

CBCS Political Science HONS
Sem II- CC4-Political Process In India

Topic-VI-Affirmative Action Policies-Women, Caste and Class

(ইতিবাচক পদক্ষেপ)

(English Version)

| ইতিবাচক পদক্ষেপ

ইতিবাচক পদক্ষেপ দুটি স্বতন্ত্র ব্রিটিশ শর্তাদি "ইতিবাচক বৈষম্য" এবং "ইতিবাচক পদক্ষেপ" উভয়ের কিছু বৈশিষ্ট্যকে অন্তর্ভুক্ত করে, এমন নীতিমালা বর্ণনা করে যা একটি সুবিধা-বঞ্চিত গ্রুপের সদস্যদের সমর্থন করে যারা পূর্বে বৈষম্যের শিকার হয়েছে (এবং বর্তমানেও অব্যাহত থাকতে পারে) : যেমন শিক্ষার ক্ষেত্রে , কর্মসংস্থান বা আবাসনা। ঐতিহাসিকভাবে এবং আন্তর্জাতিকভাবে স্বীকৃত পদক্ষেপের পক্ষে সমর্থন, কর্মসংস্থান এবং বেতনের ক্ষেত্রে অসমতা দূরীকরণ, শিক্ষার সুযোগ বৃদ্ধি এবং অতীতের অত্যাচার, ক্ষয়ক্ষতি বা বাধাদানকে দূর করার মতো লক্ষ্য অর্জনের চেষ্টা ইত্যাদি।

ইতিবাচক পদক্ষেপ এর প্রকৃতি ও নীতি এলাকা থেকে এলাকায় ভিন্ন রকমের হয়। কিছু দেশ কোটা ব্যবস্থা , সরকারি চাকরিতে শতকরা নির্দিষ্ট পরিমাণ নিশ্চিত নিয়োগ। সংরক্ষিত সদস্যদের জন্য একটি রাজনৈতিক দলও থাকার দরকার ইত্যাদি এবং উদাহরণ স্বরূপ ইহা হল ভারতের মধ্যে একটি সংরক্ষিত পদ্ধতি।]

Affirmative Action

Affirmative Action incorporates some of the features of both of the two distinct British terms "positive discrimination" and "positive action", describes policies that support members of a disadvantaged group that has previously suffered discrimination (and may continue to) in such areas as education, employment, or housing. Historically and internationally, support for affirmative action has sought to achieve goals such as bridging inequalities in employment and pay, increasing access to education, promoting diversity, and redressing apparent past wrongs, harms, or hindrances.

The nature of affirmative action policies varies from region to region and exists on a spectrum from a hard quota to merely targeting encouragement for increased participation. Some countries use a quota system, whereby a certain percentage of government jobs, political positions, and school vacancies must be reserved for members of a certain group; an example of this is the reservation system in India.

The term "affirmative action" was first used in the United States in "Executive Order No. 10925", signed by President John F. Kennedy on 6 March 1961. Which includes a provision that government contractors "take *affirmative action* to ensure that applicants are employed, and employees are treated fairly during employment, without regard to their race, creed, color, or national origin". It was used to promote actions that achieve non-discrimination. In 1965, President Lyndon B. Johnson issued Executive Order 11246 which required government employers to take "affirmative action" to "hire without regard to race, religion and national origin". This prevented employers from discriminating against members of disadvantaged groups. In 1967, gender was added to the anti-discrimination list.

Affirmative action is intended to promote the opportunities of defined minority groups within a society to give them equal access to that of the majority population.

It is often instituted for government and educational settings to ensure that certain designated "minority groups" within a society are able to participate in all provided opportunities including promotional, educational, and training opportunities.

The stated justification for affirmative action by its proponents is that it helps to compensate for past discrimination, persecution or exploitation by the ruling class of a culture, and to address existing discrimination.

Affirmative Action Policies of Indian State: Women

The **Women's Reservation Bill** or **The Constitution (108th Amendment) Bill, 2008**, is a pending bill in the Parliament of India which propose to amend the Constitution of India to reserve 33% of all seats in the Lower house of Parliament of India, the Lok Sabha, and in all state legislative assemblies for women. The seats were proposed to be reserved in rotation and would have been determined by draw of lots in such a way that a seat would be reserved only once in three consecutive general elections.

The Rajya Sabha passed the bill on 9 March 2010. However, the Lok Sabha never voted on the bill. The bill is still pending as it never went to the Lok Sabha.

Women's reservations

In 1993, a constitutional amendment was passed in India that called for a random one third of village council leader, or Sarpanch, positions in gram panchayat to be reserved for women.

There is a long-term plan to extend this reservation to parliament and legislative assemblies. Its opponents consider this preferential treatment of women in India as discrimination against them in admissions to schools, colleges, and universities.

