e. that of *de facto* equality and redresses only expresses the direct discrimination.

The notion of diversity as a justification for racial preferences in the context of higher education first appeared in *DeFunis v. Odegaard* (416 U.S. 312, 1974). In his dissenting opinion, Justice Douglas wrote that it seemed apparent to him that the Supreme Court jurisprudence weighed against the use of racial preferences for remedial purposes, unless “cultural standards of a diverse rather than a homogenous society are taken into account”. This diversity rationale was later on applied in *Regents of the University v. Bakke* (483 U.S. 265, 1978). Justice Powell, writing for the majority, reasoned that race could be used as one of many factors when making admission decisions. The permissible goal was the university’s interest in a diverse student body. Academic freedom was felt to include the right to select students, such that different students could bring diverse backgrounds to the campus and that the educational experience could be enriched for everyone (Themstrom, 1999: 44-50).

Proponents of affirmative action often point to the various social goals the policy is likely to serve. A well-designed policy of affirmative action would increase the well-being of many people in different ways. It can result in better service to disadvantaged groups, in the sense that professionals from a disadvantaged group will have a better understanding and knowledge of problems affecting them. Furthermore, when members of disadvantaged groups occupy positions of power and influence, the interests of all disadvantaged groups will be better perceived and protected. Fair and visible representation of these disadvantaged groups in various fields, such as employment or education, would provide for better social and political effectiveness in these fields.

Another argument is that affirmative action can provide role models to disadvantaged communities, which can give them important incentive and motivation. Moreover, the greater participation of disadvantaged groups in different social environments will destroy vicious stereotyping and prejudices still having a tenacious hold in many
societies. However, many argue that this kind of affirmative action brings with it risks to quality. Giving preference to less-qualified persons, solely on the basis of group membership, risks reinforcing stereotyping, instead of achieving the opposite, because of, for example, reduced efficiency in industry and education caused by the lowering of qualification standards. It may actually perpetuate thinking along racial lines.

It may not be ignored, however, that affirmative action programmes, ranging from special programmes for disadvantaged areas and gender preference programmes of the European Union, to regional quota programmes of India and Nigeria, are being actively used, both to promote the interests of underprivileged members of society, as well as to balance internal inequalities of economic and political power, with the hope of pre-empting social unrest (Chibundhu, 1999: 31-32).

During the 1960s, the United States was confronted with various racial riots, which came as a complete surprise to many Americans, not only because the riots mostly took place in northern cities, but also because they happened after the Civil Rights Act and the Voting Rights Act came into effect, in 1964 and 1965 respectively. It had finally been forbidden to make any distinction on the basis of race in the United States, and the black community had been given the right to vote. This was still not sufficient for many militant black leaders.

Following the very bloody and violent riots in Watts in 1965, the situation was seen as sufficiently threatening by United States’ politicians for them to take action. Both President John Kennedy and President Lyndon Johnson understood that race relations in the United States had never been so critical. Besides the establishment of poverty programmes, such as President Johnson’s famous “War on poverty”, an attempt was made to reduce black unemployment through strong affirmative action programmes, such as controversial quotas. According to President Johnson, “You can put these people to work and you won’t have a revolution because they’ve been left out. If they’re working, they won’t be throwing bombs in your homes and plants. Keep them busy and they won’t have time to burn your cars” (Skrentny, 1996: 113).
Some economists argue that the elimination of discrimination against disadvantaged groups will serve the efficiency and justice of the socio-economic system. The working of the labour market can be optimized if the present imperfections caused by irrational prejudices are corrected (Samuelson, 1970: 780-94).

At the dawn of a new State, efforts are made to create a more egalitarian society and a common nationality to strengthen its sovereignty. Many examples of such efforts have been given by the states that gained independence after a long period of colonisation. These states found themselves divided in ethnic conflict or were aware of several groups that were lagging behind. It is clear that the main goal of affirmative action is to establish a more egalitarian society. However, there are many competing and conflicting ideals of equality. Equality itself is essentially an undetermined category that is often filled in by policy makers.

Two ideals of equality that are particularly relevant to affirmative action are equality of opportunity, and equality of results. The choice of an ideal will also determine which affirmative action programs are desired or favoured and which vision of social justice it is that society wants to implement.

Equality of opportunity is consistent with the view that the aim of the anti-discrimination law is to secure the reduction of discrimination by eliminating/cleansing the decision-making processes, and illegitimate considerations based on race, gender or ethnicity that have harmful consequences for individuals. It is not concerned with the result, except as an indicator of a flawed process. This approach is also markedly individualistic, concentrating on securing fairness for the individual. It comes from a liberal vision of society, reflecting respect for efficiency, merit and achievement (Ackerman, 1991: 76-79).

This view of equality is seen as “manageable” in that its aim can be stated with some degree of certainty. For example, in an employment context, it means that individuals are entitled to compete for jobs exclusively on the basis of characteristics needed for the satisfactory performance of those jobs. The proposition is that racial, sexual and ethnic
characteristics are irrelevant to the way people should be treated. Thus persons should be selected and recruited without regard to race, gender, ethnic background, etc. Equality of opportunity promotes freedom of choice and free competition between individuals. Therefore, it allows social mobility, up or down, in accordance with people’s individual talents and skills. The affirmative action measures that will be consistent with the ideal of equality of opportunity will, not surprisingly, involve measures aimed at skill-building and gender- and colour-blind decision-making.

Critics of equality of opportunity find that the aim should be to fix the outcomes of the decision-making processes. They argue that the basic aim is the improvement of the relative position of disadvantaged groups. This approach tends to be concerned with the relative position of groups or classes, rather than individuals. Equality cannot depend on individual performance.

