Chapter: 5
Remedies against Discrimination - Theoretical Contribution

5.1 Introduction

In the preceding three chapters, we have discussed the conceptual and theoretical implications of social exclusion to the caste system and how caste system perpetuates lower economic development and higher level of deprivation among certain communities and groups in the society. There are two theoretical strands to remove the effect of caste system. These two diverse strands are market mechanisms and the interventionists policy approaches. Nevertheless, these approaches are insufficient to remove these mal-practices for the reason that these are the part of the larger Hindu caste system and therefore, does not work against the caste system. Thorat, therefore, provides an framework to overcome these mal-practices in the society through suggesting some remedies against discrimination in the form of equal opportunities to overcome these consequences. In this chapter, we shall try to analyse Thorat's perspective on three major issues, namely the theoretical base for the remedies against discrimination, Ambedkar's attempt to formulate policies and what Thorat's formulation of policies to overcome policies.

5.2 Theoretical Argument and International Experience

The insights from the theoretical literature from economics implies adverse consequences of economic discrimination on the economic growth, income distribution, poverty of excluded groups and inter–group conflict. Given these multiple consequences of economic discrimination, countries have developed remedies against discrimination in the form of equal opportunities to overcome these consequences. In this point, we discuss the insights from the theoretical literature to understand the theoretical justification for policies against market and non market economic discrimination. This is given by Thorat.

Thorat provides two diverse theoretical strands with respect to the policies based on market mechanism and interventionists policy, which are the central concern of economic theories. One, discrimination proves to be a transitory phenomenon in highly competitive markets, as there are costs associated with discrimination to the firms/employers, which result in a lowering of profits. Firms/employers who indulge in discrimination face the ultimate sanction imposed by the markets. This proposition points to the resulting erosion of profits as a self-correcting solution for
eliminating discrimination. This view would suggest the promotion of competitive markets to reduce economic and social discrimination (Thorat and Kumar 2008-a).

Two, interventionist policy to overcome economic and social discrimination. This school of thought believes that there are several reasons why economic discrimination might persist over long periods. Firstly, despite competitive market, exclusion and discrimination continued to persist because firms /producers as a part of larger caste system practice discrimination. Thorat predicts that the possibility practicing discrimination against lower caste is quite high. The persistence of decades of labour market discrimination in high-income countries attests to resilience of market discrimination. Secondly, in reality, not all markets are competitive. Indeed, in most of the economies, the markets are highly imperfect and are governed by oligopoly and monopolistic market situations, which empowers the firms to discriminate at will. Thorat argues that there are inherent limitations of competitive market mechanism as a solution to the problem of market discrimination because competition is either not powerful enough to offset the group dynamics of identity and interest, or it actually operates so as to sustain discriminatory behaviours (Darity and Shulman 1989).

Based on these two views, Thorat points towards different policy implications for overcoming discrimination. The former view predicts discrimination to be self-correcting, argues for strengthening competitive market mechanisms. The alternative view on the other hand asserts that market discrimination will persist, despite the presence of competitive market forces or for other reasons and therefore, the interventionist policies will be necessary. In their view, correcting discrimination would require legal safeguards against discrimination and policies for facilitating an fair share in various spheres. It calls for state interventions, not only in land, labour and capital markets, but also in product and consumer markets, and social needs such as education, housing and health. Central to this view is the exposition that discriminated groups face discrimination in transactions channelized through market and non-market situations, and in that regard, their discrimination is multiple and plural in nature.

Add to this, Thorat provides a detailed analysis of international experiences on undertaking various measure against market discrimination. However, these measures vary from country to country. Some distinguishing features of these interventions need to be clearly understood. Two aspects need special consideration. These relate to (a) type of the economic sectors or markets, which are covered or included for affirmative action policy; and (b) the method of affirmative
actions so as to provide access to discriminated groups in various social and economic spheres or markets.

Thorat reminds that labour market affirmative action policies have been developed mostly come from the developed world and these include USA and Northern Ireland (Thorat 2005). In these countries, the non-farm sector constitutes more than ninety per cent of the workforce and therefore, the focus of affirmative action policies is on labour markets. In some countries like USA some sort of affirmative action policy is also used for other economic and social spheres such as housing, education, and in dispensing various government contracts, which include government contracts for construction and purchase of product and consumer goods. In developing countries like Malaysia and South Africa where a substantial portion of the population is engaged in the agricultural sector – in addition to labor markets – the affirmative action policies are also extended to agriculture land markets and private capital (domestic and foreigner capital markets) in addition to social service like education, housing etc.

Thorat finds that various methods and legal or non-legal practices in various countries have been used to provide protection and equal participation to discriminated groups in various markets. These measures include (a) reparation or compensation for the denial of property rights for a long time in the past; (b) legal provisions against discrimination in labour markets in the form of “Equal Employment Opportunity Act”. These Acts prohibit any firm from discrimination of workers unrelated to productivity or related to non-economic considerations; and (c) affirmative action to ensure fair participation of minorities (or discriminated groups) in employment – either by promoting balanced (racial/religious) employment policy, with certain general benchmarks without quotas or with fixed quotas in proportion to the population of the minority groups.

Thorat points to the differences in the purpose and mechanisms of these methods with more clarity in understanding. According to him, the policy of “reparation or compensation” is used to compensate for the denial of property rights to certain groups in the past. It is considered as a compensatory payment for an acknowledged grievous social injustice meted to a group. In history, there are examples where compensation or reparations have been used. Realised instances of reparations in the USA include agreement with the Japanese Americans subjected to internment during the Second World War. Aleut Indians for war time losses and Passamaquoddy Indian tribe – latter were compensated with land and monetary contributions for settlement. Similar land agreements have been made with other Indian tribes in the USA. Similar precedents are to be found
elsewhere in the world, which include compensation to Jews in Germany under West Germany and the World Jewish Congress Agreement. Compensation was also given to Jews in 1995 by the Austrian Parliament. Land distribution program undertaken by Malaysian government to improve the land ownership of Malaya is another example (Thorat, Aryama and Negi 2005).

The ex-untouchables in India were denied rights to property, military, trade, agriculture, and education for several centuries. This is reflected in the lack of ownership of agricultural land and capital assets and low levels of education among them. The SCs are therefore, a potential case for reparation or compensation for denial of property rights and other rights and injustice meted to them for long periods of time in the Indian history.

The second anti-discriminatory method includes the enactment of “Equal Employment Opportunity Act” (EEOA). This Act prohibited discrimination of a person in employment and other economic spheres and made it subject to legal action. Persons from minority groups could use this provision in the event of discrimination in hiring and other spheres.

The EEOA, however, does not involve any positive or affirmative action on the part of government to guarantee or ensure equal participation of minority groups in employment and other economic spheres. Therefore, several countries have taken additional steps and made provisions to give share to the members of minority groups in government and private employment, government contracts, and educational institutes – public and private, housing, and other spheres. In such affirmative practices, certain benchmarks are fixed without quotas or with quotas to give adequate representation to discriminated groups. While USA and Northern Ireland are the good examples of representation based on non-quota methods; Malaysia, Pakistan, and India are the example of quota system. In Malaysia, however, the quota system is also used for private sector, while it is confined only to public sector in India.

Northern Ireland has also introduced a system whereby all firms/industries are required to register with Equal Employment Office and indicate their employment compositions by religious groups to bring more transparency and to help develop policies for religion-wise representation.

Depending on the nature of discrimination and exclusion, methods to overcome caste-based discrimination in private sector should consist of all three practices, namely, reparations, EEOA, and reservations/affirmative actions (Thorat, Aryama and Negi 2005).
5.3 Ambedkar’s Contribution on Remedies against discrimination

Thorat attempts to put forth Ambedkar’s understanding and his efforts to develop the solutions to the problem of Indian society arising out of institutions of caste and untouchability and to develop socially inclusive policies for the excluded groups in Indian society in the contemporary context.