Affirmative Action Policies of Indian State : Caste

A fixed percentage of India's government and public sector jobs are made exclusive for categories of people largely based on their caste or tribe.

The 1993 Supreme Court ruling in the Indra Sawhney case said that reservations in job promotions are "unconstitutional" but allowed its continuation for five years. In 1995, the 77th amendment to the Constitution was made to amend Article 16 before the five-year period expired to continue with reservations for SC/STs in promotions. It was further modified through the 85th amendment to give the benefit of *consequential seniority* to SC/ST candidates promoted by reservation.

The 81st amendment was made to the Constitution to permit the government to treat the backlog of reserved vacancies as a separate and distinct group, to which the ceiling of 50 per cent did not apply. The 82nd amendment inserted a provision in Article 335 to enable states to give concessions to SC/ST candidates in promotion.

The validity of all the above four amendments was challenged in the Supreme Court through various petitions clubbed together in *M. Nagaraj & Others Vs. Union of India & Others*, mainly on the ground that these altered the Basic Structure of the Constitution. In 2006, the Supreme Court upheld the amendments but stipulated that the concerned state will have to show, in each case, the existence of "compelling reasons" - which include "backwardness", "inadequacy of representation" and overall "administrative efficiency" - before making provisions for reservation. The court further held that these provisions are merely enabling provisions. If a state government wishes to make provisions for reservation to SC/STs in the promotion, the state has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class.

In 2007, the Government of Uttar Pradesh introduced reservation in job promotions. However, citing the Supreme Court decision, the policy was ruled to be unconstitutional by the Allahabad High Court in 2011. The decision was challenged in the Supreme Court, which upheld it in 2012 by rejecting the government's argument because it failed to furnish sufficient valid data to justify the move to promote employees on a caste basis.

Affirmative Action Policies of Indian State : Class

Other Backward Class (OBC) is a collective term used by the Government of India to classify castes which are educationally or socially disadvantaged. It is one of several official classifications of the population of India, along with Scheduled Castes and Scheduled Tribes (SCs and STs). The OBCs were found to comprise 52% of the country's population by the Mandal Commission report of 1980, a figure which had shrunk or increased to 41% by 2006 when the National Sample Survey Organisation took place. We

can have more authentic information about OBCs if in the coming census of 2021, Government collects data of OBCs by including column for OBC, as like SC and STs. There is substantial debate over the exact number of OBCs in India; it is generally estimated to be sizable, but many believe that it is higher than the figures quoted by either the Mandal Commission or the National Sample Survey.

In the Indian Constitution, OBCs are described as "socially and educationally backward classes", and the Government of India is enjoined to ensure their social and educational development — for example, the OBCs are entitled to 27% reservations in public sector employment and higher education. The list of OBCs maintained by the Indian Ministry of Social Justice and Empowerment is dynamic, with castes and communities being added or removed depending on social, educational and economic factors. In a reply to a question in Lok Sabha, Union Minister Jitendra Singh informed that as on January 2016, the percentage of OBCs in central government services is 21.57% and has shown an increasing trend since September,1993. Likewise, in 2015, at educational institutes, funds meant for OBC students under the reservation policy were not used properly or were underused in cases of upgrading infrastructure as well as in violation of faculty recruitment of OBCs according to the 49% reservation policy.

Until 1985, the affairs of the Backward Classes were looked after by the Backward Classes Cell in the Ministry of Home Affairs. A separate Ministry of Welfare was established in 1985 (renamed in 1998 to the Ministry of Social Justice and Empowerment) to attend to matters relating to Scheduled Castes, Scheduled Tribes and OBCs. The Backward Classes Division of the Ministry looks after the policy, planning and implementation of programmes relating to social and economic empowerment of OBCs, and matters relating to two institutions set up for the welfare of OBCs, the National Backward Classes Finance and Development Corporation and the National Commission for Backward Classes.

Obligation of the government

Reservation of OBCs in central government jobs is 21.57%. This difference Under Article 340 of the Indian Constitution, it is obligatory for the government to promote the welfare of the OBCs.