Where equality of opportunity maintains that talents and skills are not distributed uniformly throughout the human race, equality of results states the paramount that skills and talents are distributed uniformly. Men, women, whites and ethnic minorities have on average the same talents and skills. Thus, implementing the ideal of equality of opportunity would be expected to result in equal outcomes, in the sense that men, women, whites and ethnic minorities would be represented in positions of influence and power in proportion to their total strength in society. Following that reasoning, this means that any large disparities in result must therefore necessarily be due to the existence of a system or structure of discrimination which is the result of certain practices (Schittenhelm, 1998: 152-157).

The ideal of equality of results is more controversial because of its methods, which are open-ended and unmanageable, such as the adoption of quotas. Quotas are often criticized for serving to be a disadvantage towards other vulnerable groups that have similar claims to equality, for contributing to hostility and resentment between social groups and for failing to take into account the fundamental element of individual choice. This results in the displacement or rejection of those who, under traditional criteria, would have been allocated a social good.
However, individuals often find themselves in a position where they need to make certain sacrifices to compensate for members of a target group. But reverse discrimination is absolutely avoidable, and as McCrudden points out, this approach is said to take insufficient account of the extent to which the burden of helping disadvantaged groups falls on third parties who may be “innocent” of past wrong-doing, who may have gained no benefit from discrimination against these groups in the past and who comprise some of the least advantaged sections of the community in terms of their economic circumstances (McCrudden, 1991: xvi-xviii).

It is interesting to note that most countries started out with an affirmative action programme consistent with the ideal of equality of opportunity. However, this ideal was gradually replaced by that of equality of results, under political pressure or different social motives (Moens, 1996: 53-74). Often, the two ideals are confused, and the legislation does not make it clear as to which ideal of equality it wants to see implemented.

Nevertheless, it is clear that the issue is not simply about whether one is for or against affirmative action for a particular group. The method by which the betterment of its position is attempted matters greatly in terms of whether such efforts have the support or the opposition of others. To conclude on this issue, affirmative action programmes do not substitute anti-poverty programmes. Nor do they substitute laws against discrimination, for they provide no benefits for groups such as Chinese or Jewish minorities that suffer discrimination in many countries but are, not, on average, disadvantaged (UNDSIP, 1997). Affirmative action programmes should be viewed as anti-poverty programmes; these are primarily intended to bring historically, educationally and socio-politically marginalised sections in the mainstream of the society.

1.4 Affirmative Action in Malaysia

In societies with ethnically diverse populations, the persistence of ethnicity, often associated with economic, political and social inequalities between ethnic groups,
continues to be of concern. In the case of Malaysia, affirmative action programmes are aimed at improving the economic position of Bumiputras who consists of Malays and other indigenous communities. Bumiputras are not conventionally minorities, as they not only constitute the numerical majority in society, but also enjoy political dominance, even though they are economically disadvantaged. On the other hand, the non-Bumiputras, i.e., Chinese, Indians, and others who form 45 per cent of the population, are economically better off but politically subordinate to the Bumiputras. The groups that receive the benefits of affirmative action policies are the ones who have the political power to legislate them. Here we find that the economically disadvantaged are politically powerful and vice versa. Given the ambiguity of who constitutes a minority, the concept is not officially employed in Malaysia. The situation seems a bit strange, as the indigenous community holds political power, while the local-immigrant and foreign communities enjoy economic power. This separation of economic and political power is a result of colonial policies and practices which were meant to keep the colonised population weak and divided (Lim Mah Hui, 1985: 250-1).

Under colonial rule, while the colonial power enjoyed political and economic dominance it also nurtured separate sets of political and economic elites among the local population. Often the local political elites were former members of the indigenous aristocracy, while the economic elites came from the immigrant communities; both were, however, subordinated to the colonial rulers. But with independence this unstable situation changed. The political elites, who are economically disadvantaged set in motion policies and programmes to redress this awkward imbalance, and in the process, bring about economic, political, and ethnic conflicts. The affirmation action programmes of Malaysia can only be understood in this context.

Malaysia's affirmative action programme is guaranteed under article 153 of the Federal Constitution which states that it is the responsibility of the paramount ruler to safeguard the special position of the Bumiputras as well as the legitimate interests of other communities. It specifically stipulates that the ruler shall reserve for the Bumiputras a reasonable proportion of positions in the public service and educational institutions, scholarship, and trading or business permits or licenses. Article 89 also empowers the
state governments to declare certain areas as Malay reservation land where only Malays are entitled to ownership. These rights are securely entrenched by the provision which states that they cannot be amended through the normal legislative process. Furthermore, the consent of the conference of rulers is required before any changes can be made. Consequently, this provision makes it more difficult to amend the special rights act, rather than the constitution itself. The post-colonial government meant to help Malays enter the modern sector and attain economic parity with non-Malays. Article 153 specifically refers to the need for Malays to make in-roads into the fields of public service, education, and business. In the initial stages, the government paid most attention to public service employment because it constituted the centre of power and was the easiest to achieve. The goal called for a recruitment ratio of four Malays to each non-Malay in the Malayan Civil Service; a 3:1 ratio in the Judiciary, External Affairs, and Custom Services; and no quotas were set for the professional and technical services. Various efforts have been made to improve educational opportunities for Malays: scholarships were given generously to Malay students; special institutions were established to provide vocational and professional training for Malays; admission standards for education were lowered (Lim Mah Hui, 1985: 252-3).

Compared to the public service and educational sectors over which it has greater control, the government attempts, to force the private sector to increase Bumiputra participation, faced more difficulties. Three major sets of strategies have been used towards this end: first, the government has legislated Malay quotas for the issuance of trading/business licenses and permits, ownership of equity, and employment; second, it provides special assistance such as credit, training, and business sites to Malay businessmen; third, it undertakes responsibility to acquire shares in private corporations on behalf of Bumiputras. (Abdullah, 1997: 189)

It is no exaggeration to say that the Malay Special Rights Programmes represented the most explosive issue in Malaysian politics. It caused resentment on the part of both Malays and non-Malays. On the one hand, Malays felt that not enough has been accomplished under this programme. On the other hand, non-Malays were resentful that they were being discriminated against for too long. They found it increasingly difficult
to obtain scholarship, admission into higher education institutions, and employment in public service. The inability of the various communities to arrive at a *modus vivendi* spawned mutual distrust and resentment which eventually erupted into an ugly racial confrontation in 1969. The direct result of the riots was the promulgation of the New Economic Policy which gives added vigour and clearer guidelines to improve the economic lot of the Malays. The main objectives were to eradicate the poverty and restructuring of the economy so that Bumiputras would have at least 30 per cent employment in, and ownership of, the economy by 1990 (Lim Mah Hui, 1985: 256-7).

