AFFIRMATIVE ACTION IN SOUTH AFRICA: CONTEXT, POLICIES AND DEBATES

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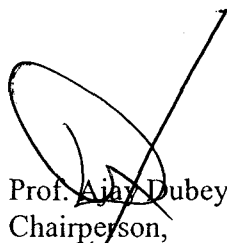India
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Declaration

I declare that the thesis entitled "Affirmative Action in South Africa: Context, Policies and Debates" submitted by me for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is my work. The dissertation has not been submitted for any other degree of this university or any other university.

Abhiruchi Ojha

Certificate

We recommend that this dissertation be placed before the examiners for evolution.

Prof. Ajay Dubey
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Prof. Ajay Dubey
Supervisor

This piece of work is dedicated to my parents…

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Abbreviations

AA- Affirmative Action
AIM- Associate In Management
ANC- African National Congress
BEE- Black Economic Empowerment
CEE- Commission for Employment Equity
CHE- Council on Higher Education
CHED- Centre for Higher Education transformation
CODESA- The Convention for Democratic South Africa
DA- Democratic Alliance
DP- Democratic Party
EEA- Employment Equity Act
GEAR- Growth, Employment and Redistribution
HE- Higher Education
HEQC- Higher Education Quality Committee
ILO- International Labour Organization
NCHE- National Commission on Higher Education
NDR- National Democratic Revolution
NNP- New National Party
NP- National Party
NQF- National Qualification Framework
RDP- Reconstruction and Development Plan
SAQA- South African Qualification Authority
SAUVCA- South African Universities Vice Chancellors Association
SMME- Small, Medium and Micro Enterprises
SWAPO- South West Africa People's Organization

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INTRODUCTION

CHAPTER 1

INTRODUCTION: BACKGROUND AND THEORETICAL FRAMEWORK

1.1 INTRODUCTION

Social inequalities are embedded in colonialism and apartheid system in South Africa. Social, political and economic discrimination have shaped and continue to influence South African society even today. Not surprising is the priority given to social equity and redress of past disparities in order to build one nation in policy discourse in post apartheid South Africa. Apartheid left a formidable challenge of economic development, social equity and deepening of democracy. Therefore, the Bill of Rights holds high the principle of non racialism and non sexism. The Bill of Rights proclaimed prohibition of unfair discrimination directly or indirectly on grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth(Constitution, Republic of South Africa, 1996). However, politics of equal recognition can not be blind to effects of legacy of apartheid and continuing discrimination on racial grounds. Nor it can be assumed that just by advent of democracy and prohibition of discrimination will eradicate exclusion and discrimination that has grounded and sustained inequalities for decades in all domain of social life in South Africa (Badat, 2008). Badat(2008:11) argues that two kinds of injustice prevail in South Africa; one rooted in

> "...beliefs, prejudice, stereotypes, chauvinism, intolerance and fear of the 'other'- whether the 'other' are people of different 'races', social classes, sex, gender, sexual orientation, cultures, religions, languages, nationalities or live in specific geographical areas. Its effects are patterns of unjust social inclusion and exclusion and domain and subordination of particular social groups. The other is deeply woven into the society, which have ossified so as to be thought of as natural and pre-ordained, even though they are, of course, reproduced through human action and agency."

Privileges for a small minority of population exist with deprivation for the majority in South Africa. These inequalities can not be removed by simply invoking constitutional idealism (Sachs, 2006). Specific measures are necessary to promote social equity and redress imbibed in the constitution. AA is one such strategy adopted in South Africa to attain these constitutional goals. AA should therefore be seen as an instrument to achieve equity to create transformation of wider structural inequalities. Any meaningful attempt to understand AA policy and plan in pursuit of democratic and equitable South African future should be seen in the light of complexity of historical conditions (Thaver, 2006).

1.2 THE APARTHEID LEGACY: BRIEF HISTORY

"A belief in the otherness and inferiority of blacks was prevalent already in Europe before Europeans first settled in South Africa."(Glaser, 2001:7).South African apartheid regime took over power from colonizers in 1948. Any analysis of contemporary South Africa is useless without reference to this system, given the case of affirmative action policies, it becomes all the more important. The social inequality that affirmative action aims at redressing is deeply embedded in, and is a product of systemic exclusion under apartheid and colonialism (Badat, 2008). Under colonialism and later on apartheid regime which was formally introduced in 1948 "separate development" of the country's four official ethnic groups (White, Black, Colored and Indian) were planned. Legislations thereafter forced blacks into homelands (Glaser,2001). There were three ways in which architects of apartheid treated South Africa; first, blacks were restricted in ten national homelands as citizens of their own Bantustans. Second, South Africa was compartmentalized in four racial groups of whites, blacks, coloured and Indians. Lastly, all these groups faced racial operation and they were restricted from entry into certain portions of the country. This creation of massive structures of exclusion ensured perpetuation of racial rule in South Africa. Laws were created to protect white privilege, preventing any kind of interaction of blacks with white neighborhood after normal working hours, compelling them to carry identification cards and leaving blacks exposed to search, seizure and arrest. Despite these, Afrikaner leaders remained dissatisfied with efforts to enforce segregation. The creation of a series of homelands for the African population was intended to force blacks out of White South Africa. These Bantustans

were intended to be independent, there by denying blacks political rights within White South Africa. Not surprisingly, poverty forced blacks to work as migrants in white South African economy. Thousands of blacks were given passes to live in peri-urban settlements. Blacks escaping from impoverished Bantustans proved boon to white South African economy. Afrikaner remained in firm control of South African governments until the very system created to ensure Afrikaner dominance collapsed under the weight of its own contradictions. They marshaled a systematic AA programme in order to increase their control of the economy. The racial cleavages with firm boundaries between them became the basis of structuring the social relations. It is important to note here that under apartheid race discourse was not homogenous. Coloured category had privilege over black (Thaver, 2006).Therefore, black resistance was less unified in comparison to white oppressors.

Apartheid left indelible scars on South Africa and it was clear that government policies must address the misdeeds that left wounds on country's social, political and economic life. In 1994 South Africa saw its first free and fair election (Shoup,2008).The 1996 constitution of republic of South Africa provided base for AA.