A close look at the various interventions by Ambedkar during 1919-1954 captures his understanding about the problem of deprived castes. He reiterated his position that the problems of Untouchables are rooted in historical denial of basic human rights to them. And therefore he grounded the justification for remedies against caste discrimination of Untouchables in citizenship framework. If the initial efforts involve creating awareness among the British regarding the position of Untouchables and demands to give citizenship rights, the second phase takes him toward assertion for the rights with wide description and explanations in terms of political representation in the form of Separate Electorates. In the third phase, we saw extension of representation and participation in the sphere of education and employment. The fourth phase of interventions came at the time of making of Constitution. This in fact saw his greatest achievements as it had acceptance of general framework which involve acceptance of principles of non-discrimination, legal abolition of untouchability, recognition of the problem, particularly the educational and economic backwardness of the low castes and the responsibility on the State to protect the interests of the SC/ST and take measures for their upliftment. In the last phase of interventions, he gets back to re-assertion and rejuvenation whether it was in the sphere of political representation in the legislatures or enlarging the spheres of State interventions.


Based on these developments from the historical perspective, Thorat broadens solutions that Ambedkar first articulated it in 1919, which in latter years took a definite shape. Ambedkar came up with two set of remedies, one against social discrimination and another against
economic exploitation. This laid the foundation of both recognition of the problem, responsibility on the State and need to take various measures. The remedies against social discrimination include the provision of equal rights to all, legal safeguards against violation of rights in term of punitive measures, measures to ensure equal access and participation (through reservation policy) in civil, political and economic spheres, and in addition a definite strategy by the state for the development and empowerment of poor in general irrespective of caste and of untouchables in particular to compensate for exclusion in the past. Ambedkar laid emphasis on monitoring mechanism to implement and supervise the measures and the participation of untouchables in policy and decision-making process and monitoring mechanism.

The above discussion establishes that Ambedkar had been concerned with the problem of lower castes from 1919 onwards and argued that their problem had been deeply entrenched in the institution of caste system and untouchability which involve denial of human rights. So the remedies against discrimination are placed with the framework of citizenship rights. Therefore what follows is the discussion on the set of policies that he suggested for social inclusion.

We have presented the major policies that Ambedkar pursued for the emancipation of the depressed classes in India (Table 5.1). Ambedkar demanded political representation in his first memorandum itself and started with a claim for equal rights to the Untouchables that he called “citizenship rights”. He understood that it was in the absence of these rights that they were not treated as equals and as a consequence suffered from discrimination, exploitation, seclusion and exclusion in multiple ways in the society. And without having a claim on such rights their position would be lacking the primary conditions of participating in the socio-political developments.
Table 5.1: Ambedkar's Remedies to Caste Discrimination

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Objectives</th>
<th>Solution to achieve Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Claim for equal rights</td>
<td>Equal representation and opportunities in different spheres of life</td>
</tr>
<tr>
<td>2.</td>
<td>Remedies against violation of rights</td>
<td>Protection against grave fears of discrimination either by legislation or by executive order being made in the future.</td>
</tr>
<tr>
<td>3.</td>
<td>Measures for the equal opportunity and participation</td>
<td>Equal access and participation in legislature, executive, educational institutions, government services and other spheres in proportion to their population</td>
</tr>
<tr>
<td>4.</td>
<td>Representation and participation in legislation</td>
<td>Sufficient political power to influence legislative and executive action</td>
</tr>
<tr>
<td>5.</td>
<td>Access to Education at all levels</td>
<td>Reservation in admission and allocation of adequate budgetary allocation</td>
</tr>
<tr>
<td>6.</td>
<td>Access and Representation in public services</td>
<td>Reservation in public services</td>
</tr>
<tr>
<td>7.</td>
<td>Policies for empowerment to compensate for historical exclusion and denial of equal rights</td>
<td>a) the political and economic system to remove the structural inequalities, b) the effective role of SC in policy making and governance</td>
</tr>
</tbody>
</table>


Equal rights have no meaning without sufficient safeguards in one form or the other. These safeguards have to be through adequate legal protection in case of violation of such rights. Ambedkar stated that claims of equality of opportunity have no meaning in Indian social conditions, which do not allow equality to prevail, and efforts by Untouchables to secure equal rights are vehemently opposed by the so-called higher castes. The equality of opportunity is conflicted not only by the common masses of caste-Hindus but also by those in government at various levels of helm of affairs of the State. Consequently the remedy lies not merely in having equal rights for the untouchables as possessed by others rather having a device that provides legal ways and methods to claim the rights if violation takes place and penalties against infringement of rights as rights without guarantee to exercise them have no meaning if the society at large does not allow the rights to be protected.

The measures in the form of equal rights and remedies against abuse of rights are limited in their consequences for SCs. These merely restrain members of the society to take steps putting minorities or underprivileged sections in a disadvantageous position in the public domain. This may not enable the Untouchables to enjoy just access and participate in social, economic and political processes due to prevalence of practice of discrimination and opposition by the so-called higher castes vis-à-vis SCs. In this context, Ambedkar observed, “in a country like India, where it is possible for discrimination to practice on a vast scale and in a relent manner, fundamental rights
have no meaning.’’ Thus in addition to legal safeguards against discrimination, protection against discrimination becomes significant and this could be possible only through equal access and participation in legislature, executive, educational institutions, government services and other spheres in proportion to their population. This access and participation was to be made operational through methods like reservations facilitating just access, representation and participation to the discriminated groups in various spheres like legislatures, public services, educational institutions etc.

It is evident that Ambedkar started putting forth the voice of Untouchables in the political arena for their representation in the legislature form the very beginning. This representation had to be not merely nominal but effective with the kind of representation demanded by him in the form of elected Members and not the co-opted or nominated ones.

Education is another issue on which Ambedkar focus his efforts during this period. His effort starts with a demand for compulsory primary education with equal share for SC in technical and higher education in the budget of the State. In 1942, he submitted a memorandum to the Governor-General on the Grievances of the Scheduled Castes and for the first time Ambedkar talked of assigning a certain number of seats for them in the field of education by asking for reserving one-tenth of the total number of admissions for the SC. Later in the Constituent Assembly discussion he addressed this question and asked for adequate funds and proportional allocations in the budget for the SC.

Though the subject of education had been dear to Ambedkar but he saw a specific purpose of it for SCs. The common occupations being closed for them, public services were the area that could have a significant meaning for them in the context of lack of access to other occupations.

From the foregoing discussion, it becomes evident that Ambedkar strived for three-fold approach to provide safeguards against the denial of equal right to the lower castes in the present. These include- i) claims for equal rights, ii) remedies against violation of rights in terms of legal provision and iii) measures for equal access, share and participation in legislature, executive, administration, education and other public domains for the discriminated groups in the form of reservation policy (Thorat and Kumar 2008-b).
For the overall development of discriminated groups as well as other poor, in addition to reservation, Ambedkar suggested two measures- a) the political and economic system to remove the structural inequalities, b) the effective role of SC in policy making and governance. On the first, Ambedkar entrusted the State with the task of providing access to agricultural land and capital to the SC and other poor. He suggested a more radical remedy of equalization in the form of 'State Socialism' in agriculture and industry to protect the deprived groups against economic exploitation.

For Ambedkar, to remove structural inequalities planning economic life of the people was necessary and this could be done through State Socialism where there is State ownership in agriculture with collective farming. On the similar lines, he proposed modified form of State Socialism in industries. He did not propose to monopolize all the fields by the State but to have a say in the major areas so that the inequalities could be reduced. With this kind of arrangement, the State will have the duty of reorganizing the economic life of the people by which not only the socially discriminated groups like SC/ST and OBC would be benefited but also the general masses of poor will get advantage of state interventions in deciding their economic life.

On the second hand, Ambedkar suggested a statutory obligation to maintain a separate administrative division to deal with their problems—that is "to watch the interests of the depressed classes and promoting their welfare".

5.4 Empowerment and Equal Opportunity Policies

Thorat gives two alternative sets of remedies, which can be grouped into the strategy of “Social and Economic Empowerment” and of “Equal Opportunity”, emerged from the extensive discussion on the basis of theoretical analysis, international experiences and the remedies suggested and pursued by Ambedkar (Thorat and Kumar 2008-b).

The policy of social and economic empowerment is essentially directed towards improving the ownership of capital assets like agricultural land, business, and educational level and skills of discriminated groups. These measures are supposed to augment the capacities of discriminated groups to undertake businesses and to enhance their employability by enhancing their education and skill level. It appears that there is also a general recognition of need to empower the
discriminated groups such as lower castes, particularly the former untouchables, women and some religious minority groups, for denial of equal economic rights to them in the past.