Therefore, Malaysian affirmative action programmes legally constituted as Malay Special Right stands as one of those rare cases of success, if success is measured purely in terms of the extent to which it has brought about an improvement in the economic position of Bumiputras. Advances made by Bumiputras in the fields of education, employment, occupational mobility, ownership of small businesses, as well as large corporations, have been impressive and, in some cases, have even surpassed that of the non-Malays. This success can be attributed to the political hegemony which the Malays enjoy and are able to use to promote the Malay Special Rights Programmes.

### 1.5 Affirmative Action in South Africa

To understand a country’s present situation there is a need look at that country’s past, since much of what has happened in the past forms the basis for action taken in the present. South Africa was a country that was ruled under a political system called apartheid. Apartheid was based on the policy of the segregation of races through legislation. Racial discrimination was one of the defining features of apartheid in South Africa and had been entrenched in a range of statutory provisions for many decades.

When South Africa achieved democracy in 1994, the country’s black majority hoped that its new political strength would bring blacks a share in the riches of Africa’s wealthiest nation. Six years later, economic power remains firmly in the hands of whites. Though blacks make up over 75 per cent of the country’s population, they hold only 17 per cent of the skilled jobs in the country and just five per cent of the
management positions, according to the South African Labour Department. Blacks also account for about 90 per cent of South Africa’s unemployed workers (Thaver, 2006: 153-172).

In an effort to narrow the gap between black and white, the government passed a series of employment laws in 1998 mandating, among other things, affirmative action and job training in private companies. This is important as successive governments of South Africa used legislation to inhibit the economic advancement of blacks. The section 9 (2) of the Constitution of South Africa provides that in order to “promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken”. The affirmative action policies aim to achieve equality. The equality is one of the overarching goals laid down in the very first article of the constitution. Both from the text of section 9 (2) and its interpretation by the constitutional court, it is clear that affirmative action measures are not be viewed as contrary to, or as an exception to the idea of equality, but rather as a means towards achieving substantive equality embraced by the Constitution (Thaver, 2006: 172).

In order to give effect to section 9 (2) of the Constitution, the Employment Equity Act places an obligation on “designated employers” (primarily those who employ 50 or more employees) to implement “affirmative action measures in order to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and level in the work forces. “Designated groups” is defined as black people, women and people with disabilities. (Dupper, Ockert and Stellenbosch, 2005: 138-43).

As a social experiment it was arguably far more ambitious and daunting than those ever undertaken in the United States, because South Africa was a place where even small attempts to form a representative society met accusations of unfairness and tokenism. But it has so far managed to negotiate a fragile balance between past injustices and present realities, and many are hopeful (Gove, 2000: 38-39).
1.6 Affirmative Action in Sri Lanka

The country is a member of the commonwealth and the South Asian Association for Regional Cooperation. The majorities of its people are poor, live in rural areas and depend on agriculture for their livelihood. As the home of several ethnic groups, each with its own cultural heritage, Sri Lanka also has a highly varied cultural landscape. Sinhalese, who are 70 per cent of the total population of the nation, were under-represented in education and services despite the fact that statistically they were in majority. Many of the Sinhalese inhabited districts were also educationally backward. Muslim women were also discriminated in education, employment and politics. (Desilva, 1997: 124-286).

Tamils formed a majority group (Sinhalese-Buddhist) in Sri Lanka nevertheless, because of they historically enjoyed the benefits of education; they were always over-represented in the prestigious and lucrative white collar and professional employment against ethnic Sinhalese. The Sinhalese were lower in economic status as compared to other significant groups in the society. In 1971, the Standardization policy of Sri Lankan universities was introduced as an affirmative action programme for those students, who were from areas that had insufficient infrastructure for education and educational facilities. This impoverishment had been largely due to the 200 years of purposeful discrimination by British colonialists. The British had practiced communal favouritism towards Christians against the minority of Tamils for the entire 200 years they had controlled Sri Lanka, as part of a policy of divide and rule. This is one of the reasons why there was a Sri Lankan civil war (Sowell, 2004: 18).

1.7 Affirmative Action in Pakistan

After independence, and due to developmental programmes implemented in the field of industry, agriculture and education, the margin of inequality among districts expanded greatly. In one study, Karachi scored 26, 0147 on the scale of social development including education, health and water supply; Lahore scored 15.8617, Hyderabad 4.8612, Peshawar 13097 and Jhang 0.634845. So, a situation of gross inequality existed
between people living in various districts and provinces. They were, as a result, mobilised to demand compensatory policies (Wassem, 1997: 223-224).

At the other end, migrants from India were initially overrepresented in the public sector and were additionally provided a guaranteed quota in the services. This further aggravated the already skewed pattern of representation in the public services. The *mohajirs*, who were only three per cent of the population, had as many as 21 per cent of the jobs in the bureaucracy (Wassem, 1997: 109). While the province of Punjab and the *mohajir* community visibly dominated the civil bureaucracy, all other communities and provinces felt grossly marginalised. As the latter developed their respective nationalist movements, their meagre representation in the services emerged as a recurrent theme on their agenda and they demanded greater quotas.