1.3 AFFIRMATIVE ACTION : WORKING DEFINITION

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

According to classical definition provided by Crosby and Cordova (1996:34) AA "...occurs whenever people go out of their way (take positive action) to increase the likelihood of true equality for individuals of differing categories. Whenever an

organization expends energy to make sure that women and men, people of colour and white people, or disabled and fully abled workers have the same chances as each other to be hired, retained, or promoted, then the organization has a policy of affirmative action in employment. By the same token, whenever an organization expends energy to make sure that females and males, people of colour and white people, or disabled and fully abled students have same chances as each other to be educated, then the organization has a policy of affirmative action in education." The meaning of AA goes much beyond from just providing 'same chance', it is concerned with equity as well as redress, it raises notions of equality as well as justice. AA calls for a proactive intervention on part of organizations and institutions not only to make sure that no discrimination is taking place while selection of candidates but also give preference to suitable qualified candidates of disadvantaged groups or equally qualified candidates as the case may be.[1]

1.4 AFFIRMATIVE ACTION AND RELATED CONCEPTS

As stated earlier, anti discrimination laws and policies do not put an end to historical patterns of discrimination, exclusion and disadvantage. Special measures have therefore been permitted in different states in order to include previously disadvantaged groups in important activities, such as education, employment, the reward of business contracts and politics. Such measures go by various names depending on the context and their perceived acceptability. There are different terms used to address these measures such as 'positive discrimination', 'preferential treatment', and 'positive action'. McHarg & Nicolson (2006:1-2) identify two forms of AA- the 'soft' form of AA involves out reach programmes designed to encourage under represented groups to apply for positions and programmes intended to enable them to compete on equal terms with privileged candidates. The 'strong' form of AA assists members of previously excluded groups at the point of allocation either through decision making preferences in their favour or quotas which reserve certain percentage of positions for them. Situated between the 'soft'

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[1] EU provides for positive action where equally qualified candidate of disadvantaged group is given preference whereas in South African case AA within BEE calls for preference to a black who is suitably qualified. The term suitably qualified has more to do with ability of a person to do certain job than qualifications.

and 'strong' is a form of AA that settles goals and timetables for increasing the representation of under represented groups.

There is a deliberative association of AA with reverse discrimination, it leads to an assumption that AA creates innocent victims and undeserving beneficiaries, lowers the merit standards and stigmatizes its beneficiaries. In reality, however, it can be conceptualized in many a ways depending upon the rout taken for its justification. *Compensatory justice* is one of the principles that the supporters of AA evoke for defending AA. It calls for redress of pass disadvantages and injuries made by discriminatory practices. Compensatory justice can be seen in the light of what Aristotle calls rectificatory justice.[2] Unlike positive discrimination involving justified differentiation, McHarg and Nicolson (2006) argue that compensatory justice holds the idea of society repaying the harm it has done. *Distributive justice* is used to justify AA and this argument is more popular outside US. According to this argument, in order to treat people equally, it is necessary to treat them differently. It calls for equal opportunity for the most disadvantaged in society, share in the goods and resources. This principle of justice leaves space for empowerment measures and preferential resource allocation.[3]

A far more popular justification of affirmative action is appeal to distributive justice rather that of corrective justice. Its argued that in order to treat people equally it sometimes requires to treat them differently. Opotow (1996) claims that there are three attitudes contesting within the scope of justice: firstly, believing that considerations of fairness apply to them; secondly, willingness to allocate a share of community resources to them; and thirdly, willingness to sacrifice to foster their development. There is a distinction between AA as policy and AA as a plan/programme. These attitudes form the basis of support for AA's goal, which is redress of persistence of past exclusions in present society with AA measures. These measures extend fairness to target groups,

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[2] Aristotle in Nicomachean Ethics (113ob-113ia) talks about two kinds of justice –rectoficatory and distributive. Rectificatory justice comes into picture only when things are set aright, when amends are made. Whereas distributive justice can be called when one receives ones share of honor, money or/ and goods. (See, Heslep, 1977)

[3] John Rawls has devised a formal system that takes into account what he considers to be most profound relevant difference: between the most and the least favored in the society. He goes on to explicitly challenging meritocratic view; he believes that meritocracy is unfair because under it equality of opportunity means equal chance to the most favored one. Disadvantages call for redress. Justice is primary virtue of social institutions; therefore, purpose of these institutions should be to target the least advantaged individuals (See, Green, 1977).

distribute societal resources and provide for societal sacrifices that result from redistribution of societal resources (1996:20). *Equality* principle and *Non Discrimination* are invariable linked if we talk about AA. There are three concepts of equality that offer potential framework for anti discrimination policies. First model is that of equality of treatment. It is expression of formal equality. Based on individualistic notion it ignores culmination of disadvantages of groups. The second model is based on equality of opportunity. Equality of opportunity moves beyond equality of treatment. The third principle which is concerned with AA is that of substantive equality. As discussed earlier AA, involves substantial form of equality, it recognizes that injustice of the past has led to inequalities and these can not be treated by treating all equally at all times. Substantive approach to equality does not presuppose a just social order. It therefore allows affirmative measure to achieve equality. Substantive equality requires equality of outcome (Burrow & Robinson, 2006:27-28). Therefore it is argued that non discrimination can not serve its purpose by simply depending on laws that prohibit discrimination. AA based on social justice and the principle of equality can serve the purpose. Moreover, in deeply-divided societies like South Africa proactive measures are needed.

However, AA is challenged on several ground. Critics argue that it is reverse discrimination AA can not serve the purpose of justice because it is unfair to non target groups, it creates innocent victims; those who did not cause any harm are held to pay and those who were not harmed reap benefits. Moreover, it is argued that AA undermines merit principle and leads to stigmatization of target groups. These oppositions are based on micro view of justice and if seen in macro level many problems will itself be solved. Critics fail to see that AA is an antidote to discrimination and not its cause. Without any such measures discrimination and disadvantages will continue in society. Commitment to democracy and social justice calls for positive intervention by the state in order to overcome unjust practices. It should be remembered that AA deals with discrimination of past, present and future. Eradicating past discrimination calls for compensatory/ corrective justice, removal of present hurdles in advance of disadvantaged groups calls for leveling the playing field and distributive justice and under representation of

disadvantaged groups in present that may effect advancement of disadvantaged groups calls for diversity so that equality may be achieved and justice be done.