However, when it comes to equal opportunities in private sector, the contention does not find similar favour. It is argued that labour, and other markets, generally work in a neutral manner and access to markets is determined by merit and efficiency consideration. As such, there is no need for safeguards against possible market and non-market discrimination. Thus, while policies for the general education, and economic empowerment of discriminated groups are favored, those ensuring equal share and participation through reservations are marked with differences of opinion.

Here they said that theoretical literature indicates that the problem of discriminated groups like the former untouchables, women, and similar groups are different from other groups. First is the lack of the access to income-earning capital assets like agricultural land and non-farm businesses, quality employment, education due to denial of the same in the past for long periods of time, the consequences of which are visible in contemporary times in the form of inter-group inequalities between them and others in several indicators of human development. Second and more important is the continuation of discrimination in various markets and non-market transactions in the present, in some forms, if not all. Therefore, the problem of discriminated groups requires a dual solution— one set of remedies for improving the ownership of land and capital assets, quality employment, and augmenting their educational levels, as compensation for the of basic rights denial in the “past”, and another set of remedies to provide safeguards against discrimination in the “present”. While the former (that is empowerment policies) is based on the principle of compensation for denial of rights in the past (the consequences of which are visible in the present), the latter (that is equal opportunity policies) is based on the assumption of providing safeguards against discrimination in the present, in various market and non-market transactions, and ensuring due share and participation in employment, education, businesses, legislature, and other supportive services.

These two set of policies, namely of “economic empowerment and equal opportunity policies” are complementary to each other. The policy of economic empowerment is expected to enhance the capacities of discriminated groups to take advantage of the ongoing social and economic progress. Improved access to income-earning assets will improve the capacities of the discriminated groups and enable them to partake in business activities. Educational and skill
development is expected to increase employability and enable them to access jobs in both the private and public sectors.

However, the policy of economic empowerment needs to be supplemented by equal opportunity policies to provide safeguards against the discrimination in the present, which the discriminated group may face. Even if they gain access to incoming earning assets, education and skill through empowerment measures, but due to the practice of discrimination in various markets, particularly the labour market and non-market transactions, they may fail to get due share and participation in ownership of assets, employment, social needs like education, health, housing and other. In the absence of equal opportunity policies in the form of reservation, and similar measures, the excluded and marginalized groups may continue to face denial. It is precisely for this reason that equal opportunity policy is developed in the form of reservation policy and similar policies in many countries to ensure fair share to discriminated groups. The complementary nature of these two policies will ultimately help the historically discriminated groups not only to improve their capabilities but also to receive them the due share in the economic and social progress.

### 5.5 Lessons for Inclusive Development Policy

Dr. Ambedkar’s interpretation of the caste system with regards to its exclusionary character and consequences has important lessons for the contemporary efforts to develop inclusive policies, not only for groups suffering from institutions of caste but also the groups suffering from discrimination associated with other group identities like ethnicity, religion, gender and other forms of exclusions. It is recognized that “Group based exclusion” essentially generates outcomes which are detrimental for the excluded groups. Exclusion results in deprivation and poverty in so far as it involves denial of equal rights to persons from these groups. By doing so, it also leads to inter-group inequalities and potential for inter-group conflict. Recent literature also points out towards the adverse consequences of market discrimination on economic growth.

Given these adverse consequences of discrimination on economic growth, income distribution, and inter-group conflicts; reducing discrimination becomes imperative as it is likely to induce economic growth, reduce poverty and inequality and minimise the potential for inter-group conflicts.
Views on the remedies against economic discrimination, however, differ. Mainstream economists suggest market competition as a solution to the problem of market failures associated with discrimination. It is argued that in highly competitive market situations, discrimination will be a transitory as there are costs associated with discrimination to the firm/employer, which result in lowering of profits. Others, on the other hand, point out that for several reasons market discrimination may persist over long periods of time. Even if the markets are sufficiently competitive, discrimination will still persist – if all firms practice discrimination – the likelihood of which is always high. The persistence of labour market discrimination in high-income countries over long periods of time attests to that. But more importantly, in practice, markets are generally characterized by imperfections and monopoly power. Such monopolies provide enough power to the firms to discriminate in various markets.

Since discrimination will persist, an interventionist policy to remedy market failures associated with discrimination is pertinent. Interventionist policy is required, both to improved competitiveness and also to provide safeguarding against market and non market discrimination. Interventions will be necessary in all markets, namely, land, labour, capital, product and consumer and non-market transitions in education and housing.

Indian context, given the multiple forms of exclusion associated with group identities like caste, ethnicity, gender, religion in various spheres of economy, polity, society and culture it is important to formulate an inclusive policy to overcome deprivation associated with multiple forms of discriminations. To develop inclusive policies for multiple groups suffering from exclusion associated with caste, ethnicity, religion, gender and other forms of exclusion is an issue, which is currently being discussed by the Indian government and policymakers. It is to be recognized that the nature of inclusive policies will be necessarily governed by the exclusionary character of Indian society. It would further depend on the forms and spheres of discrimination and their specific consequences on the discriminated groups.

As regards Hindu society, the principle of “graded inequality” implies that not all castes suffer equally from the hierarchal entitlement of rights. While the castes located at the bottom of caste hierarchy, namely, the former untouchable suffer the most, the Other Backward Castes (OBCs) follow closely. The OBCs in all probability do not suffer from the notion of untouchability as much as the former untouchables, but they do historically face exclusion in education, quality employment and in certain other social spheres (Thorat and Kumar 2008-b).
In case of religions, other than Hinduism, the lower castes converted to Christianity and Islam probably face discrimination, although, not in a similar fashion to the Hindu low castes. Certain religious minorities, particularly the Muslim, also probably face discrimination in a number of spheres, although due to lack of studies we do not have clear idea about the forms and spheres of discrimination. Similarly, women also face exclusion and it varies depending upon their caste and religious backgrounds. Some groups such as tribal and semi-nomadic tribes also suffer from physical and social isolation/ exclusion due to their ethnic backgrounds. An important issue, therefore, is to develop group-specific inclusive policies to overcome the consequences of discrimination. Currently, we are discussing alternative ways of overcoming deprivation suffered by excluded groups such as the SC, ST, OBC’s, low castes converted to Christianity and Islam, religious minorities such as Muslims and women in public and the private domain.

In this context, there is lot to be learnt from Dr. Ambedkar’s approach and the latter developments in social science literature on social exclusion for the devising inclusive policies. Dr. Ambedkar’s perspective on “inclusive policy” incorporates a dual strategy. He refers to these as “safeguards against economic exploitation” and “safeguards against social discrimination and isolation” in his last systematic treatise on this theme statement.

In Dr. Ambedkar’s view, the problem of discriminated groups is two-folds. First is the lack of access to income earning capital assets, businesses, employment and education due to denial of the same in the past – the consequences of which are visible even in contemporary times? Second is the continuation of discrimination in the present, in various market and non-market transactions in some forms or the other, if not in their full original forms. Some discriminated groups also face exclusion in civil, cultural spheres and in executive and governance. Therefore, policies for the discriminated groups require a dual solution – one set of remedies for the historical denial of economic, social and educational rights (the consequences of which are carry forward and are visible today) as a compensation for that denial in the past and a second set of remedies to provide safeguards against continuing forms of discrimination in the present.

The first strategy includes more fundamental measures for addressing the problem of ‘structural inequalities’ created by caste system and involves the creation of an “egalitarian economic structure”, which will ensure equal access to income earning capital assets and economic opportunities for the poor in general and the discriminated persons, in particular. This includes creating an economic structure, which will ensure equal access to land, capital,
employment and provision of education and health services. This policy for generality of the poor, in Ambedkar’s view, will also create an egalitarian structural base for economic and social empowerment of the excluded groups as well (Thorat and Kumar 2008-b).

This strategy of “egalitarian economic structure” will enable and enhance the capacity of the excluded groups to participate in the economic and social development processes of the nation. However, such a strategy has its limitations. Improved ownership of income earning assets will empower the excluded groups to make use of business opportunities. However the discriminatory working of the factor markets, and private education and housing services, may not in practice enable them to make actual use of such opportunities. Similarly educational and skill development will enhance employability of discriminated groups, but discriminatory working of employment market may not automatically and necessarily translate it into actual employment of these groups. Therefore, in addition to the strategy of creating “Egalitarian Economic Structure”, Ambedkar suggested a complementary strategy of “Equal Opportunity” to ensure fair share and access to employment, capital assets and social needs like education and housing canalized through market and non-market institutions. They are not mutually exclusive, but complementary to each other. The “Equal Opportunity Policy” suggested by Ambedkar is characterized by four main attributes:

Firstly, legal safeguards in the form of laws against discrimination in economic, social and other spheres so that persons may use them in event of discrimination.