As opposed to this, when the *mohajir* nationalist movement emerged in the 1980s, it reflected the rampant frustration over the adverse effects of the implementation of the quota system on the *mohajir* youth. During the 15 years after 1973, when the quota system came into full operation in Sindh, the *mohajir* representation in senior positions declined from 33.5 per cent to 18.3 per cent (Kennedy, 1993: 138-139). The emergence of the *mohajir* nationalist party Muttahida Qaumi Movement was at least partially a result of the quota system with its perceived negative impact on *mohajirs* in terms of admission at educational institutions; especially professional colleges and universities and representation in the higher bureaucracy (Wassem, 1997: 112).

The quota system did reflect a generalised consciousness among people for a need for their proportionate representation in the services, and successive governments did respond to this quite positively. In a legal sense, the policy of recruitment towards armed services was not allowed to be affected by these policies. The principle of merit, rather than quota, applied to the military. The idea was that national security demanded the best available talent and therefore it could not be sacrificed at the altar of political expediency. As a consequence, the colonial pattern of domination of Punjab in the army continued unabated, even after half a century of independence. This provoked feelings that were anti-Punjab, especially as army generals ruled Pakistan for an entire 24 years.
The lack of any meaningful representation of Bengalis, Sindhis and the Baluch in the armed forces led to regionalisation of the latter's image. This in turn shaped the demands of these communities, along regional lines, in opposition to the perceived domination of the state apparatus by Punjab. The quota system in Pakistan was initially implemented as a temporary measure. It was meant to open up opportunities for underdeveloped regions and communities, in the short run, so as to enable them to compete with the relatively developed regions and communities in the long term (Wassem, 1997:223-224).

1.8 Affirmative Action in India

Policies of affirmative action through reservation in government jobs, and special political representation for lower castes, had been instituted by the British. Many of the arguments used both for and against the report resemble those that arose in other countries pursuing affirmative action – on whether or not role models are important, the relevance of “historical injustice,” the effects on efficiency, and so on. However, there are also some specific Indian features on the affirmative action debate in India. These may not contribute much to the general analysis of affirmative action, but they reveal a great deal about the social values of Indian intellectual thought, and the beliefs that exist here about the possibilities of reform in India. Some of these attitudes are deep seated, perhaps deceptively so; others reflect the political crisis of the last few years. Three issues are discussed here: the quality of policy making, the modern role of caste, and Indian attitudes towards what is known as ‘merit’ (Eweisskopf, 2004: 10-15).

The need for affirmative action, as for reservation, is deeply rooted in India’s caste-based society. Estimated to be over 2,500 years old, the caste system has undergone many transformations, from the ancient *Varna* system to the contemporary *jati* system, and this is fully related to today’s reservation practice adopted by Indian lawmakers in 1947. The *Varna* system divided the population initially into – four and later five – mutually exclusive, endogamous, hereditary, occupation specific groups: the Brahmins, the Kshatriyas, the Vaisyas, the Sudras and the ati-Sudras – in that order (Oneill, 2003: 7).
The last two caste categories comprised of those who did menial jobs, with the final (or the ati-sudras) considered as “untouchable”, which meant that even their presence was considered a ‘pollution’ and was to be avoided. The three higher varnas were referred to as “caste Hindus” (upper caste Hindus) or as “twice born”, since (the men of) these castes enter an initiation ceremony (the second birth), and are allowed to wear the sacred thread. Together, the upper castes constitute 17-18 percent of the population. The ati-Sudras comprise of roughly 16 per cent of the population. Numerically, the largest Varna is Sudra, constituting of nearly half the population (Deshpande, 2005: 64).

Clearly, this division of castes corresponded to a rudimentary economy. Over the years as economy and society grew more complex, this system metamorphosed into the jati system, with features similar to the Varna system, but with some differences. Firstly, the number of jatis today is estimated to be between 2 to 3000. It is a testimony to the complexity of the system that even the exact number of caste divisions cannot be determined with certainty. Secondly, most jatis are regional categories, making inter-regional comparisons of jatis less than straightforward (Oneill, 2003: 7-9).

It must be noted that jatis are not clear subsets of the varnas, thus making the ranking of jatis an enormously complicated task, if not an impossible one. Thirdly, the jati-occupation link is not as straightforward as the varna-occupation link. However, the association between jati and Varna at the topmost level (Brahmin jatis, most Kshatriya jatis) and at the bottom (Ati-Sudra or former untouchables) is clearer than it is in the middle ranks (Oneill, 2003: 9).

Being at the bottom of the caste hierarchy, the former untouchables not only are poorer, they continue to be targets of discrimination, oppression, violence and exclusion. Thus, the affirmative action programme in India is targeted at these jatis, designed both to bring these groups into the mainstream and also to compensate them for centuries of discrimination. The names of these jatis are listed in a government schedule and thus in official literature these castes are referred to as Scheduled Castes, or simply as SCs. Mahatma Gandhi referred to them as Harijans, literally, as people of (close to) God, but
some view this as a patronising term. Most prefer to use the original Sanskrit, but now Marathi term Dalit, meaning the oppressed (Deshpande, 2005: 64-65).

After independent India, untouchability was abolished by law, and caste-based discrimination is a crime, in principle. Also, in keeping with the ideal of a casteless society, an individual is not obliged to disclose his/her caste (jati) anywhere. Data are, therefore, not available by caste: the last jati based census was in 1931. Since caste is not ascriptive in the same way as race, it is not always possible to ascertain the caste status of an individual if he/she chooses not to reveal it, especially in urban areas. However, overt and covert instances of untouchability continue and caste is used as a basis of both social and economic discrimination (Deshpande, 2005: 65).

While the caste system is conventionally associated with Hinduism, all religions in India, including Christianity and Islam, display inter-group disparity, akin to the same, leading to the hypothesis that perhaps caste was a system of social stratification in pre-modern India. “It should never be forgotten that Buddhism is a reformed Brahmanism, as is evidenced by the invariably honorific use which Gautama makes of the title ‘Brahmin’ and it therefore takes for granted certain Vedic or Vedantic postulates”. This holds true for all religious schools, like Buddhism as well (Deshpande, 2005: 63-64).