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1.5 (a) OBJECTIVE OF THE STUDY

- To contextualize the concept of Affirmative action in South Africa.

- To analyze the present debates on affirmative action in South Africa in the context of transition accounts and market led development policies of ANC.

- To assess into the policies of the Affirmative action in South Africa.

- To evaluate the debates around Affirmative action in South Africa.

1.5 (b) RESEARCH PROBLEM

In South Africa, Affirmative action has become a practice that has a political connotations. Stands in favour or against it are heavily loaded with assumptions about personal and political values. Affirmative action in South Africa today has come in the context of the negotiations between the white regime and ANC. Nevertheless, need for well constructed affirmative action plan as strategy for the inclusion and to create diversity in public sphere have been expressed in the debates that centre around affirmative action in South Africa. The purpose of my study is to map these debates on affirmative actions in South Africa and for this purpose following questions form my research questions.

- In which context affirmative action was adopted in South Africa?

- How does ANC conceptualize the affirmative action in South Africa?

- Keeping in mind that South Africa is an open-market economy with ANC having outright majority, what kind of policies are adopted?

- What are the core issues centered on Affirmative action policy in South Africa?

1.5 (c) RESEARCH METHODOLOGIES

The proposed study will be based on primary and secondary sources of data. This study employs analytical and descriptive method. Historical accounts will be employed to understand the nature of social exclusion in South Africa. The literature available will be used to provide debates on affirmative actions in South Africa. Media reports will be helpful in throwing lights at the debates in media, which is collected from the internet sites in due course of the study.

1.5 (d) HYPOTHESES

- Affirmative action in South Africa came in the context of compromise between the White Regime and the ANC, leading to open, market economy and majoritarian rule. Therefore, the affirmative action was limited in nature.

- ANC's absolute majority and very weak opposition left limited space for competitive politics on affirmative action.

1.5 (e) REVIEW OF LITERATURE
1.5 (e). i. THEORITICAL FRAMEWORK

Affirmative Action (AA) has been surrounded with controversies since its inception in South Africa. Contestation is focused on the fairness of the policy and justice issue embedded in it. It becomes all the more important because both proponents and opponents of the policy in South Africa agree on social values such as eradicating discrimination and equality of opportunity. At one level debates occur around AA on policy level, which is theoretical in nature; how can equality be achieved, through equal opportunity or through AA. On other level debates are centered on AA as a plan/programme, these are related to implementation of AA. Those who criticize AA argue that it is possible that a principle that is good in principle may be poor in practice. AA can be justified on three grounds compensatory justice (Badat, 2008; Green 1977; Dupper, 2006), distributive justice (Heslep, 1977), and, based on social utility and

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diversity (McHarg& Nicolson, 2006). Equity and redress are two main goals of AA in South Africa for attainment of social justice (Sachs, 2006; Sikhosana, 1993)

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1.6(e). ii. AFFIRMATIVE ACTION IN SOUTH AFRICA: POLICY LEVEL

Ramphele's work brings forth normative definitions of Affirmative action and tests the compliance of policy and definition, taking into view Employment Equity act 1998. However, I attempt to look at the debates on Affirmative action on broader framework, looking at the inclusive policies in field of education, employment and economic empowerment. In case of merit question, two clearly opposite view exists, telling two different stories and raising two different concerns. Kanya Adams stresses on three points: First, Problem of treating citizens unequally due to their irrelevant skin color (an argument similar to that of reverse discrimination), promoting under qualified at the expense of better qualified (meritocracy argument) and the problem of class (creamy layer argument). She looks into details of the "anticipatory compliance" to potential legislation and policies of competitors. After putting forth the competing discourses on affirmative action, she assesses the racialized competition and suggests a policy of non-racial and class-based affirmative action. She argues that affirmative action being corrective measures of limited duration and not an end in itself restoring equality of opportunities rather than legislative outcomes would seem the most feasible and just form of redress for all concerned. The end objective of implemented policies could be 'equitable representation'; therefore equality with justice will be achieved. She raises problem of justifying affirmative action with emphasis on group rights that is based race. Originally concealed as an instrument to advance equal rights to individuals stemming from civil rights movements claiming it for group obscures affirmative action (Adams, 1997). However, debate on individual and group rights is long drawn debate, in South African context looking at the legacy of Apartheid which discriminated Blacks, redress is needed on racial lines.

Just opposite to this argument is the problems raised by Mabokela concerning faculty diversification programme in South African Universities and redress in Higher Education admission in South Africa which faces a continuing challenge to 'include' and 'diversify'. The opposition to affirmative action has stemmed from the misconception

that such a programme will privilege Blacks over Whites and that it lowers the standards. This leads to feeling of alienation among those few blacks who actually manage to reach university campuses. A need is felt to examine the institutional culture of historically white universities. Waddy's work throws many questions for scholars working on commenting on affirmative action. Most of the universities remain predominantly white. As Badat puts, most universities do not have admission policies, without a policy it is obvious that public scrutiny is not possible. Students from upper class are concentrated in historically White Universities. Despite initiatives to reshape the apartheid landscape through meager and other means, historical pattern of advantages and disadvantages continue to condition the universities, therefore, affecting outcome as well. There are other scales like drop out ratio and graduation rates quoted by Badat to strengthen his argument that positive change in out come needs to be facilitated. There is an obvious coincidence between class and race in South Africa. This gives answer to questions and concerns raised by Kanya Adam, reproduction of South Africa's class based and racialized structures can be stopped through progressive measures there after forging of greater social cohesion is possible (Mabokela,2000) (Badat,2008). An attempt is also made to differentiate between past experience of discrimination of apartheid among Blacks, Indians and Colored, and to find how these differential levels of oppression to be accounted for. Cry of reverse discrimination leads to claims that affirmative action is futile, so much so that affirmative action is counter projected as competing with non-racialism. (See Waddy, 2003-04). However, I would like to rebut this argument in my study and evaluate affirmative action in the light of Social Justice, Equity and Non-Discrimination.