Secondly, incorporation of pro-active measures for the discriminated groups to ensure fair share access to income earning capital assets, employment, education both in the public and the private spheres and also in legislature, executive and other public spheres in the form of reservation policy. The enactment of such an “Equal Opportunity Policy” will ensure a due share for the discriminated groups in businesses, employment, education, housing and other services. Together, the dual policies of “egalitarian economic structure” and of Equal Opportunities will enable in addressing the problem of the poor in general and also the problem of the discriminated groups;

Thirdly, the provision of adequate representation and participation in the executive and in administration for decision-making and monitoring. In Ambedkar’s view, representing the interests of discriminated groups by others is not enough, their interests could be meaningfully ensured by their own representation and participation in decision-making processes and
monitoring, along with others at all levels. Therefore, the participation of discriminated groups in the democratic polity at all levels from legislation to execution of policies is necessary. In the strategic scheme of inclusive policies suggested by Ambedkar, representation and participation of discriminated groups in executive and in administration for decision-making and monitoring remains crucial and central; and

Fourthly, provision of rights to be embodied in the Constitution remained at the core of Ambedkar’s perspective. In Ambedkar’s view, if a society practices discrimination then the impetus for change should ideally be emanated from the State. This requires provisions in the Constitution and in other statutory forms, with clear responsibility on the State to develop policies against discrimination and for development of the discriminated groups both in public and private sector (Thorat and Kumar 2008-b).

Thus, the “Inclusive Policy” proposed by Ambedkar has these four components, which include creating an egalitarian economic structure, which will provide a base for equal economic and social opportunities for the generality of the poor including the discriminated groups; equal opportunity policy in terms of reservation for the discriminated groups with adequate legal safeguards against discrimination; participation of discriminated groups in governance through fair share in legislature, executive and administration involving decision-making and monitoring processes; and finally responsibility on the State to undertake such policies with a clear provision in the Constitution and in other statutory forms (Thorat and Kumar 2008-b).

An equal opportunity policy will be of different nature for various ‘discriminated groups’ depending on the forms and spheres of discrimination and their social, economic and educational consequences on the discriminated groups. An equal opportunity policy, therefore, may not be the same for groups such as the former untouchables; OBCs; lower caste converts to Christianity and Islam; ethnic groups like tribals; religious minorities such as Muslims; women; and others. This will be necessarily governed by a reasonable understanding about the forms, spheres and nature of exclusion and discrimination suffered by various excluded and discriminated groups and their specific socio-economic and educational situation. This will enable us to develop more enlightened and well grounded equal opportunity policies. In this sense our economy, polity, society, culture and governance will have to be more participatory and representative of various castes, ethnicities, religions and women. This will make our democracy more inclusive, vibrant and consequential to all the citizens (Thorat and Kumar 2008-b).
5.6 Remedies against Caste Discrimination- Present Indian Discourse

According to Thorat, India is presently engaged in a discussion over developing reservation policies for groups and communities suffering from social, educational, and economic exclusion associated with the institutions of caste, ethnicity, gender, and religious identities. The experiences of over half a century of economic development have brought to the surface the exclusionary character of Indian society and its consequences on the excluded groups. Alternative ways of overcoming deprivation have been suggested by various social scientists engaged in the discussion, particularly, in context of the issue of reservation in private sector, its extension to the OBCs in educational institutions, and for incorporating similar demands by lower caste converts to Islam and Christianity and certain religious minority groups like the Muslims. Broadly, two alternative set of remedies, which have emerged from such deliberations can be grouped into the stratagem of ‘Social and Economic Empowerment’ and ‘Equal Opportunity’ policies (Thorat, 2009).

5.6.1 Graded Inequality versus Inclusive Policy

The development of ‘Inclusive Policies’ requires the use of both, policies for economic empowerment and the provision of equal opportunities (in the form of reservation policy). However, formulating reservation policies for various caste groups within the Hindu and the non-Hindu society needs to take into consideration the ‘essential’ and ‘unique’ features of caste system in terms of its exclusionary character and establish the linkage between them and the wider social and economic consequences on different castes.

The core governing principle of caste system is not inequality alone, but the ‘graded nature of inequality’, which implies a hierarchical and unequal entitlement of rights to various castes. Entitlement of rights being hierarchically unequal, every caste (except for the highest caste group) suffers from a degree of denial and exclusion. No rights can be universal. However, in the given framework of social relations, the loss of rights was not uniform across caste groups. As one moved down the caste hierarchy, the rights and privileges also got reduced. By implication, the castes located at the bottom of caste hierarchy suffered the most. The hierarchical structure determined privileges and obligations of different caste groups in a given network of social relations. The disadvantage of lower castes becomes advantageous for higher castes.
The system of graded entitlement to rights results in disparities in social, economic, and educational conditions of different caste groups. The lesson we ought to learn from this is that given the differential impact on each caste, policies against discrimination and deprivation need to be caste specific and governed by an understanding of the specific social, economic, and education conditions of each caste. Thus, while the general exclusionary character of Hindu society in which each caste suffers (except the highest caste) from denial of rights in a differentiated manner will require a common set of policy instruments of social inclusion to ensure equal and fair participation for all castes in various spheres of society. However, additional policy instruments will have to be combined with group specific policies of inclusiveness. By implication, equal opportunity policies will necessarily be different for different caste groups depending upon the nature of discrimination faced by them and their social, economic, and educational situations (Thorat, 2009).

It has to be recognized that Indian society is characterized by multiple forms of exclusion associated with group identities like caste, ethnicity, gender, religion, and others. Therefore, inclusive policies are required to overcome deprivation associated with caste, ethnicity, gender, religion, and other forms of exclusion. The growth experience of the last fifty years or so indicates that social and economic development has benefited various groups in a differentiated manner and therefore, those who experienced exclusion or derived limited benefits from it are now seeking solutions to their group specific problems.

Here Prof Thorat said that the lessons from literature are that the nature of inclusive policies for India will necessarily have to be guided by an understanding of the exclusionary character of the Hindu and the non-Hindu communities in Indian society. The policy framework will also have to take into consideration the forms and spheres of discrimination and their consequences on discriminated groups.

As regards the Hindu society as mentioned above, the principle of 'graded inequality' implies that not all castes suffer equally from the hierarchal entitlement of rights. While the castes located at the bottom of caste hierarchy, namely, the SCs suffer the most; the OBCs follow closely. The OBCs probably did not suffer from untouchability and residential and social isolation as much as the SCs did, but historically, they too, faced exclusion in educational, employment, and other certain spheres. In case of non-Hindu communities, some elements of Hindu caste system seem to percolated and spilled over with the converts into other religions.
Therefore, the lower castes converts to Christianity and Islam (like the lower caste converts to Buddhism and Sikhism) also face discrimination, although, not in a similar fashion as the SCs (Thorat, 2009).

Certain religious minorities, particularly, the Muslims face discrimination as a religious group in a number of spheres as reflected in their lower performance with respect to relevant human development indicators. Similarly, women also face exclusion as a category of population, but the extent, magnitude, and nature of their exclusion varies depending on their caste, class, and religious backgrounds. Further, some groups such as the STs and semi-nomadic tribal communities too, suffer from isolation and exclusion due their ethnic backgrounds.

Due to variations in forms and spheres of discrimination, the consequences of deprivation and poverty across various discriminated groups may vary. Although, unlike the SCs and the STs, there are limited studies on discrimination of other discriminated groups, however, the visible presence of inter-group inequalities in various indicators of human development points towards the consequences of their historical discrimination – reflected in differential access to income earning assets, property, businesses, employment, education, and civil rights. Although, all of them require measures to compensate for denial of equal rights in the past and also necessary safeguards against discrimination (in some forms if not all) in the present; equal opportunity policies in the form of reservation, in its essential elements may vary depending on nature of discrimination faced by each of these excluded groups and their present social, educational, economic, and political standing (Thorat,2009).