Ironically, Buddhism is a religion that has been embraced by low castes in large numbers with the belief that it will provide them with equality that Hinduism had denied them. Occasionally, castes with a stigmatised ethnic identity, referred to as the ‘untouchables’, have converted to other religions, like Christianity and Islam, as an escape from discrimination and exclusion. However, such conversions do not necessarily guarantee social equality; for instance, the census label ‘neo-Buddhist’ indicates an ex-untouchable who converted to Buddhism. Since this is common knowledge, it is unlikely that the social position of this person will improve significantly (Deshpande, 2005: 63-64).

However, only caste divisions among Hindus are highlighted in the mainstream and are today the central program of affirmative action in India. Lower castes from other
religions, such as Dalit Christians, have been demanding affirmative action, but the program is yet restricted only to Hindu Schedule Castes. In addition to the caste system, more than 50 million Indians belong to tribal communities are often distinct from the Hindu religious fold. These are the *Adivasis*, (literally, original inhabitants) who have origins that precede the Aryans, and even the Dravidians of the South. Many have lifestyles and religious practices distinct from any of the other known religions in India, and languages distinct from official languages of India and their dialects. Most live on the margins of existence, excluded from the mainstream development process. These tribes are also targets of affirmative action, similarly notified in a government schedule and hence referred to as (Schedule Tribes) STs (Seenarine, 1996: 46).

Very close to the social and economic position of the Dalits are the erstwhile Sudra jatis that, however, have *not* been targets of untouchability. The blanket term “Other Backward Classes” (OBCs) is supposed to capture these jatis that have been described in the constitution as “socially and educationally backward classes”. The implication of these categories on data availability is the reduction from an extremely high indeterminate number to either three or four categories, making comparisons easier. Up to the early 1990s, government data was available for three categories: SC, ST, 'Others' (everyone who is neither SC nor ST: the residual category). From the mid-1990s, ' Others' got divided into two categories: OBCs and 'Others' (non-SC/ST/OBC residual). While the narrowing of the number of categories definitely eases analysis, the non-availability of data by jati does not enable us to isolate the status of the upper castes. However, it should be apparent that any estimate of inter-group disparity, based on this three or four way division, will underestimate the gap between the top and the bottom end of the caste hierarchy. This is because ‘Others’ is a residual term that includes everyone else (as explained above) and, thus, includes jatis, who are very close to SCs in economic and social position (Cunningham and Menon, 1999: 1304-07).
1.8.1 Reservation Policy in India

Reservation is a form of affirmative action associated with the Indian law, a term used to describe the governmental policy whereby a percentage of seats are reserved in the Parliament of India, State Legislative Assemblies, Central and State Civil Services, Public Sector Units, Central and State Governmental Departments and in all Public and Private Educational Institutions, except in the Minority and Religious Educational Institutions, for the socially and educationally backward classes of citizens, or the Scheduled Castes and Tribes, who are perceived by the Government to be inadequately represented in these services and institutions. It is a form of affirmative action.

Caste is the predominant factor used for reservation in India, though reservation is also offered based on other parameters like Religion, State of Domicile etc. The Central Government of India reserves 27 per cent of government jobs and places in higher education. Even certain Indian states like Chhattisgarh follow this caste based reservation system since its formation in 2001 and currently reserves seats for SCs and STs. Supreme Court has passed and approved of various judgments that favour the implementation of reservation policies. It has also delivered many judgments pointing out anomalies in implementation procedures which were subsequently nullified by the Indian parliament through constitutional amendments (Government of India, Report-2006).

Reservations are intended to increase the social diversity in campuses and workplaces, and lower the entry criteria for certain identifiable groups that are grossly under-represented in proportion to their numbers in the general population. However, caste is a criterion that is used most popularly to identify under-represented groups. There are other identifiable under represented groups like Gender (women are a social minority), State of Domicile (North Eastern States, Bihar, Chhattisgarh, Uttar Pradesh are under represented), and rural people, as revealed by the Government-of-India-sponsored National Family Health and National Sample surveys (NSSO)
The underlying theory is that the under-representation of the identifiable groups is a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST). The Constitution laid down that 15 per cent and 7.5 per cent of vacancies to government-aided educational institutions, and for jobs in the government/public sector, as reserved quota for the SC and ST candidates respectively. Later, reservations were introduced for other sections as well. The Supreme Court ruling that reservations cannot exceed 50 per cent (that would be violating of equality guaranteed by the constitution) has put a cap on reservations (Times of India, 20 October 2006).

1.8.2 Affirmative Action: The Policy of Reservation

Reservation in Indian law is a term used to describe the governmental policy whereby a percentage of seats are reserved in the Parliament of India, State Legislative Assemblies, Central and State Civil Services, Public Sector Units, Central and State Governmental Departments and in all Public and Private Educational Institutions, except in the Minority and Religious Educational Institutions, for the socially and educationally backward classes of citizens or the SCs and STs who are perceived by the Government to be inadequately represented in these services and institutions. It is a form of affirmative action.

The quota based affirmative action programme in India is called ‘reservation system’ officially, and has two components: it is targeted separately towards SCs, STs and “Other Backward Castes” (OBC) groups. It is best to examine them separately: 22.5 per cent of all government jobs, seats in educational institutions that have complete or partial government funding, and electoral constituencies at all levels of government, are reserved for SCs and STs. This quota is roughly proportional to their share in the general population. While this was enshrined in the Indian constitution, adopted in 1950, via Article 15 (4) (reserve places for the under privileged in state run educational institutions) and Article 16 (4) (reservation of government jobs), this programme has a history that precedes independence (Parikh, 1997: 3).
Historically, in India the reservation has its long history and journey. In the United States, affirmative action (called reservation in India) began with the civil rights movement of 1964. India is divided into many endogamous groups, castes and sub-castes, as a result of centuries of practicing the caste system. Proponents of the reservation policy say that the traditional caste system, as it is practiced, leads to severe oppression and segregation of the lower castes and has limited their access to various freedoms, including education. Affirmative action began in India in 1921, when the Madras Presidency introduced the reservation of 44 per cent for non-Brahmins, 16 per cent for Brahmins, 16 per cent for Muslims, 16 per cent for Anglo-Indians/ Christians and eight per cent for the SCs (Hutton, 1946: 95-98).