1.6.(e)   iii   AFFIRMATIVE   ACTION   IN   SOUTH   AFRICA: PLAN/IMPLEMENTATION LEVEL

Critics demonstrate that privileged people within the disadvantaged group have successfully accessed the rights created by redress legislation. This applies across all social categories. Rich black entrepreneurs have been more successful in accessing benefits associated with BEE than their poorer counterparts(Bezuidenhout,2008; Sanchez,2008). In order to direct the benefits of redress programmes to wider layers of

the population, it is suggested by some scholars, class criteria also be considered as an element defining who the beneficiaries should be(Alexander,2006; Adam,2008). This would require both policy reform and rigorous implementation and monitoring to ensure that the spirit of the policy is adhered to. Such an approach would not only enable scarce resources to be prioritised in the direction of the most needy and disadvantaged, but it would also mediate the possibility of redress polarising society along racial lines.

The process of embougeoisement of key cadres of ANC has led to integration of ANC cadres into structures of economic power. Critics see it as a mechanism of government to establish control of the state. ANC has responded harshly to its critics. They hold that black embourgeoisement does not show sings of trickling down to the poor. Black empowerment initiatives are limited to existing economic activities and do not create new employment. The new South African elite banks on unlimited economic growth where poor masses are kept at periphery.(Andereasson, 2006;Adam & Moodley,1997)

1.6 LIMITATIONS OF THE STUDY

It is important to note here that this study deals with AA *on racial ground* and it looks broadly on AA provided in the field of employment and *higher education*. It is based on secondary material. It is important to reiterate that this study can not provide a comprehensive picture of AA in South African society. This study must be supplemented with empirical study to get a comprehensive picture. Both time constraint and availability of sources have resulted this study to restrict itself in just mapping the debates and it needs to be further substantiated.

1.7 CHAPTERIZATION

This dissertation is divided in three sections – introduction, which deals with background of the study and theoretical framework; three chapters dealing with context policies and debates on AA in South Africa, and conclusion.

Chapter 1. *Introduction*- Chapter 1 starts with the brief history of apartheid system in South Africa with the purpose to provide a background of the problem. A working definition of AA action has been provided for the purpose of the research. Next section of this chapter deals with AA and related concepts which are either evoked in defense of

AA or to oppose it. Some underlining principles of AA which serve to direct it towards its goal are briefly discussed in this section. Next section deals with objective of the study, methodology, review of literature, research problem and hypotheses.

Chapter 2. *Affirmative Action in South Africa: context and policies*- looks into the transition of South Africa from apartheid state to democracy, referred as a 'small miracle', the transition to democracy was negotiated settlement and in many ways decide the faith of transformation of the Southern African state. Adoption of AA and more importantly the kind of AA that South Africa has today was shaped by this transition. Leaving its Socialist claims of radical measures to overcome the legacy of apartheid ANC shifted towards open market economy, quotas(hard form of AA) was replaced with preferential treatment (a soft form of AA).This chapter looks in detail Employment Equity Act(EEA), Higher Education Act(1997), National Commission on Higher Education: *A frame work for transition* in 1996, Department of Education White Paper Three-*A programme for the higher education transformation 1997, and* the higher education sector in South Africa. It focuses on the concepts within these acts, specific AA measures, and the mechanisms of implementation. A look into the structure of higher education sector provides for better understand of how the AA is implemented and regulated in South Africa.

Chapter 3.*Issues and Debates*- AA in South Africa is a contested issue, views both in support of and against AA are heavily loaded with values. This chapter looks into various issues contested in academia and media related to AA. There are some debates that are related to AA on theoretical level, such as suitability, stigmatization, reverse discrimination; whereas there are other issues and debates that are related to AA on programme level such as question of class within the AA, skill shortage, role of ANC and opposition, tokenist appointments, and perpetuation of racial identities that are viewed as an outcome of AA or related to it.

Chapter 4. *Discussion and Assesments*- Some of the debates are taken up and discussed briefly in chapter 3 and a detailed discussion is taken up in this chapter. The debates on AA in South Africa are assessed. The issues that come up from theoretical level are matter of principle and depend on the nature society and the context in which it comes. For attainment of the constitutional goals it becomes important to adopt AA in South

Africa, it becomes all the more important to continue it given the case of continuing discrimination. However, debates on implementation of the plan bring forth several challenges for the state; in many cases the very nature of the government creates problems in implementation of the programme.

Chapter 5. *Conclusion*- The concluding chapter brings out the findings of the study.

AFFIRMATIVE ACTION IN SOUTH AFRICA: CONTEXT AND POLICIES

CHAPTER 2

AFFIRMATIVE ACTION IN SOUTH AFRICA: CONTEXT AND POLICIES

2.1 (a). INTRODUCTION

In words of Nelson Mandela,

> "...We are not.. asking for handouts for anyone nor we are saying that just as a white shin was passport to privilege in the past, so a black skin should be basis of privilege in future. Nor... is it our aim to do away with qualifications. What we are against is not upholding of standards as such but the sustaining of barriers to the attainment of standards; the special measure that we envisage to overcome the legacy of past discrimination are not intended to ensure the advancement of unqualified persons, but to see to it that those who have been denied access to qualification in the past can now become qualified now, and that those who have been qualified all along bit overlooked because of past discrimination, are at last given their due..."

> (cited in Dupper,O;2006:160)

The term AA (not appear anywhere in South African constitution, ground has been made for it as it animates in spirit. I attempt to study the context of AA and the policies in this Chapter. Therefore, this chapter is divided into four sections. The first section deals with the context of AA in South Africa, political developments from late 1980's to mid 1990's which provided the platform for such inclusive policy and in many ways shaped the nature of the AA policy itself. Second section deals with the Employment Equity Act and purpose of the act (as stated in the act and key concepts within the act). Section three of this chapter deals with policy papers related to Higher Education in South Africa(NCHE 1996, White Paper number 3 of 1997, Higher Education Act 101 of 1997) that provide for AA in higher education in South Africa. Fourth and the final section deals with the structure of Higher Education in South Africa, providing basic information for better understanding of the mechanisms of implementation of Affirmative Action in South Africa. Discussion on these policy measures will be taken up in the next chapter covering the debates on AA in South Africa.