The inclusive policies for discriminated groups essentially will have two aspects. First, in so far as the bulk of discriminated persons also happen to constitute the poor, it will require pro-poor policies of a general nature. Among the general policies, special programs to improve the skills and educational level to enhance the employability of these sections are most important. Since these sections, particularly, the SCs, the STs, the OBCs, and women were denied rights to education in the past, it is necessary to use measures to compensate for past denial. Other constituting religious minorities like the Muslims also suffer from lower education levels; hence, similar measures are also necessary for them. Besides education, general policy measures will also require measures to improve the ownership of income earning agricultural land and non land capital assets as some groups as whole or some sections within such groups lack access to
income earning capital assets, again due denial of ownership of such assets. Also, such measures will have to be substantiated by the provision of social needs like housing and others.

Secondly, general pro-poor policies will have to be supplemented by equal opportunity policies. The general policies will necessarily compensate the discriminated groups for denial of equal rights, which everybody enjoyed in the past. However, given their continuing exclusion and discrimination in the present, it is necessary to provide legal safeguards against discrimination, as well as, initiate pro-active measures to provide them a fair share in various spheres of society, polity, and economy. The equal opportunity policies will have to necessarily in the form of reservation to ensure fair access to employment, capital assets, and social needs like education and housing, civil and cultural rights, and other spheres.

The experiences of various countries and that of our own indicate that our government has used a few measures separately or in combination as part of its present equal opportunity policy. It generally constitutes firstly, legal safeguards against discrimination in multiple spheres of society, polity, and economy, which takes the form of enacting laws against discrimination such as Civil Rights Act in the USA or PCR and POA Acts in India. These Acts are necessary to provide legal safeguards so that in event of discrimination an individual can take legal recourse. Secondly, it has also been recognised that though legal provisions are a necessary pre-condition to overcome discrimination; just legal safeguards are not enough. Just the mere enactment of laws cannot overcome the deleterious consequences of historical exclusion in the past, in terms of denial of basic rights in education, in access to income earning assets, employment, civil rights, and other spheres. Further, the laws also have their limitations in overcoming the consequences of exclusion and discrimination suffered by discriminated groups in the past and also towards limiting the continuity of discrimination in the present. In fact, the consequences of discrimination in the past and present are reflected in poor performance of discriminated groups with respect to necessary indicators of human development such as educational levels, ownership of income earning assets, employment both, in private and public sectors, as well as, their participation in executive, governance, and legislature of the nation (Thorat, 2009).

Therefore, equal opportunity policies will require specific measures to ensure equal share and participation of discriminated groups in various spheres of society, polity, and economy such as legislature, executive, employment in private and public sectors, education, and other public spheres in the form of reservation policy. Reservation policy will ensure their due share in
income earning assets, employment in private and public sectors, education, civil amenities like housing and other services and also in the executive (including, decision-making and monitoring processes). This compensatory policy is necessary to break the inter-generational cumulative transmission of disadvantage that the discriminated groups faced and continue to face.

Besides the policy of equal access in employment, education, and legislature; equally important is their participation in the executive and administrative processes. The representation of discriminated groups may become meaningful through their own representation and participation in the administrative and decision-making process at all levels as it will bring their experiences, as well as, sensitivities to the process of governance. Therefore, participation of discriminated groups in the governance process at all levels from legislature to policymaking, execution, and monitoring is necessary. Representation and participation of discriminated groups is central to the development of inclusive policies and an inclusive society (Thorat, 2009).

There are legal and other mechanisms, which have been used inter-nationally and nationally to operationalize the two dimensions of equal opportunity policy, namely, reservation and equal share in governance. It is imperative that the provisions with respect to equal rights and protection against violation of rights be embodied in the Constitution. If a society practices discrimination then the impetus for change should come from the state and the civil society. The initiatives by civil society in the form of reforms and securing equal human rights are necessary. However, a democratic nation has its responsibilities and therefore, it is obligatory on its part to enact legal and other measures in the Constitution with clear fixation of responsibilities.

To summarise, the development of ‘inclusive policies’ will involve three components. Firstly, it should include general pro-poor policies for the generality of poor as a whole including discriminated groups. Secondly, equal opportunity policies for discriminated groups with two measures, namely, enactment of laws against discrimination and pro-active measures in the form of reservations to give equal share in income earning capital assets, employment (public and private), social needs (education and housing), participation in governance (legislature, executive and administration), and with necessary provisions in the Constitution and the laws. It is necessary to recognise that while the development of inclusive policies will have a common thread cutting across all discriminated groups; the equal opportunity policies, on the other hand, will have be groups specific taking into cognizance the differential nature of discrimination and marginalization associated with group identities. Since our society, economy, and polity is
characterised by exclusion and isolation of various types and magnitude; it is imperative to develop a comprehensive inclusive policy to ensure representation and participation of the hitherto excluded sections to seek a fair share and equity in social and economic development of the nation. Correspondingly, the polity, society, and economy will also have to be more inclusive and participatory and only then can democracy as means of governance become a meaningful for all (Thorat,2004).

India’s equal opportunity policy, more popularly known as the “reservation policy” was authored by provisions in the Indian Constitution, which was adopted in 1950, though its initiation at the country level dates back to the early 1930’s.

The Indian government's approach towards the SC/STs has primarily been shaped by the provisions in the Constitution, which basically guarantee equality before the law and empower the state to make special provisions to promote the educational and economic interests of the SC/STs and to provide them with legal and other safeguards against discrimination in multiple spheres.

The government has applied the following strategy:

(a) Legal safeguards against discrimination;
(b) Pro-active measures in the form of ‘reservation policy’ for state sector and state supported sectors; and
(c) Policies in the form of informal affirmative action for private sector (namely, agriculture and private industry, in which more than 90 per cent of the SC/ST workers are engaged) as part of a general developmental or empowering measures.

Anti-discriminatory measures include enactment of PCR Act, 1979 and the POA Act, 1989. Under the former, the practice of untouchability and discrimination in public places and services is treated as offence. The latter provides legal protections to the SC/STs against violence and atrocities by the higher castes.

Reservations for the SC/STs in government services, educational institutions, and political bodies like legislature also fall under anti-discriminatory, but pro-active measures. These pro-active measures have been used to ensure proportional participation of the SC/STs in various public domains.
The reservation policy is confined to a state-run and state-supported sector, whereas, the vast private sector is excluded from this provision. In private sector, therefore, the SC/STs remain unprotected from exclusion and discrimination. In the absence of reservation policy in private sector, the state has used ‘general programmes’ for economic, educational, and social empowerment of the SC/STs. The focus has been to improve the private ownership of fixed capital assets (land and non-land), education, and improved access to social needs like housing, health, drinking water, electricity, and others. The strategy for improving or building private ownership of capital assets, education, and social needs, which has been generally taken as a part of the anti-poverty programmes is also used as a method of earmarking quotas in an informal manner for the SC/STs (Thorat, 2004).

5.6.2 Reservation in Government Services, Educational Institutions, and Legislature Bodies

Reservation policy is operative mainly in three spheres: government jobs, admissions to public educational institutions, and seats in central, state, and local legislatures, and bodies. Over a period of time, as the government sphere expanded, so did the scope of reservations to include newer spheres like: government housing, government spaces for shops and commercial activities, and a number of other small spheres.

The most important aspect is reservations in government services. Article 16 (A) permits reservations in favour of backward castes and in pursuance of this provision the government has made reservations for the SC/STs in proportion to their share of population. There is also reservation in the promotion of persons employed in the public sector. The government services generally include government civil services, public sector undertakings, statutory and semi-government bodies, voluntary agencies, etc. which are under the control of the government or receiving grant-in-aid. However, there are also certain services at the central level that do not come within the purview of reservation policy. These include defense and judicial services.

Reservation policy is accompanied by an array of other special provisions designed to facilitate and enhance the probability of reserved groups to compete for government jobs. These include: relaxation of minimum age for entry into service, relaxation in minimum standards of suitability within reasonable limits (subject to required minimum qualifications), relaxation in fee,
and provisions for pre-examination training, separate interviews for the SC/ST persons, provisions of experts from the SC/ST backgrounds on selection committees among others (Thorat, 2004).

Second important sphere of reservation is the educational sector. Article 15 (4) empowers the state to make special provisions for the advancement of the SC/STs. Under this provision, the state has to reserve seats for the SC/ST students in educational institutions: in colleges and universities, including technical, engineering, and medical colleges run by the central and state governments and government-aided educational institutions. These provisions are supported by a number of financial schemes, which include scholarships, special hostels for SC/ST students, concessions in fees, grants for books, remedial coaching classes, etc.

