The protective discrimination social policy model attempts to synthesize universal and inclusive selective principles in the provision of benefits of services to disadvantaged groups. The universal principle is based on the moral concept of social justice and thus recognizes the right of the individual to obtain the basic social benefits of services, irrespective of his ability to pay for them. The inclusive selective principle identifies disadvantaged groups for favoured or special treatment. Positive discrimination policies derived from the principle of "inclusive selectivity" represent something of a hybrid of the two principles. They are selectively inclusive in the sense that they attempt to identify groups for favoured treatment by a process of diagnosis and selection, free from stigmatization. Thus, such policies provide a framework of values and opportunities within and around which socially acceptable selective services aiming at specially disadvantaged groups with the minimum risk of stigma, can be developed. One may, therefore, argue that positive discrimination policies aim at the improvement of the circumstances of living for socially, economically and politically disadvantaged minorities by providing special services or by providing the same services on protective basis.

Ideology and Positive Discrimination Policies in India

Pinker (1971 : 100) points out that welfare state ideology is most supportive to positive discrimination policies because it emphasizes equality, social justice and egalitarian values.

The Constitution of India envisages her as a welfare state. Article 38 of the Constitution contains a provision that, the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The Constitution also lays down that the state shall insure that "the ownership and control for material resources are so distributed as best to serve the common goal". Further, "the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment". Article 39(e) enjoins the state to ensure "the health and strength of workers, men and women, and tender age of the children are not abused and that citizens are not forced by economic necessity to enter evocations unsuited to their age and strength". Article 41 lays down that the state shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistances in cases of un-
employment, old age, sickness and disablement, and in other cases of underserved want". Further, Articles 42 and 43 direct the state to "secure to all workers, just and humane conditions of work and secure to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities". Article 45 states that the state shall endeavour to provide — free compulsory education for all children until they complete the age of 14 years."

The Directive Principles of State Policy, laid down in Article 46, provides that the state shall promote with special care the educational and economic interests of weaker sections of the people, and, in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation".

Scheduled Castes

The scheduled castes include those castes, races, or groups defined by the President of India under the provision of Article 341 of the Constitution and listed therein schedule V. Constituting about 15 per cent of the total population of the country, the scheduled castes are socio-economically one of the most disadvantaged groups in the society. The genesis of their disadvantaged condition lies in the Hindu social structure. In ancient India, Hindu Society was divided into three Varnas: (1) the Kshatriyas — rulers, warriors; (2) the Brahmins — priests; and (3) the Vaishyas — traders. A person could aspire to rise in this hierarchy either by his wisdom or his powers. As the process of integration of the Aryans with the natives continued over time, a fourth caste group was created, called the Shudras. These four groups form the basis of the Hindu Caste System.

The caste system, in time, gave prominence to the idea of purity of blood and division of labour among the castes. In this process, the Shudras, who engaged in menial jobs such as sweeping and scavenging and removal of dead animals, were relegated to the lowest status in the caste hierarchy. The performance of their disagreeable menial tasks gave rise to the institution of untouchability — characterised by discrimination in social relations and occupational activities — which eliminated the Shudras' opportunity for achieving the status of the higher castes.

Thus, the social system in India led to deep rooted oppression and discriminatory practices in social and economic relations against the Scheduled castes and for centuries deprived them of a chance to share equally with the higher castes the opportunities for social and economic mobility. Scheduled castes, therefore, are one of the most disadvantaged groups in Indian society. For example, 90 per cent of the scheduled castes in 1971 (N=65 million) lived in villages, while 82 per cent of India's population lived in villages. About 90 per cent of the total scheduled caste population were illiterate, while 82 per cent of Indian population was illiterate. The percentage of agricultural labourers, the poorest among the poor, was higher for the scheduled castes than for general population: about 34.5 per cent for the scheduled castes and 16.7 per cent for the general population. In respect to residence, housing and health, the situation of the scheduled
castes has been abject.

Scheduled Tribes

The "scheduled tribes" in India include groups declared by the president of India under the provision of Article 342 (1) of the Constitution. Scheduled tribes constitute about seven per cent of India's population. About 89 per cent of the total tribal population are concentrated in the states of Madhya Pradesh, Orissa, Bihar, Gujarat, Rajasthan, Maharashtra, West Bengal, Andhra Pradesh and Assam.

Scheduled tribes are placed in a highly disadvantageous position in Indian society. According to data for 1971, only three per cent of them lived in urban areas. In terms of education, less than ten per cent of them were literate. In terms of economic participation, 33 per cent of total workers in scheduled tribes were engaged as agricultural labourers in 1971, as compared to 25.8 per cent of total workers in the country. Further, only 9.4 per cent of the total tribal labour force were employed in the non-agricultural sector, as compared to 31.4 per cent of the total work force in the country. However, about 57 per cent of the work force of scheduled tribes were employed as cultivators as compared to 43 per cent of the total work force engaged in a similar occupations. Even in this respect, scheduled tribes are not better off than the rest of the population because of the following reasons: (1) The average size of land holding in tribal areas is comparatively small, (2) The quality of land in tribal areas is poorer than in non-tribal areas; thus, the per acre output in tribal areas is lower than in non-tribal areas.