2.1.(b) NATURE OF AA IN SOUTH AFRICA

Since 1994, AA has occupied a prominent place in policy framework of South Africa. It is much debated and remains deeply controversial issue. The policy of AA, managing diversity, leveling playing field or whatever we may call it; it has been a sensitive issue.

As Neville Alexander puts it,

> "It involves in a most elaborate process of public consultation that culminated in the core legislation of Public Service Act, the Skills Development Act and the Skills Development Levy act. All of these are, laudably, geared towards the imperative of the redistribution of the economic, social, cultural and political power and resources that constituted the fundamental struggle against racial capitalism in general and apartheid in particular. Only reactionaries and hard-bound conservatives are opposed to these objectives of post-apartheid government. The vast majority of people support them as a matter of fact."

(2006:3)

In case of Employment Equity act, it aims at bringing about societal transformation by targeting designated employers. By adopting designated groups (racial, gender, disabled, cultural, linguistic and religious) it makes sure that these groups through inclusive policy such as EEA be included in an organization thus, leading to a process of transformation. The two basic concepts influencing AA is justice and equality, both of which are addressed in AA.

In the light of history of systemic discrimination, the importance of principle of equality is reflected in very first section of the constitution. Equality in South African constitution is enunciated as a value and as right(Albertyn and Goldblatt, 1998:249)The Preamble of the 1996 constitution states that "the achievement of equality is one of the founding values of the republic." It further stresses "the need to create a new order in which there is equality between men and women and people of all races so that all citizens may be able to enjoy and exercise their fundamental rights and freedom."

However it is important to mention here that substantive approach to equality has been established by the constitution. Constitutional court recognized that injustice of the past

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has led to inequalities and these can not be treated by treating all equally at all times.[4]

Substantive approach to equality does not presuppose a just social order.[5] It therefore

allows affirmative measure to achieve equality. In view of South Africa's history, need

for the legislation for prohibit unfair discrimination and to set new values was pressing.

South African constitution enunciates equity as a right to establish equality. Given the

past history and the legacy of apartheid, more than the individual claim not to be

discriminated against was needed. The 1996 constitution of South Africa, Bill of Rights,

sets out that individuals and,

> "the state may not unfairly discriminate directly or indirectly against anyone on one or
> more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social
> origin, colour, sexual orientation, age, disability, religion, conscience, culture, language,
> birth."

(section 9.3 and9.4)

The section 9 of the constitution enunciates a general equality guaranteed (section 9.1),

defines it by outlawing unfair discrimination on a number of grounds (sub section 3 and

4)expressly allows and lays the burden of proof on the discriminator.(sub section

5)(Vogt, 2001).

The constitution states ,

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[4] Formal equality is based on the Aristotetelian concept of equality which means that to treat like persons alike and unlike persons unlike. Formal equality assumes that a just legal order has provided all persons with equal rights and all persons are able to compete on an equal footing. Formal equality ignores actual social and economic disparities between individuals and groups in society. Its underlining logic is that by extending equal rights to all, inequality has been eliminated. Once declared that all persons are equal before law, formal equality becomes blind to socio-economic disparities.

[5] Burrows and Robison, while dealing with Positive Action for women in employment in the context of law of European Commission and that of Britain, provide for three concepts of equality.1st is the model of equal treatment which is an expression of formal equality. It is based on an individualistic conception which ignores the cumulative disadvantages of the group in which the individual is situated.2nd model is based on the principle of equal opportunity which moves beyond principle of equal opportunity but still remains within the formal equality paradigm. This conception accepts that measures remove barriers to participation do not offend against the principle of equality.3rd model is based on the conception of substantive rather than formal equality. Substantive equality looks to the law to provide full equality in practice and to target disadvantaged groups rather than advantaged ones. It is also related to equality of outcome. Quoting Fredman they establish that the remedial measures are not discriminatory because individuals are not similarly situated. Positive actions are not exception to principle to equal treatment but, alternative way to achieve equality. (see, Burrows, N and Robison, M in McHarg & Nicolson (2006); 26-28).

"to promote the achievement of equality, legislation and other measures designed to protect and advance persons or categories of persons , disadvantaged by unfair discrimination may be taken."

(section 9.2)

Thus, section 9 of the aims at prevention of discrimination and promotion of equality. (ibid).The advent of democracy in itself is not sufficient condition to ensure eradication of the structures, institutions, policies and practices that have roots in inequality. Therefore, the constitution provided the scope of inclusive policies for disadvantaged groups and redress of past injustices.

2.1 (c) POLITICAL DEVELOPMENTS TILL 1994

The first half of 1990s witnessed what Nelson Mandela termed as a 'small miracle' (cited in Lawrence 1994:1). 1994 saw first free election there by leading to open and inclusive electoral process. But the process of transition to democracy was by no means sudden. President Botha who held the office from 1979-89 ended the Mixed Marriages Act and the Immorality Act, which forbade interracial marriage and sexual relations, and he ameliorated the pass laws, among the biggest hurdle upon blacks' freedom of movement. Waldmeir suggests these reforms rolled on and that the credit for South Africa's radical reform went to Botha's successor, F.W. de Klerk, who figured out the fact that the decline of communism in late 1989 also diminished the threat the ANC represented to whites. He began signaling his intentions as early as September 1989, his first month as state president, when he permitted an ANC rally in Cape Town (Waldmeir,1997).Another factor is that by 1989 the severe turbulence that started in 1984 was overcome. De Klark's move to negotiations gave an impression that white minority rule transferred power from position of full control of events, which obviously comes from the scholarship that the reforms introduced by Botha were attempt to modernize the apartheid system. Actually, the decade of 1980s after 1984 was marked with economic turbulence, use of violence from both, the regime and the opponents and, internal and external pressure on the white regime to negotiate.

"The physical overthrow of the state never occurred, but nor had it done anywhere in Africa; South Africa's 'decolonization' actually amongst the more violent on the continent." (Glasser; 2001:201).