The third most important sphere of reservation is representation in the central and state legislatures. Legislative reservation is one of the specific and mandatory constitutional provisions dedicated to the SC/STs. Under Articles 330, 332, and 334 of the Constitution, seats are reserved for the SC/STs in the central and state legislatures in direct proportion to their population size. Similarly, reservation is provided in local level bodies at the district, block, and village levels. Constituencies (for seats in Parliament and State Assemblies) are reserved for the SC/STs in proportion to their share in population. Thus, at the all India level, out of the total number of parliamentary seats, 14 per cent and 7 per cent of constituencies (or seats) are earmarked for the SC/STs respectively. Only the persons from the SC/ST community can contest from these reserved constituencies. For example, in 2004, of the total of 543 constituencies in the Parliament, 75 were reserved for SCs and 41 for STs (Thorat, 2009).

5.6.3 Private section and Reservation

Faced with intense group structured inequalities and deprivation associated with caste system and the institution of untouchability, and the urgent need to correct these inequalities, the Indian state has made explicit use of multiple remedies against discrimination (in the form of legal measures and equal opportunity policies) in employment, educational, political, and civil spheres. Such policies, however, remain confined to a tiny government and public sector, and the vast private sector comprising agriculture, industry, and service sector (in which more than 90 per cent of the SC/STs are employed) remains outside the purview of reservation policy. To begin with, in other countries such policies have been used both, for the public and private sector.
Subsequent to the narrowing down of the already tiny public sector owing to privatisation and selective withdrawal of the state under the policy of liberalisation; serious concerns have been expressed about the significance and efficacy of the public sector reservation policy.

5.6.4 Equal Opportunity Arguments and Corporate Sector’s Position

In this section Thorat delves into the debate on extending the reservation policy to private sector. Among several reasons, the absence of discrimination in recruitments or hiring and the use of merit-based policies in private sector have been offered as main arguments against extending reservations to private sector by those who oppose reservations in one form or the other. After running through the various views on these points, it appears that these arguments are not based on empirical facts about the working of various markets and, particularly, of hiring practices used by private sector. The evidence, on the contrary, shows that methods used by private sector have been discriminatory and exclusionary in nature.

Although, private sector denies the possibility of discriminatory practices in hiring etc., it accepts the problems of marginalised social groups like the SC/STs and suggested some measures for their upliftment. This section now looks at the measures suggested by corporate sector for the discriminated groups such as the SC/STs and their limitations.

Firstly, the urgent need to improve the status of disadvantaged groups is widely shared even by the corporate sector, but there is a considerable disagreement about methods and the means that can or should be used for their improvement. Exceptions apart (which we shall mention later), the corporate sector and a group of academicians favour policies for the development of education, skills, and entrepreneurship abilities with increased access to capital to setup businesses and for building institutional infrastructures for education etc. The corporate sector also suggested informal and voluntary preferences in employment for the SC/STs with or without incentives subject to merit (Thorat- Reservation in the Private Sector).

The Federation of Indian Chambers of Commerce (FICCI), which represents about 443 chambers, associations, and member bodies suggested three-pronged measured as (a) definite medium and long-term plan for the educational and skill development of the SC/STs through private public partnership; (b) development of entrepreneurship with well defined affirmative action policy for financial institutions to supply capital to the vulnerable groups for setting up
businesses and awarding government licenses and contracts to the SC/STs, and giving preference to the SC/STs in government procurements; and (c) some representation to the disadvantaged communities in private sector employment on voluntary basis with substitutive incentives to firms following the preferences in the forms of tax-breaks.

The Indian Chambers of Commerce and Industry, which has a membership of about 1,500 suggested that the proper way to address the issue of uplifting the downtrodden classes is by providing them with adequate educational support, vocational programmes, and preferences in jobs, whether in public or private sector through incentives to those who provide employment to such groups. The Confederation of Indian Industries (CII) favoured programmes of affirmative actions in terms of voluntary preferences in employment. But, it focuses on economically backward sections irrespective of caste, creed or religion. It emphasises on improving employability and entrepreneurial capacities for self-sustaining ventures. The CII, thus, suggested measures for (a) educational development by member companies through scholarships, adoptions, through linkages of company schools with government schools in improving educational infrastructure, upgrading the skills of teachers, helping Industrial Training schools to upgrade, giving preferences to the economically backward students in companies, vocational schools, and training centres; and (b) undertaking measures to develop entrepreneurial skills and helping artisans to strengthen macro-enterprises and self-help groups, generating resources for them and helping them in setting up enterprises (Thorat, Aryama and Negi 2005).

The Associated Chambers of Commerce favours American type affirmative action policy in employment, education, housing, and health facilities – by “giving preference in employment to the SC/STs and backward communities, provided the other things in merit are equal”. It also suggested that a mechanism could be evolved to seek redressal grievances, in case discrimination based on community, sex, and caste.

One thing is apparent from the position of corporate sector that they all recognise the need for measures to improve the situation of the disadvantaged groups like the SC/STs and propose measures for their development. Most of them also suggest the need to give preferences to persons from disadvantaged sections in employment, subject to merit and strictly on a voluntary basis. They also suggested preferences in supply of capital by public sector banks to disadvantaged groups so as enable them to undertake businesses. But, their suggestions remain silent about the
role of private sector banks. In addition, they also favour preference for the SC/STs in the government contracts, which includes government purchases and procurements.

This informal affirmative action policy, however, is supposed to be based on voluntary initiatives of corporate sector without any legal compulsion or monitoring mechanisms. In fact, corporate sector suggests provisions of incentives in return to firms, which give some share of employment to the SC/STs. They do not suggest any legal safeguards against discrimination in employment. Interestingly, only one chamber suggested American type affirmative action policy with legal safeguards and none of them favoured quotas and monitoring (Thorat, Aryama and Negi 2005).

Here Thorat said that, why does corporate sector take such an approach? The reasons are to be found in their particular understanding of the problems of the SC/STs. Most of the chambers do not recognise that they discriminate in employment, in supply of capital, in private education, and other markets. Therefore, corporate sector argues the case for some preferences, but on the grounds of sympathy and charity for the historical denial, and not on the basis of continuing discrimination in private domain in the present.

Since corporate sector does not recognise the problem of continuing discrimination of the SCs in various markets and only recognises (although, in an indirect manner) the present deprivation as a possible consequence of denial of rights in the past, the solutions offered by them are also based on this assumption. The proposed measures by corporate sector are largely grounded in sympathy and charity and ignore the issue of providing equal opportunities and safeguards to discriminated groups against continuing discrimination in the present – in various markets like private employment, private capital, land markets (agricultural and urban), input markets, product and consumer markets, private education, and other services required for pursuing businesses. It is this understanding of corporate sector, which induces them to suggest measures for the development of education, skills, and entrepreneurship to improve the employability and entrepreneurship skills among the discriminated groups. Measures suggested by corporate sector also displace the issue to access and lack of basic infrastructure and in this manner they wash their hands off from the issues of discrimination practiced by markets.

In short, they do not see any role for themselves and present themselves as the ‘employer of employable’, without discrimination. For instance, corporate sector recommends that public
sector banks should give preference to the SC/STs in supplying credit, but such measures are not suggested for private banks. The corporate sector also recommends that the government should give preferences to the SC/STs in government contracts in purchases of materials and goods, but such measures are not extended to private sector purchases. Again corporate sector recommends some quotas for the SC/STs in government contracts and procurements like constructions, but it excludes quotas in contracts by private sector. Also, corporate sector recommends some preferences to the SC/STs in admissions to public educational institutions, but exceptions apart, they are silent about reservations in private educational institutions. In this context, the issue of corporate social responsibility needs to be revived and discussed afresh (Thorat, Aryama and Negi 2005).

These alternative measures suggested by corporate sector, therefore, suffer from major limitations in so far as they do not suggest definite measures against present market discrimination suffered by the SC/STs in various markets. They also do not address the question of market failures associated with caste-based market discrimination and its adverse consequences on economic efficiency. In other words, corporate sector offers a general solution of improving education, skills, and entrepreneurship to a problem, which requires specific solutions. It fails to recognise that the problems of the discriminated groups are two folds; firstly, lack of access to income earning capital assets, other capital assets essential for running businesses, and education due to the denial in the past and resultant economic and educational backwardness of a high magnitude; and secondly, continuing exclusion and discrimination in various markets including private employment market in the present.