Social Programmes for Scheduled Castes and Tribes

After Independence and the adoption of the Constitution which declared India as a Socialist Democratic Republic, wherein discrimination against and exploitation of any section of society by other sections cannot be morally and legally justified — scheduled castes and scheduled tribes have been positively discriminated in regard to the allocation of resources in the development plans in the country. The policies were enacted to accelerate their social and economic development, hitherto retarded due to discrimination, isolation and neglect. Funds have been provided in five year plans for the welfare of these disadvantaged groups. From the first five year plan to the end of the fifth plan, a total of approximately Rs. 545 crores has been spent in the Central and State sectors for the welfare of these groups under the supplementary programmes.

The main programmes for the welfare of scheduled castes and tribes include (1) the removal of untouchability—programmes for the eradication of the practices which prohibit the untouchable to use public facilities such as wells, recreational facilities, schools and the places of workshop, etc., used by higher castes; (2) economic development; and (3) schemes to promote social and occupational mobility to integrate these groups with the rest of the community.

The most important programmes for economic upliftment of the scheduled
castes and scheduled tribes consists of reservation of jobs in government services, allotment of fallow land to these groups, and the development of cottage and village industries to provide employment for them. Fifteen and seven and half per cents of all the Central government jobs filled by open competition or by competitive examination limited to departmental candidates for grades 3 to 4 are reserved for scheduled castes and scheduled tribes candidates respectively. The public sector undertaking and cooperations are also expected to reserve 12.5 per cent of the jobs for them. Allotment of land is another major programme for improving their economic status. A majority in the scheduled caste and tribal population earn their livelihood by working on the land. The land for distribution is available generally from three sources: (1) reclamation of cultivable waste land, (2) surplus land released through ceiling on agricultural holdings, and (3) land made available through the Bhoomand movement. The educational programmes for the scheduled castes and tribes consist of the award of scholarship for post matriculation education, setting up of hostels for girls belonging to these groups, scholarship for overseas education, etc. The scholarship amount for post matric education covers maintenance allowance, compulsory non-refundable fees, expenses for study tours, etc. These programmes are available as supplementary programmes to accelerate the development of scheduled castes and tribes in order to bridge the gap between these groups and the rest of the population in the country. Thus, the social policy governing programmes for scheduled castes can be characterised as positive discrimination.

Issues in Positive Discrimination Policies Invalidity

One of the issues in the positive discrimination policies is their doubtful soundness, in view of widespread poverty. It is estimated that about 66 per cent of country’s population live below the survival level. With such widespread abject poverty, singling out scheduled castes and scheduled tribes may be inappropriate, at least in respect to economic benefits, for the following reasons: (1) There are poorer sections among the higher castes than among the scheduled castes and scheduled tribes, who are not covered by the positive discrimination policies. (2) The policies accentuate already tense intergroup relations among the higher and lower castes who believe that they equally deserve special treatment.

A more appropriate policy in respect to economic benefits would be to discriminate positively the depressed areas, i.e. slums, low income regions, undeveloped and underdeveloped regions, which would create employment opportunities and income for all those living in these regions, including the scheduled castes and tribes. In the community development blocks, which are area based, one need to discriminate positively those blocks, which are very backward and provide additional resources for their development. If this approach is extensively used in the development of rural and urban areas, the need for positive discrimination for the scheduled castes and scheduled tribes would not be as compelling and even persuasive. It is interesting to note that this approach is being used in respect to scheduled areas along with positive discrimination in favour of scheduled tribes. My view is that once area development is achieved, so would be
the development of the people within it. This would be fair to all the poor and realistic in view of the extensive poverty in an undeveloped country with social democracy.

There is, however, a persuasive reason for providing special protections against social disabilities such as untouchability, restrictions against inter-caste marriages, entry into public recreational and religious places, and discrimination in hiring the members of the groups, such as the scheduled castes and scheduled tribes for employment. Measures in these areas should be strengthened and should be firmly implemented. So far, the results in this respect are not very impressive. For example, Parliament passed the Untouchability (offenses) Act (UOA) subsequently amended and renamed as Protection of Civil Right Act), which outlaws the enforcement of disabilities, on the ground of untouchability, in regard to inter alia entrance and worship at temples, access to shops and restaurants, use of water sources, places of public resort and accommodation, public conveyance, hospitals, educational institution, construction and occupation of residential premises, holding of religious ceremonies and processions, use of jewellery and finery. The imposition of disabilities is made a crime punishable by a fine upto Rs. 500/- and imprisonment upto six months, and cancellation or suspension of licences and of public grants. Enforcement of disabilities includes more than actual physical prevention from the use of facilities such as wells, temples, restaurants, etc. The UOA makes it an offence to molest, injure, annoy, obstruct or attempt to obstruct the exercise of any right accruing to a person by reason of Article 17. An important feature of the Act is that the burden of proof lies on the accused and not on the prosecution.