Another important fact to remember is that although South Africa decolonized long back in 1948 but the actual transfer of power occurred with internal initiations. The settlers had no place to flee to. Therefore the option was to negotiate and secure vested interests. Another fact to keep in mind was that there was no external power to manage the transfer of power and that it took four years to transfer the power. Further more, it took place with the background of (as Glasser claims, it was not unconnected to,) the developments in Soviet Union. To understand the AA policy adopted in South Africa with a purpose to include historically disadvantaged and excluded groups to society, it becomes much more important to understand the context in which these policies were adopted. Commentators attempting to explain the dynamics of South Africa's transfer of power relative importance of structural factors such as economic and political pressure from within and without and agencies such as black and white leadership. Glasser points out that while De Klark can be seen as an agent with pragmatic vision willing to adjust his political line to ensure survival of the NP, protect white interest and preserve capitalism; not a clear explanation has been given to explain what turned De Klark into a reformer. At the same time it is important to mark that neither the members of the NP nor the conservative administration staged an outright rebellion against this move. On the other side, Nelson Rolihlahla Mandela led ANC acted as opposition agent in the transfer. The organization started developing contacts with white political establishment. In public, they followed projecting itself as a government in waiting. As part of its effort to present itself as a credible party to take over power, it reassured white about there well being under ANC(Glasser,2001:207).

In 1988, it presented constitutional guidelines which suggested that it accepted an essentially liberal democratic model of state and in 1989 in Harare it offered terms of negotiations. In case of ANC too, party members and supporters feared that leaders are giving too much away. There were voices of protest from among party members and rank and file ANC military in turn strengthened the bargaining position of ANC. The white

regime new well that ANC had support of black population;during 1985-86 rebellion could be curbed by force but opposition of blacks continued. General strikes and other outbreaks of protests continued year after year.

Another important point is that there was economic slowdown. Initially it was effect of global trend but it got deepened in case of South Africa because of apartheid legacy of untrained black labour force and constricted internal market. Moreover, South Africa faced increasing isolation from overseas capital market. There was serious capital shortage and economic stagnation carried real danger for the white regime. Moreover, different classes took economic stagnation differently among whites. Well off class saw it as an obstacle to their growth and the poor whites opposed any kind of redistribution. The ruling class found it safe to settle with blacks on terms that would be acceptable to white elites(Glasser,2001).

Regional trends added momentum to a negotiated settlement with ANC. With the decolonization of Namibia focus shifted on South Africa. The international pressure started mounting. The positive outcome for South Africa was that Namibian settlement taught South Africa lesson on how to secure a favourable term with black nationalists.[6] (SWAPO settled with a constitution that limited majoritarian power.)

Globally, as Mamdani points out

> "The failure of the 1984-85 repression coincided with a dramatic shift in the international situation as Gorbachev came to lead USSR. The 'front line states' had been intimidated, while ANC either seemed eager or was pressed into accepting a negotiated dismantling of apartheid... And, finally, the people too yearned for peace , particularly in rural areas which were least organized and so least able to with stand repression."(Mamdani,1992:1056)

Gorbachev's launch of new foreign policy talked of cooperation with USA to resolve long running regional conflict. This met reorientation of revolutionary dismantling of apartheid to reformist approach. USA and Soviet together intensified their support to

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[6] By late 1980s South Africa got a setback in its imperial status in Southern Africa. In 1987, Cuban and Angolan forces checked SADF advance. This created a problem in progress of military might of of South Africa in the region. Internationally, United States and Soviet Union were working from mid 1980 to secure overall settlement for Angola and Namibia that included withdrawal of Cuban forces and South Africa's granting of independence to Namibia.

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bring ANC and white regime on negotiation table. Reorientation of Soviet meant for USA more conditional support to its friends. Change of circumstances globally meant relief for white regime, an assurance that ANC would not insist on dismantling of capitalist economy in South Africa. For ANC a revolutionary overthrow as an option weakened.

The opportunity that came up due to local and international trends brought, along with it, many risks, risk of settlement on unfavourable terms, risk of gaining too little and loosing supporters. At this conjuncture both parties decide to out weight risks. When De Klark decided to negotiate in 1989-90 he did not intend to establish a Majoritarian Liberal democracy. From 1990-92, there were large disagreements. In 1991 CODESA sat for the first time. In 1992 NP and ANC signed a "Record of Understanding"[7]. By 1993, democratic majoritarian rule was accepted in the place of consociationalism. A transitional Executive council was set up to oversee a transition to free elections. ANC went on to win the 1994 elections overwhelmingly but it had to settle with liberal democratic majority rule including constrains on bureaucratic reform, free market economy and interim power sharing arrangements. Although the real power was in ANC but not the instrument of fundamental social change. It was in this context that AA was adopted in South Africa.

2.1 (d) POLITICAL DEVELOPMENT- 1994 ONWARDS

The Mandela government's first attempt at economic reorganization was introduction of Reconstruction and Development Plan (RDP) in 1994. The RDP had two goals; reduce

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[7] Looking at the pres statement of Nelson Mandela on occasion of 'Summit Meeting' between N.P and ANC, two things become clear- 1st, Codesa2 talks came to a deal lock because of violent mass protests .Talks were held in the background of mass movement, and, 2nd, ANC made it clear to the white minority that the government in waiting would refrain from harming its interests; thereby, both putting pressure on NP by continuing local movement and appealing to the minority to join in the peace process. "The major concerns addressed at the summit were the release of political prisoners, steps to curtail violence emanating from hostels and the prohibition of the carrying and display of dangerous weapons. ..Finally, with regard to the constitutional process which was aborted in June this year, common understanding has been reached today in the joint Record of Understanding that we need to move with all urgency towards an interim government of national unity and a democratically elected constituent assembly... It is only the achievement of these goals that will finally bring lasting peace to this blood-soaked land... There is no reason why a political settlement should not be achieved within a relatively short period. This will pave the path to peace. This will pave the path to the economic recovery we all yearn for. But we will only achieve this if all parties and all our people, black and white, put South Africa first."(see,Press Statement by Nelson Mandela (26th sept 1992) issued by Department of Information and Publicity; South Africa)

the crushing poverty and reconstruction of the economy. People were deprived of basic amenities like clean water and housing. RDP aimed at addressing these basic issues. RDP's uneven record of accomplishment gave way to another programme launched in 1996 called Growth, Employment and Redistribution (GEAR).[8]GEAR came with a neo liberal approach, an approach that contrasted sharply with approach earlier adopted. ANC faced a lot of opposition from its supporters for endorsing such a measure. GEAR emphasized fiscal austerity and labour market flexibility intended to foster capital investment and generate job for macro economic change. This neo liberal policy got support both by Mandela and Mbeki governments. International community too gave appreciation for these measures(Shoup, 2008:149).