In 1935, the Indian National Congress passed a resolution called the Poona Pact to allocate separate electoral constituencies for depressed classes and in 1942, Dr. B. R. Ambedkar established the All India Depressed Classes Federation to support the advancement of the Dalits. He also demanded reservations for the scheduled castes in government services and education. In 1947, India was declared independent and Dr. Ambedkar was appointed Chairman of the drafting committee for the Indian Constitution. The Indian Constitution prohibits any discrimination based on religion, race, caste, sex and place of birth. Nevertheless, while providing equality of opportunity for all citizens, the constitution also contains special clauses to ensure reservation for the advancement of any socially and educationally backward classes of citizens or for the SCs and the STs. Separate constituencies allocated to Scheduled Castes and Tribes to ensure their political representation for 10 years (Galanter, 1984: 32).

There are several arguments provided both in support and in opposition to the reservation policy of India. Some of the arguments on either side are often disputed by the other, while others are agreed upon by both sides, with a possible third solution proposed to accommodate both parties. Affirmative Action schemes are in place in many countries including the United States, Pakistan, Sri Lanka and Malaysia. Affirmative Action programs in these countries, especially in the United States, differ significantly from the caste-based reservation system of India. Affirmative Action in the United States recognises that there are multiple factors of exclusion and discrimination.
working in society (such as race, gender, and economic factors) while caste-based reservations focus only on caste at the cost of addressing social justice concerns more effectively for the sake of narrow political ends. These are some of the arguments offered by anti-reservationists.

Affirmative Action can be provided at a more comprehensive level taking into account various factors of exclusion such as caste, economic conditions, gender, kind of schooling received, etc. A comprehensive scheme of Affirmative Action would be more beneficial than reservations in addressing concerns of social justice. In India, this includes all backward classes in states to be benefited with the reservation policy of the Government of India.

In the early years of 1990, as to the Mandal Commission report itself; two main points need to be borne in mind. The report dealt with the OBCs, i.e., those other than the lower castes (formerly called deprived castes or untouchables) who feature in a special schedule of the constitution, and for those that are known as SC. Since supporters often try to evoke sympathy for the OBCs by grouping them with the SCs, this distinction is important. Secondly, the report is mainly about the reservation of jobs of an extraordinarily wide scope but covers other types of affirmative action, too. The few sentences at the end stating that these are only short-term measures and what is really needed is a "restructuring of production relations" are mainly of use to those with radical pretensions (Singh and Sharma, 1995: 110-134).

The Mandal commission recommended reservation of jobs in government, the public sector, nationalised banks, universities and affiliated colleges, and "all private sector undertakings which have received financial assistance from the government in one from or another" – a large and vitally important segment of the economy. The commission also recommended educational and other concessions and such measures as "a separate network of financial and technical institutions to foster business and industrial enterprise among OBCs" (Engineer, 1991: 67-98).
SCs and STs together account for 23.5 percent of India’s population, and the Mandal commission has calculated that an additional 52 per cent of the population, including Muslim and Christian converts, require special concessions in all three-fourths of the total population of India. But the Supreme Court has ruled that reservation cannot exceed 50 percent of the jobs, so the commission had reluctantly recommended reservation of only 27 per cent of jobs for OBCs, “even though their population is almost twice this figure” (except where larger quotas were already in force). Also, the commission has expressly stated that “candidates belonging to OBCs, recruited on the basis of merit in an open competition, should not be adjusted against their reservation quota of 27 per cent.” In other words, if the commission’s recommendations are followed, half the posts in the public sector and in universities will be filled by people who could not get in on merit, but only providing they belong to the right castes.

The report itself is extremely shoddy. It is a potted version of Indian history is highly slanted, stressing the suffering of “the historically suppressed and backward classes,” and supporting the view that the caste system is not losing “its traditional divisive role,” a view disputed by many of the leading social scientists of India. The report identifies “backward castes” with “backward classes,” necessary because the constitution only refers to “special provisions for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs.” There is, needless to say, much turgid writing on whether or when castes become classes; the issue has occupied Marxists, sociologists, and lawyers (Das, 1992: 8-9).

The report’s argument rests on two premises: first, OBCs form a very large proportion (52 per cent) of the population, and second that they hold less than 5 per cent of higher level positions in the Central government. They also form a small proportion of professionals or business executives. Since the 1931 census was the last to collect data on caste and since it does not provide data on the caste composition of different occupations, let alone senior bureaucrats or university professors, the commission has had to collect the necessary information on its own. It first calculated the percentage of backward castes among the Hindus, commissioning sample surveys of two villages and
one urban block in each district and identifying “backwardness” by eleven social and economic criteria (Parikh, 1997: 56).

The commission also asked the state government to provide lists of people belonging to the OBCs. Finally, it made judgments based on “personal knowledge gained through extensive touring of the country and receipt of voluminous public evidences.” On the basis of this information collected like this, it calculated that backward castes formed 52 per cent of the Hind community and simply assumed that backward classes would form the same proportion of the non-Hindu population.

The errors of these procedures have been widely commented upon and significantly by the three eminent sociologists appointed on the commission as advisors, but who had in fact little effect on its deliberations. The criteria were often self-contradictory, and in any case, the commission made arbitrary judgments on the status of particular castes with ludicrous results. Brahmins and SCs were included in certain states while highly prosperous merchant castes were in others. The evidence suggests that the commission wished to make a strong case for OBC reservation, so it is likely that its estimate of the OBC population was inflated. However, recently in a central government survey after the Supreme Court directives, the OBCs population was calculated to 40.95 per cent (The Times of India, 20 October 2006).