However there are a number of weaknesses or loopholes in the Act which in actual practice render it ineffective. The Act, for example, forbids denial of facilities and services on the ground of untouchability. The requirement that the denial of facilities and services must be preceded by a specific intent makes it difficult to obtain convictions since "states of mind" are difficult to prove. The courts, government, and legislatures tend to define untouchability denotatively by pointing to well-known example of its practice, rather than connotatively by specifying boundary criteria. Thus, making an imponderable mental state a part of the offence renders it difficult to deal with discriminatory conduct in which incidence does not correspond precisely and directly with the distinction between "touchable" and "untouchable".

The second weakness of the UOA is the equivocation in its coverage of facilities which are used by the public, but are not technically "public". The High Courts, therefore, have dismissed cases wherein person was denied the use of facility which was used by the public, but was not technically public. Consequently, the effectiveness of the Act has been limited. This is clear from the figures available on the number of cases registered of violation of the UOA and conviction thereof since 1956. The data indicated that there was a steady decrease in the number of cases registered since 1956. The percentage of cases ending in conviction also declined sharply after first year. Further, a large number of cases had been kept pending at the end of each year, which seriously defeated the purpose of the Act. Punishment meted out to the offenders of the Act was hardly
of an order to be deterrent.

**Inefficiency**

The positive discrimination policies as they exist are also inefficient, as they provide economic, social and welfare benefits even to those scheduled castes and tribes person who are not poor. Thus persons who are not so deserving tend to consume the scarce resources. For example, reviews of post matric scholarships programme have shown that the advantage taken of this programme by various scheduled caste groups is highly uneven. Further, those states where these groups are politically powerful obtain a lion share of the benefits.

Data (The Commissioner for Scheduled Castes and Scheduled Tribes, 1969 : 116-26) indicated that more than 60 per cent of the scholarships awarded to scheduled caste students have gone to three states — Uttar Pradesh, West Bengal and Maharashtra, though these states contain only 39 per cent of the total scheduled caste population. On the other hand, Andhra Pradesh, Bihar and Madras, which have about 30 per cent of the total scheduled caste population, have been awarded only 16 per cent of the total scholarships for the scheduled caste students. Further, the working of the scheme of post matric scholarships has shown that the advantages taken by the various scheduled castes is highly uneven. Some of the economically better placed communities have secured much more than proportionate benefits from the scheme while some economically backward communities have got only negligible benefits, for example, in Haryana — Chamar/Jatav castes, which constitute 53 per cent of the total scheduled caste population in the State, received 76.12 per cent of the total scholarships awarded to scheduled caste students in the State; while the Balmiki and Kabir panthi castes which constitute 19.77 per cent of the scheduled caste population in the state, received only 8.30 and 0.60 per cent of the scholarships respectively. Further, in Karnataka, it was revealed in a study that 85.7 per cent of the total scholarships were awarded to scheduled caste students belonging to Adi-karnataka community while only 14.3 per cent of the scholarships went to the remaining scheduled caste communities (The Commissioner for Scheduled Castes and Scheduled Tribes, 1975-77 : 96).

Data (The Commissioner for Scheduled Castes and Scheduled Tribes, 1974 : 130-140) indicate that nearly three-fourths of the total scholarships (73 per cent) have been awarded to scheduled tribe students belonging to the states of Assam and Bihar, though the tribal population in those states constitutes only about one-fifth of the total tribal population. Even within States, the advantage taken by various tribal groups is highly skewed. In Maharashtra, students from the Halba tribe, which constitutes only 22 per cent of the total tribal population in the State, received 33 per cent of the total post matric scholarships awarded to scheduled tribe students in the state in 1972-73, while the Varlis, which constitute about 14 per cent of the tribal population, received only .5 per cent of the total post matric scholarships awarded to the scheduled tribe students in the state. The Gonds, who form 11.3 per cent of the tribal population in the state, received 29 per cent of the scholarships.
Inconsistency

The positive discrimination policies in respect to these groups have also created numerous inconsistencies. For example, one group identified as scheduled caste in one state may not be so classified in another state, though their life conditions could be similar. Consequently, location of residence of a given group becomes more important than its socio-economic status for eligibility of benefits under the positive discrimination policies. This inconsistency can be corrected if the benefits are positively discriminated in favour of areas rather than groups of persons.

Corruption

Positive discrimination policies as they exist now have encouraged certain groups or individuals to engage in cheating, in order to obtain classification of scheduled castes or scheduled tribes so that they may become eligible for the benefits available to these groups. It has been reported that members of higher castes have bribed officials for the favour of changing their caste titles to those covered under positive discrimination policies. Some of these castes perhaps are as deserving as the scheduled castes and scheduled tribes. Thus they do not feel any moral and ethical compunction in engaging in this corruption. This again can be corrected if positive discrimination policies favour areas, rather than groups.

In summary, this paper examined the ideological bases for positive discrimination policies toward scheduled castes and scheduled tribes, the wisdom behind the policies, and the difficulties and inconsistencies which the policies have created in their implementation. The paper also points out that area-based positive discrimination policies would be more appropriate than group based positive discrimination policies in our country where two-third or more of its population live below the poverty level.

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