South Africa faced problems regarding its economic policies. High rate of unemployment and growing gap between whites and blacks put a big question mark in front of policy makers. Control of whites over South African economy posed a big problem in front of ruling party. It is to overcome these that Mbeki announced Black Economic Empowerment initiative (BEE) as a means to address South Africa's pressing economic disparity. This initiative introduced in 2000 was later replaced by Broad Based Economic empowerment initiative (BBEE).

The point to be noted here is that all these measures mentioned here fall in time frame of one decade. Century's long period of colonization and white minority led apartheid based on exploitation and discrimination left legacy can not be overcome in just one decade. My focus of research is Affirmative Action in the field of employment and education, therefore in following paragraphs I will deal with these topics.

2.2 EMPLOYMENT EQUITY ACT OF 1998

The Preamble of EEA states that as a result of apartheid and other discriminatory laws there are disparities which create disadvantage for certain categories of people which can not be redressed by simply repealing discriminatory laws. Therefore to promote

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[8] RDP was considered by leftist as a measure to overcome South Africa's structural deficiencies. Lodge argues that despite made to achieve development, RDP had its own problems ie, in case of housing, the subsidy was very low and alternative source of funding was a big problem for buyers. For renters, rent payment was difficult to arrange .Moreover, the houses suffered from low quality construction. (see, Lodge, Tom; (2002), *Politics in South Africa: from Mandela to Mbeki.* Bloomington, IN: Indiana University Press.)

constitutional right to equality, eliminate unfair discrimination in employment, ensuring employment equity to achieve diversity that is broadly representative of people and promote economic development and efficiency, the act is passed to give effect to obligation as member as member of ILO. The act is divided into 6 chapters. The chapters deal with following topics- definition, purpose, interpretation and application, prohibition of unfair discrimination, commission for employment equity, monitoring, enforcement and legal proceedings, and general provisions. The third chapter deals with Affirmative Action. The EEA was enacted in 1998 and Affirmative Action measure described in this act came in force from December 1999. From the Preamble we can derive following goals of the act –

- Elimination of unfair discrimination in employment,
- Ensuring employment equity to redress past discrimination,
- Achieving diversity that is broadly representative of population,
- Promotion of economic development and efficiency,
- Compliance with the obligation for members for the ILO.(EEA 55/1998)

2.2 (a) KEY CONCEPTS WITHIN THE ACT

There are certain concepts the act that needs to be explained.

"Black People" is a generic term which means Africans, Coloured and Indians.

"Designated Group" means black people, women and people with disabilities.

"Designated Employer" means –

    (a) An employer who employs 50 or more employees;

    (b) An employer who employs fewer than 50 employees but has a total annual turnover that is equal to or above the application annual turnover of a small business in terms of schedule 4 of EEA[9].

The prohibition of unfair discrimination forms an important part of EEA. All employers are required to eliminate unfair discrimination, direct or indirect, on grounds of race,

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[9] Agriculture- R 2 million, Mining &Quarrying- R 7.5 million, Manufacturing- R 10 million, Electricity, Gas & Water- R 10 million, Construction- R 5 million, Retail, Motor trade &Repair services-R 15 million, Wholesale Trade, Commercial Agents & Allied Services- R 25 million, Catering, Accommodation & Other trade- R 5 million, Transport, Storage & Communication- R 10 million, Finance & Business Services- R 10 million, Community, Social & Personal Services- R 5 million.

gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

Chapter 2 of the act also dictates that it is not unfair to discrimination to –

    (a) take Affirmative Action measures consistent with the purpose of EEA,

    (b) Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

2.2(b) AFFIRMATIVE ACTION MEASURES UNDER EEA

The aim of AA is to ensure that disadvantaged groups are represented in all kinds of works and all levels of work force. No preferential categories have been provided under EEA(55/98). Section 15 clause 2 of Chapter 3 of EEA (55/98) mentions specific AA measures to be implemented by a designated employer that include-

- Measures identify and eliminate employment barriers, including unfair discrimination, which adversely effect people from designated groups;

- Measures designated to further diversity to further diversity in the workforce based on equal dignity and respect of all people.

- Making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in workforce of a designated employer.

- Subject to sub section 3, measures to

    - ensure the equitable representation of suitability qualified people from designated groups in all occupational categories and levels in the work force;

    - retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for Skills Development.[10]

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[10] The measures referred to in subsection includes preferential treatment and numerical goals, but excludes quotas along with it there is sub regulation that mentions that the designated employers are not required to take decisions regarding the formulation of employment policies, which will establish absolute barriers to the prospective or the continued employment or advancement of the people who are not from the designated groups. These are two very important sub-regulations. Hereby, it addresses some of the common

Several mechanisms exists that help in implementation, monitoring and reporting of EEA. **The Commission for Employment Equity**, one of such mechanisms, was established in 1999 as in advisory body to Minister of Labour. This commission consists of chairperson and eight members; they hold office on part-time basis. The function of the CEE is to advice minister on "Code of Good Practice" issued the minister, regulations made by the minister and, policy and other matters concerning the act. The commission may research and report to the minister on any matter relating to the application of EEA including the appropriate and well researched norms and bench marks for setting the numerical goals in various sectors. Moreover, the EEA also prescribes obligation for the employer regarding mechanisms to implement the AA. These mechanisms include consultation with the employees (either trade union representative/ and (or in case of absence of trade union) representatives of employs, preparation/ adoption of

Employment Equity Plan as prescribed by EEA, analysis of profile of the employment and publication of report. The EEA planning and reporting is supplemented by three *Code of Good Conduct* that focuses the implementation and communication matters, dealing with disability and HIV. EEA plan pertains to annual and five year targets that are suppose to be set up by employers. Both EEA plan and report are needed to be submitted to the department of labour by the first working day of October of every year.[11]

EEA is the guiding act which mentions AA in employment to redress and remove unfair discrimination. I would discuss different debates that came up after implementation of AA in my next chapter. Here I take up another sector, and a crucial one, where AA measure has been introduced.