It may well be the case that there are many castes not included in the SC/ST list that are poor and socially backward and do not contain many central government officials. But this is beside the point, which is that the commission very probably overestimated the proportion of OBCs in the population and underestimated their proportion in the central government. And yet, the commission makes great play with these extremely dubious figures. For instance, in asserting that every citizen has the “right” to be represented in the bureaucracy, it argues that “any situation which results in a near-denial of this right to nearly 52 per cent of the country’s population, needs to be urgently rectified.” This statement is constantly repeated (Frontline, 9 May 2008).
Pronouncements from V. P. Singh and some of his cabinet ministers continued this process of obfuscation. When addressing OBC voters, the officials thundered about the "social revolution" that Mandal would bring about, without mentioning that only a minute percentage of OBCs could qualify for the better official jobs. But when they faced criticism, the finance minister and others would point out how tiny a proportion of total employment in the country was involved, overlooking the fallacy of dividing the total employment in the country by the number of reserved jobs in the Central government. The 1990 debate in parliament on the Mandal report matched the quality of the report itself. It lasted only a few hours and was marked by acrimony, personal abuse, slogan-shouting, and table-thumping. And since no political party was prepared to oppose reservations, only one or two Member of Parliament dared to speak honestly. Finally, the government's reluctance to provide full information to the public can be seen in the case now before the Supreme Court, where a number of petitioners have challenged the constitutionality of the Mandal recommendations (Frontline, 9 May 2008).

The other important and independent organisation is the National Commission for SCs and STs. It also functions as an investigating agency of specific complaints received from the SC/ST employees regarding service and promotion matters under reservation. The matter may be related to incidences of discrimination, vacillation of reservation policy, and related matters. The Commission has the power of the Civil Court, and can call the employer for enquiry and action. The commission also watches over the development of the SC/ST, and prepares annual reports about their progress, which is discussed in the parliament every year from its inception in 1950 (Parikh, 1997: 36).

At the policy framing level is the Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs and the Committee of Parliament on Welfare of SCs/STs. The Ministries are the nodal bodies that oversee the task for the development of SCs and STs. The Ministry is responsible for all round development of SCs/STs. The ministry carries out various schemes related to education, and economic development. They work in close collaboration with the Planning Commission that has a special Division for Backward Castes for the purpose of economic planning (Mungekar, 2006: 45).
1.8.3 Reservation in Chhattisgarh

In Chhattisgarh, the reservation policy is implemented in accordance to the constitutional provision of India. The need to discriminate positively in favour of the socially under-privileged was felt for the first time during the nationalist movement. The constitution of independent India, which largely followed the pattern of the Government of India Act, 1935, made provisions for positive discrimination in favour of the SCs and STs. Unlike the SCs and STs, there was no clear thinking about backward classes in the pre-independence period. The constitution of India designated the socially and educationally Backward Classes as eligible for affirmative action before it was clear who these classes were. When the first national backward classes commission started its work in 1953, it had to somehow rank the population of India on the scale of backwardness. Further, he says, a common problem with affirmative action is the unequal distribution of benefits among the beneficiaries. The government of India considers this to be a serious problem and tries to cope with it. Justice demands that this creamy layer be removed from the list of beneficiaries. A crucial aspect of the reservation policy and the list of beneficiaries is made up on the basis of information obtained form a great number of local informants who are invited or informed and can pressure the Backward Class commission. In the 1970s and 1980s, however, the backward caste (BCs, or OBCs) movements picked up momentum in several parts of India (Das, 1992: 8-9).

The implementation of reservation policy for the BCs came into the focus of Indian politics in prior to the 1990s. The debate over positive discrimination in India is acrimonious and is increasingly finding expression in violence. On one hand, the policy is defended as ethically correct, as it is meant to compensate centuries of injustice perpetrated against large sections of people on account of their social origin. Affirmative action, reservation of government jobs, and special political representation for the British in India, Sri Lanka, and Malaysia instituted the low castes. India may well have the largest affirmative action program in the world.
Since the implementation of reservation in the 1950s and for the Backward Classes in the pre-1990s has increased caste consciousness and new cast-based associations have been formed. The reservation policies or affirmative action policies have been seen as a mode of positive discrimination; in the case of merit this could be sensed. However, the allegations made are that this affects merit, and that this has little or no effect in liberating the classes, although it would aid social integration. The policy of compensatory discrimination has had its critics, especially in the first two decades. The depressed classes in testimony before the commission, established to monitor their progress, claims that the benefits are inadequate appropriations and that the expenditure is insufficient, and that the local administration is lax in following their duties. The privileged strata, and especially social scientists in India and the United States, claim the policy does either 'too much' or the 'wrong things' or does both, and has harmful social effects. Nevertheless, Marc Galanter (Author of Competing Equalities) has evaluated compensatory discrimination and has said that the reservation policy has helped the deprived sections of Indian society to enhance their situation (Galanter, 1984: 353-359).

Chhattisgarh witnessed a mobilisation or massive call for economic boycott with the formation of a new state. The demand for bandh has not been frequent in the Chhattisgarh region. Another feature of this movement has been that it has been carried out in a Gandhian way. Unlike the Jharkhand or Uttarakhand movements, the Chhattisgarh movement never bore the wrath of police brutality, torture, or harassment, and neither has it opened up opposition from political parties, the administration, or the government of the mother state.