Therefore, the problem indeed requires a dual solution. One set of remedies for historical denial of ownership of capital assets, employment (of some types) and education; and secondly, a set of remedies to provide safeguards and measures against continuing market discrimination. Like other economically and educationally backward sections from higher castes, the SC/STs also require education and skill development to improve their employability and access to capital for businesses. But unlike others, the SC/STs facing discrimination in jobs and other markets require additional safeguards to ensure fair access to private sector employment, capital markets, other input markets, product and consumer markets and services required for businesses, and education and skill development. Education and entrepreneurship development alone will not help, unless they supplemented by strategies of fair access and participation in jobs and various other markets to the discriminated groups and therefore, what is required is a definite policy to ensure their adequate share in private sector employment, capital, agricultural (land and non-land assets) and other input
markets, product and consumer markets and services, and educational and skill development institutions tailored for their needs. It is not a coincidence that in large number of countries across the world, the strategies of economic and educational empowerment of discriminated groups are supplemented by reservation/affirmative action policies to give them a fair share and representation, not only, in employment and education, but also in capital, agriculture land, housing, and political sphere (Thorat, Aryama and Negi 2005).

What is problematic in the solution suggested by corporate sector is the failure to recognise the adverse consequences of market failures associated with caste and untouchability-based market discrimination on the competitiveness of various markets and thereby, on economic efficiency and the performance of the economy. The market intervention policy in the form of reservation or affirmative actions and other positive measures are suggested, not only, to provide equal access to discriminated groups, but also to overcome the market failures or imperfections caused by discrimination and to improve its competitiveness, and thereby, the performance of the economy. In other words, anti-discriminatory measures and pro-active policies are required for social justice and growth, which corporate sector does not seem to admit (Thorat, Aryama and Negi 2005).

5.6.5 Remedies for Economic and Market Discrimination in Private Sector

A policy for private sector reservation is necessary to provide equal opportunities to discriminated groups and to create an atmosphere conducive for economic growth. There are lessons to be drawn both, from theory and empirical facts – from the experiences of Indian reservation policy and other similar policies in countries across the world. The overview of the remedies being utilised in India and other countries presented in the ensuing sections indicate three alternative remedies being used. These include Equal Opportunity Laws as safeguards against discrimination and measures to ensure equal share and participation (assuming different names like Reservation in India, Affirmative Action in the United States, Positive Action Policy in the United Kingdom, or New Policy and Reparation and Compensation in Malaysia). Adoption of some or all of these remedies against discrimination for discriminated and similar groups in private sector in India will be determined by the nature of economic discrimination faced by them in various markets. It needs no mention that the SCs in India suffered from societal discrimination in multiple economic and social spheres. Therefore, remedies against past and present discrimination in private sector should necessarily cover multiple economic spheres and not just the labour markets alone.
Given the prevalence of a pervasive societal discrimination against the SCs, strictly speaking, all the three measures, namely legal safeguards, measures to ensure appropriate share and participation and compensation and reparation are essential for mitigating the existing practices of market and non-market discrimination and the denial of economic and educational opportunities in the past (the consequences of which are still present today). The strategy of reparation and compensation is necessary to compensate for the denial of property rights in agricultural land, business opportunities, and educational facilities to the SCs. To deal with current discrimination in labour, capital, input, product and consumer markets, and social needs like education and housing, a combined use of legal and fair access policies may be necessary. In brief, all the three measures are necessary to address the problems of discriminated groups (Thorat, Aryama and Negi 2005).

5.6.6 Legal Safeguards against Economic and Market Exclusion and Discrimination

The Indian Constitution guarantees equal rights to all. While there are legal guarantees of equal rights in civil spheres in the form of PCR Act, 1979; there are no such legal safeguards against economic and market discrimination for private sector. Therefore, there is a need to have laws against economic and market discriminations in private sector similar to the PCR Act. For the purposes of enacting such an Act, private sector should be clearly defined, so as to include, not only, the sphere of private employment, but also, transactions in various other markets, like agriculture, land and lease markets, capital and financial markets, input markets, product and consumer markets, privately supplied social needs like education, housing, water, and various other services carried through market and non-market channels should also be brought within the ambit of this law.

Economic and market discrimination based on caste and untouchability should be treated as illegal and offences should invite legal action. This should include unfair discrimination in hiring for employment, in sale, purchase, and leasing in and leasing out of agricultural lands, sale of private irrigation water, supply of finances by private banks, discrimination in the sale and purchase in various products and consumer goods, discrimination in the provision of private medical services, admissions to private educational institutions, discrimination in renting of private residential houses, discrimination in allocation of private spaces for shops and other business activities, and supply of other services (Thorat, Aryama and Negi 2005).
5.6.7  Strategies for Fair Access and Participation

Anti-discriminatory measures in the form of legal safeguards against violations in economic and market discrimination have their limitations. Due to the practice of discrimination, the SC/STs may not enjoy fair access and participation in various markets. Therefore, there is need to ensure fair access and participation in various markets and non-market transactions including employment. Some sort of reservation policy will have to be developed to ensure fair share and participation in private employment, in supply of credit and in private educational institutions.

In the case of agricultural land, capital, and education some sort of policy instructions are necessary to increase the ownership of agricultural land, capital, and education to compensate for the historical denial of rights and this will have to be done through one time settlement spread over a reasonable period of time.

5.6.7.1 Private Employment Market – Legal Safeguards and Reservation in Private Sector Employment

The employment pattern of discriminated groups like the SC/STs is such that a majority of them constitute wage labour households. Selective evidence indicates the presence of significant discrimination of the SC/STs in hiring and wage payments, which is unrelated to productivity. At present, a majority of the SC/ST workers are engaged in the private sector, which includes agriculture, privately owned industrial and tertiary sectors.

In case of agricultural sector, there is a high involvement of the SC/ST workers mainly as agricultural labourers (65 per cent of the SC households are wage labourers). The imposed involvement by the prevailing system in agricultural labour markets ensures their excessive participation and as such there is no need of reservation in agriculture labour markets for the SC/STs.

However, given their selective discrimination in hiring and wage payment, particularly, associated with the notions of untouchability and pollution and purity, there is need to have at least a legal provision in the form of Equal Employment Opportunity Act (EEOA) so that legal protection is guaranteed against labour market discrimination to the SC/STs in hiring and wage payments.
In the industrial and service sectors, discrimination in employment is possibly high in certain categories of jobs, if not all. It is reflected in the near absence of the Dalits in the industrial and service sectors. Herein, the government should use the provisions of the EEOA and supplement it by reservations in terms of quotas identical to the present reservation policy in public sector employment. The EEOA is likely to reduce discrimination as it will act as deterrent on employers. Further, reservation with certain quotas in certain categories of jobs will ensure fair participation of the SCs in the industrial and service sectors employment.

In order to bring transparency in employment patterns, all firms should be asked to register with the EEOA (to be set up for this purpose) and it should be made obligatory for the employers to provide information about the social composition of their employees (Thorat, Aryama and Negi 2005).

5.6.7.2 Land Markets – Compensatory Measures for Denial of Ownership of Agriculture Lands

Over 80 per cent of the SC/ST persons still reside in the rural areas. Out of the total SC households about three-fourths are either, landless or near landless (that is, owning less than one acre of land). High incidence of landlessness among the SCs is the result of customary restrictions on the ownership of agricultural land exercised in the past. In the present, the SC persons suffer from discrimination and even exclusion from the purchase and allocation of agricultural lands in private markets. The problem of landlessness of the SCs, therefore, persists. With the exception of some preference in allocation of surplus lands under ceiling and public lands; no serious efforts have been made by the government to correct the impacts of the exclusion from land rights in the past (Thorat-Reservation in the Private Sector…).