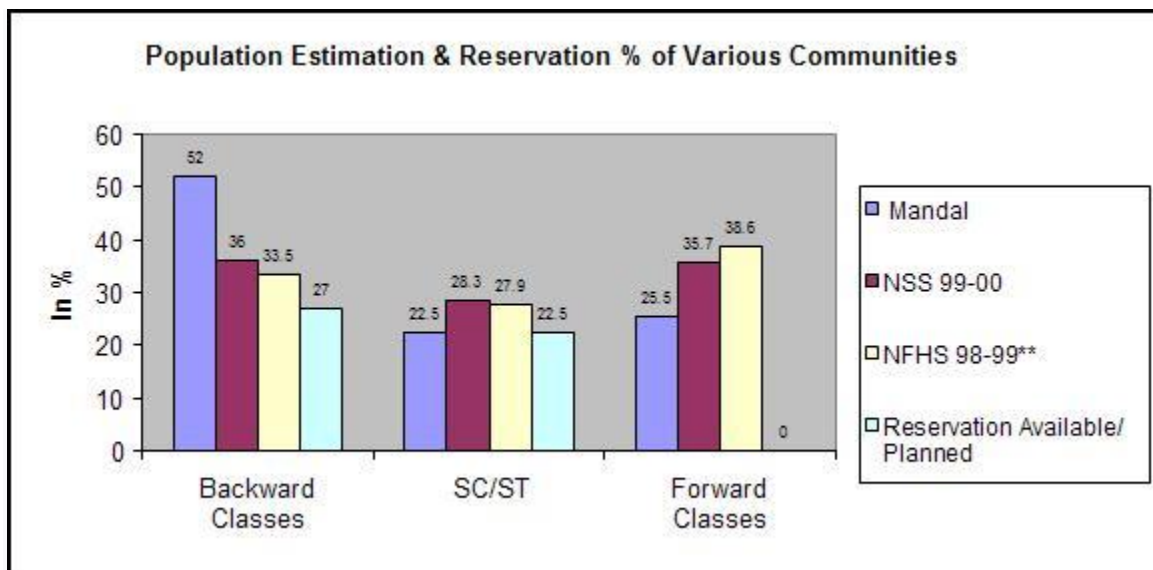
The president may by order appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India. And also, the difficulties under which they labour and to make recommendations as to the steps that should be taken by the union or any state to remove such difficulties. Such effort is to improve their condition and as to the grants that should be made. The order appointing such commission shall define the procedure to be followed by the commission. A commission so appointed shall investigate the

matters referred to them and present to the president a report setting out the facts as found by them and making such recommendation as they think proper.

— Article 340 of the Indian Constitution

A 1992 decision of the Supreme Court of India resulted in a requirement that 27% of civil service positions be reserved for members of OBCs. In a reply to a question in Lok Sabha, Union Minister Jitendra Singh informed that as on January 2016, the percentage between proportion of different communities in higher educational institutions is mainly because of difference in primary school enrolment. Political parties in India have attempted to use these communities as their vote banks.

Mandal Commission



**NFHS Survey estimated only Hindu OBC population. Total OBC population derived by assuming Muslim in same proportion as Hindu OBC population.

The decision to set up a second backward classes commission was made official by the president on 1 January 1979. The commission popularly known as the Mandal Commission, its chairman being B. P. Mandal, submitted a report in December 1980 that stated that the population of OBCs, which includes both Hindus and non-Hindus, was around 52 per cent of the total population according to the Mandal Commission.

The number of backward castes and communities was 3743 in the initial list of Mandal Commission set up in 1979-80. The number of backward castes in Central list of OBCs has now increased to 5013 (without the figures for most of the Union Territories) in 2006 as per National Commission for Backward Classes.

- The Mandal Commission developed 11 indicators or criteria to identify OBCs, of which four were economic.

The National Sample Survey puts the figure at 41%. There is substantial debate over the exact number of OBCs in India, with census data compromised by partisan politics. It is generally estimated to be sizable, but lower than the figures quoted by either the Mandal Commission or and National Sample Survey.

27 percent of reservation was recommended owing to the legal constraint that the total quantum of reservation should not exceed 50 percent. States which have already introduced reservation for OBC exceeding 27 per cent will not be affected by this recommendation. With this general recommendation the commission proposed the following overall scheme of reservation for OBC:

1. Candidates belonging to OBC recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27 per cent.
2. The above reservation should also be made applicable to promotion quota at all levels.
3. Reserved quota remaining unfilled should be carried forward for a period of three years and de-reserved thereafter.
4. Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBC in the same manner as done in the case of scheduled castes and scheduled tribes.
5. A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of scheduled caste and scheduled tribe candidates.

These recommendations in total are applicable to all recruitment to public sector undertakings, both under the central and state governments as well as to nationalised banks. All private sector undertakings which have received financial assistance from the government in one form or other should also be obliged to recruit personnel on the aforesaid basis. All universities and affiliated colleges should also be covered by the above scheme of reservation. Although education is considered an important factor to bring a desired social change, "educational reform" was not within the terms of reference of this commission. To promote literacy the following measures were suggested:

1. An intensive time-bound programme for adult education should be launched in selected pockets with high concentration of OBC population.
2. Residential schools should be set up in these areas for backward class students to provide a climate specially conducive to serious studies. All facilities in these schools including board and lodging should be provided free of cost to attract students from poor and backward class homes.
3. Separate hostels for OBC students with above facilities will have to be provided.
4. Vocational training was considered imperative.
5. It was recommended that seats should be reserved for OBC students in all scientific, technical and professional institutions run by the central as well as state governments. The quantum of reservation should be the same as in the government services, i.e. 27 per cent.