The demand for Chhattisgarh is a comparatively old one. Its demand for a separate statehood was a dormant aspiration among authors, writers, social activists, politicians and the common people of this region. Some argue that the demand for Chhattisgarh was voiced in the period as early as 1922 and 1923, while on the other hand, some claim that with the reorganization of the state in 1956, the demand for separate statehood in this region became a feverish demand (Gajrani, 2004: 9-11).
However, in the absence of a strong and bold leadership for this demand and mass immobilisation, this demand could not get appropriate manifestation; it was in 1964 that Dr. Khoob Chand Baghel tried to ignite the imagination of the people in the region. He used the popular medium of theatre to motivate and organise people to demand a new state. In 1980, Pawan Diwan fought his Lok Sabha election on the plank of the formation of a new state, but his mass appeal for a new state did not convince people of his constituency. He lost the election in 1989, and Chandu Lal Chandrakar, someone central to this history of Chhattisgarh tried to form a common platform for Chhattisgarh. In reality, the demand for Chhattisgarh was used by different political parties as a political gimmick, through sheer opportunism rather than any attempt to resolve the real issues of this region. This demand therefore did not make ground or percolate people.

The year 1998 can be regarded as a milestone in the formation of the new state. Atal Bihari Vajpai, in one of his Lok Sabha election campaign speech in this region announced that if the Bharatiya Janta Party comes to power, it would make Chhattisgarh a real state. His announcement dramatised the total scenario. All political parties supported the formation of the new state. Therefore, all the hesitations were gone. Ultimately, Chhattisgarh came into being on 1 November 2000 (Bhargava, 2005: 19-20).

This new state has many mind-boggling problems which need special treatment and proper care. Insufficient infrastructure, lack of proper irrigation facilities, acute poverty leading to mass migration of the people, lack of better communication, inadequate medical facilities, and increasing threat of Naxalism are some major problems of this new state. Through proper development, better communication, better water management and better harnessing of forest, land and mineral resources and development of basic industries like bauxite, aluminium and thermal steel, this state can establish it and take the people in the realm of prosperity.

Will the creation of Chhattisgarh, whether the aspirations of the local people were fulfilled was a difficult question to answer. The benefits of the break-up of Madhya Pradesh are attributed to its pace of development and good governance. Development is
linked to decentralisation of power, grassroots planning, reaching the un-reached, and empowerment of the weaker sections being made real. The Panchayati Raj system could have worked as an effective means of parliamentary democracy, and it is participatory democracy that might be able to solve many problems of governance and development. Especially since equality, consensus, homogeneity, representation of different segments in a decision-making process are prerequisites for a participatory democracy.

For a dynamic and vibrant Chhattisgarh, aspirations of the common people must be recognised. The nexus of power elites has to be broken. Structural changes need to be brought about. But these changes are possible only when there is mass mobilisation; development benefits cannot trickle down to the poor and tribes without their participation in the social process. The tasks before the new state are gigantic and enormous. It needs proper and planned attention from the new incumbent. Otherwise, the apparent optimism among the people of Chhattisgarh may degenerate into disillusionment and political chaos (Kumar, 2001: 25-26).

Reservations and its benefits for the tribes of Chhattisgarh and other backwards class have provided opportunity for them to grow their status in a caste based society. The reservation (affirmative action) policy of Indian government has enhanced tribal conditions in Chhattisgarh from lower strata of the society to higher through many programs at the state level and district level since its creation, even though it was associated with Madhya Pradesh (Government of Chhattisgarh, 2001). Today, tribal men, women and children and other marginalised sections of society become aware of the policies announced by the government occasionally and enjoy being a part in the mainstream (Kumar, 2001: 26).

Reservation for ST and SC are 15 per cent and 18 per cent respectively in Chhattisgarh. In case of vacant positions, reservation is changeable among them. The other beneficiaries of reservation policy are Other Backward Classes (except creamy layer); for them 14 percentage of seats are reserved. Positive discrimination or reservation also has been provided to female candidates and an amount of 30 per cent seats are reserved for them (Maitra, 2008: 28-37).
1.9 Objectives of Research Study

This research work attempts to analyse the conceptual framework of affirmative action in the United States and issue of reservation in India, and how affirmative action is crucial for development of the deprived sections of society in the states of Chhattisgarh. The main purpose of the study is to analyse whether affirmative action and reservation are indispensable for social justice and equality in a tribal state like Chhattisgarh, and what new aspects of affirmative action and reservation policies do we need for Chhattisgarh.

1.9.1 Hypothesis

Affirmative action, including reservations, is indispensable for social justice and the development of marginalised and deprived sections of the society. The requirements of deprived sections can be guaranteed by only their political participation from within government bodies.

1.9.2 Methodology

The research study has adopted historical, analytical, descriptive and comparative approaches, and is based on the primary as well as secondary sources of policy where affirmative action and reservation in the United States, India and the state of Chhattisgarh, is concerned. The main focus in the research work is on the basic problem of discrimination generated by racism in the United States, and by casteism in India. The primary sources include reports of various commissions on reservation, other policies of affirmative action and empowerment of weaker sections of the society, which have been created by the Government of India and Government of Chhattisgarh. Further, it relies on various secondary sources such as books and articles available in various journals and newspapers and reviews the subject matter in concerned publications. A survey has also been conducted by two districts, namely Surguja and Rajnandgaon to analyse the people perception, awareness, and impact assessment of reservation policy in Chhattisgarh.
The database for the major part of our study comes from a primary survey conducted in the two districts, namely Surguja and Rajnandgaon of Chhattisgarh. In addition, census data is also utilised in order to ascertain status of education, employment in SCs, STs and backward sections of the population. The NSSO data provides the detailed information on different socio-economic and demographic characteristics of the survey, households and thereby helps us to get a fairly comprehensive idea of the broad determinants of SCs and STs employment. A field survey was conducted in September 2008 through a structured questionnaire addressed to the respondents. The data collected has been compiled, analysed and presented, given the limitations of conducting studies.

Totally, 200 people were interviewed during the field work. While collecting information, there was an intensive discussion carried out with social activists, community leaders, trade union leaders, NGO representatives and local residents on the reservation and its impact on weaker sections of the society. What is their perception on reservation, what type of government reform do they accept on reservation policy, and what is their awareness about reservation provision and process.