In this regard Thorat gives international experience. The policies of empowering discriminated groups for the denial of property rights with respect to ownership of land in some of the countries have been generally treated within the framework of “Reparation or Compensation”. Affirmative Action policy does not, in general, rest on the goal of compensation for the past injustices or on their denial, nor does it provide a vehicle for the redressal of wealth disparities. Therefore, the question related to land has been dealt in some countries within the framework of “Reparation or Compensation” for the denial of land rights in the past.
The Malaysian programme of improving land ownership of the Malays (or the Bhumiputras) is quite relevant in this context. In order to improve the access to agricultural land, the Malay’s were given special land rights. The Malay’s special rights “included reservation of large tracts of agricultural lands. More than 90 per cent of the settlers under the massive programme of Federal Land Development Authority (FLDA) were the Malay community”.

In India, giving priority in the distribution of lands to the SCs has not helped. Although, the government has confirmed land rights in some cases to the SCs, but actual possession of surplus lands under ceiling or public lands has been problematic. What is possibly required is settling of people on the land, in a way similar to Malaysia. The government should create a ‘pool of state lands acquired under ceiling and other public lands like wastelands’ etc. free from legal problems and place such pool of state lands under the control of a specific authority to be created for this purpose. Once the pool of lands under ‘state common land pool’ is created, then perhaps, it and could be distributed to the landless SC/ST households. This may be one of the ways of distributing land bypassing the legal obstacles. In case of agricultural land, the method of “Reparation or Compensation” needs to be used. Under a one-time settlement, the SC households should be given a minimum tract of agricultural land, as compensation for the denial of land rights for several centuries. Other ways have not helped the SCs to gain access to agricultural lands as was pointed out by Ambedkar way back in 1947 (Thorat, Aryama and Negi 2005).

5.6.7.3 Capital Market Compensatory Measures for Ownership of Capital

Traditionally the SCs were, not only, denied ownership to agricultural lands, but were also barred from undertaking any businesses (except some polluting occupations). This is reflected in their lower presence in businesses. In 2001, of the total SC households about 12 per cent in the rural area and 27 per cent in the urban areas were engaged in some kind of self-employed business activities, as compared with 41 per cent and 36 per cent of the Non SC/ST households in the rural and the urban areas respectively.

At present, the government has intervened through public finance institutions such as nationalised banks and special institutions for the SC/STs and through the supply the capital for businesses and industries operated by the SC persons. However, private capital has no obligation towards the SC businesses, which continue to suffer from lack of financial capital.
The main issue, it seems is how to increase the participation of private capital in SC/ST industries and businesses. Some of the countries such as USA and Malaysia have developed an affirmative action policy to improve the access of the discriminated groups to private capital in industries and businesses. The Indian government too, can learn from similar policies and develop a strategy of providing access to private capital for the SC/STs. The affirmative action policy can be developed on the lines suggested below.

Government and public finance institutions should have a specific policy of supply of capital to the SC/ST businesses with a corpus of funds especially marked for them. The government should also develop some sort of affirmative action policy for the private financial institutions, including banks, so that they allocate or supply a certain amount of their capital or finances to the SC/ST industries and businesses.

5.6.7.4 Government Policy to Increase the Participation of SC/STs in Private Capital

At present, private capital is mobilised mainly in the form of ownership in shares, debentures, and other financial instruments. How to increase the share of the SC/STs in share capital and equity in private sector and how to improve their ownership in industry and trade? The Malaysian government has set up Investment Foundation (IF) and National Equity Corporation (NEC), which is used for minority equity investments. These institutions ensure that minority communities get appropriate shares in the companies share capital. Therefore, the Indian government, too, should set up a IF and NEC to help the SC/STs to participate in share capital of various companies. Importantly, legally sanctioned systematic re-distribution of private capital ownership was undertaken under the aegis of New Economic Policy (NEP), 1970-90 in Malaysia, whereby, share of the Malay’s in ownership of corporate capital rose from 2 to 20 per cent over the course of two decades (Thorat, Aryama and Negi 2005).

5.6.7.5 Product and Consumer Goods Market – Legal Safeguards and Reservations

The SC/STs suffers from discrimination in consumer goods both, in wholesale and retail markets. The discrimination is in terms of (a) access to infrastructure such as space and other amenities; (b) restrictions on the sale of goods; and (c) restrictions on the purchase of goods and services. The
The government should, therefore, develop a reservation policy for wholesale and retail markets for the SC/ST communities on the following lines.

(a) Reservation in Government and Private Purchase Contracts

Apparently, government and private sector business participation in purchase of goods is massive. There should be reservations for the SC/ST businesses in purchases of several goods and commodities by government and private sector. The Madhya Pradesh government had taken a major initiative in making provisions of certain quotas in their purchases to the SC/ST communities. This is an effective way to provide some amount of market share to the SC/ST businessmen that protects them from possible discrimination in consumer goods and other markets. The private sector, too, needs to be brought under the ambit of the reservation policy in purchases of goods and services from the SC/ST businesses to partly compensate for discrimination faced by them in commodity markets.

(b) Reservation Policy for the Purchase of Agricultural Products

Products such as vegetables, flowers, fruits, and other products including milk, poultry, etc., which are purchased by government and private sector should be bought from the SC/ST farmers and retailers, who face discrimination in the retail and wholesale markets in the sale of several commodities on account of the notions of untouchability and pollution. Certain quotas could be fixed in the purchase by government and private companies for SC/ST businesses.

(c) Government and Private Sector Contracts

There are other contracts such as in constructions and various other works needed by government and private sector, which include construction of roads, buildings, projects irrigation, and hundreds of other activities in which a specific shares could be fixed for the SC/STs (Thorat, Aryama and Negi 2005).

5.6.7.6 Reservation in Private Sector Education and Safeguard in Private Housing

The government should develop a reservation policy for admissions to private educational institutions and support the poor SC/ST students. In the case of private housing, too, as such there is no need for a
reservation policy. However, there is need to incorporate legal safeguards in the form of anti-discrimination laws against possible discrimination in renting of houses to the SC and in construction of houses in residential areas dominated by higher castes (Thorat, Aryama and Negi 2005).

5.7 Summary

In this chapter, we tried to capture the writings of Thorat on the issue of remedies against discrimination. The theoretical literature indicates that the problem of discriminated groups like the former untouchables, women, and similar groups are different from other groups. First is the lack of the access to income-earning capital assets like agricultural land and non-farm businesses, quality employment, education due to denial of the same in the past for long periods of time, the consequences of which are visible in contemporary times in the form of inter-group inequalities between them and others in several indicators of human development. Second and more important is the continuation of discrimination in various markets and non-market transactions in the present, in some forms, if not all. Therefore, the problem of discriminated groups requires a dual solution—one set of remedies for improving the ownership of land and capital assets, quality employment, and augmenting their educational levels, as compensation for the of basic rights denial in the “past”, and another set of remedies to provide safeguards against discrimination in the “present”. Thorat suggest two set of policies namely of “economic empowerment and equal opportunity policies” are complementary to each other. The policy of economic empowerment is expected to enhance the capacities of discriminated groups to take advantage of the ongoing social and economic progress. Improved access to income-earning assets will improve the capacities of the discriminated groups and enable them to partake in business activities. Educational and skill development is expected to increase employability and enable them to access jobs in both the private and public sectors.

Thorat provides an glimpse of Dr. Ambedkar’s solutions for social inclusion. He suggests certain sets of policies for social inclusion. Such as claim to equal rights, remedies against violation of rights, measures for equal opportunity and participation, representation and participation in legislatures, access to education, access and representation in public services.

In the case of caste discrimination, we have required inclusive policies which are overcome deprivation associated with caste, ethnicity, gender, religion and other forms of exclusion. Indian government applied strategies against discrimination these strategies are legal safeguards against
discrimination, pro-active measures in the form of ‘reservation policy’ for state sector and state supported sectors and Policies in the form of informal affirmative action for private sector namely, agriculture and private industry, in which more than 90 per cent of the SC/ST workers are engaged as part of a general developmental or empowering measures.
Reference

5. Thorat Sukhadeo (2009), “Graded Inequality- Implications for Inclusive Policy volume VI issue 4 & 5, the Little Magazine
Section- II

On Empirical Research Work- Understanding Problems of Dalit and Other

This section is based on theoretical writings of Prof. S.K. Thorat. In the empirical section, we have discuss the issues of measurement of discrimination, status of Dalit multiple aspects, poverty, caste and ownership of private enterprise, empirical estimation of economic discrimination market and non-market, social discrimination of Dalit- untouchability and atrocities, social and economic discrimination of adiwasis, nomadic and de-notified tribes, and studies on policy.