2.3 AFFIRMATIVE ACTION IN HIGHER EDUCATION

Education is one field where AA was mostly required in South Africa. Higher Education sector suffered most from segregation policies and therefore historical black universities lacked far behind in matters of quality education. They face shortage of funds. From massification to mergers, a shift in policy can be seen in the field of higher education.

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misunderstandings about EEA. It neither aims at quotas nor does it leaves space for policies that would create barriers for the development of White people.

[11] Bith EEA plan and report are important because it contains a check list (compulsory) explaining duty to consult, duty to inform that is described in EEA and the *code fo Good Practices* for the EEA.

Following are the important acts and white papers that guide the HE sector in South Africa.

2.3. (a) HIGHER EDUCATION IN POST-APARTHIED SOUTH AFRICA: NCHE, 1996

The framework for the higher education in South Africa was prepared by the report of National Commission on Higher Education: *A frame work for transition* in 1996. NCHE was formed under chairmanship of Dr. Jairam Reddy. In many respects NCHE formed the basis of present day South African education system, it is not only placed the context in front of policy makers but also presented the opportunities and challenges in its report. On page number 29, it states;

> "A major characteristics of South Africa's higher education of the legacy of apartheid ideology which provided the framework for structuring the education system after 1948. Starting with the Bantu Education Act of 1953, all education in South Africa was officially divided among racial/ ethnic lines to re enforce the dominance of White rule by the excluded black from the quality academic and technical training"

Realizing this problem the report envisaged a system having a number of main characteristics. Large scale "massifaction" of higher education was expected to occur by increased participation of students from excluded groups into higher education system. A system that is more responsive to the needs of the society and is in cooperation and partnership for development. All these would culminate in a single coordinated higher education system, that would overcome the fragmentation of past, answer the needs of access and equity, correct inefficiency inherent in previous system, be subject to overall planning and "steering" by the state through the introduction of goal oriented funding. NCHE also made numerous fundamental recommendations, being suggested in 1996 most of these suggestions were incorporated in the constitution as guiding principle of higher education system.

2.3. (b) THE HIGHER EDUCATION WHITE PAPER THREE (1997)

The NCHE report which has published in 1996 was followed by the Department of Education White Paper Three-*A programme for the higher education transformation*.[12] The White Paper Three formalized the recommendations made by NCHE report; it was adopted as a government policy. It dealt with functioning of NQF with respect to higher education qualification and the importance of quality control and the functioning of the HEQC. The White Paper Three located the "transformation of higher education as part of broader socio-political and economic transformation in South Africa which includes political democratization, economic reconstruction and development, and redistributive social policies aimed at equity". It pose the challenge of reconstructing domestic social and economic to eradicate and redress the inequitable patterns of ownership, wealth and social and economic practices that were shaped by segregation and apartheid. (DoE, 1997).

The White Paper Three is divided into four chapters. Purpose of the higher education as stated by White Paper Three is to contribute and support the process of societal transformation outlined in reconstruction and Development Programme (RDP), with its compelling vision of people driven development leading to building of a better quality of life for all. (Section 1.3 of the White Paper). The White Paper Three puts light on requirements of higher education system for transformation as;

- Increased and broadened participation: successful policy must over come a historically pattern of fragmentation, inequality and insufficiency. It must increase access for black, women, disabled and mature students, and generate

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[12] An education white paper is one of the stages that precedes education legislation. The Ministry of Education appoints Commission or Committees to investigate into the condition of education system. The discussion document is called draft and after accepting comments by the drafts the document is called 'White Paper'. The White Paper is debated in parliament. First education White Paper was presented in 1995 which was on education and training. It sets out policy directions, values and principles for education system in accordance with the constitution. It focuses on integrated approach on education, training of all, policy of equity and redress. White Paper Two dealt with organization, governing and funding of schools. It cam in 1996 and was based on hunter report. It discuses parent rights, public and private school, government policies for public schools, role of governing bodies, employment of teachers. Despite paper formed basis of South Africa School Act 1996 (see Thambeka Vuvelwa M. Matrne and Steward Mothata's first chapter in *Development in Policy Legislation in the Education and the Training System*, UNISA 2000).

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new curricula and flexible models of learning and teaching including models of delivery, to accommodate a larger and more diverse student population.

- Responsiveness to the societal interests and needs: successful policy must reconstruct the education system and its institutions to meet the need of an increasingly technologically oriented economy. It must also deliver to requisite research, the highly trained people and the knowledge to equal the developing society with the capacity to address the national needs and to participate in rapidly changing and competitive global context.

- Cooperation and partnership in governance: successful policy must re-conceptualize the relationship between the higher education and the state, civil society and stake holders, and among institutions. It must also create an enabling institutional environment and culture that is sensitive to and affirms the diversity, promotes reconciliation and respect for human life, protects the dignity of individuals from the racial and sexual harassment, and rejects all forms of violent behaviour (Section 1.13).

The principle stated in the White Paper Three includes democratization, development, quality, effectiveness and efficiency, academic freedom, institutional autonomy, public accountability and most importantly principle of equity and redress. The principle of equity requires fair opportunity both to enter higher education programme and to succeed in them. Appling the principle of equity implies, on the one hand, a critical identification of existing inequalities which are the product of policies, structures and practices based on racial, gender, disability and other forms of discrimination and disadvantages, and on the other a programme of transformation with the view to redress. Such transformation involves not only abolishing all existing forms of unjust differentiation, but also measures of empowerment including financial support to bring about equal opportunities for individuals and institutions. Need to eradicate all forms of unjust differentiation was stressed (White Paper 1997, Section 1.18).

Chapter two, White Paper Three deals with structure and growth of HE system. It is asserted that the change in composition of student body will be affected through targeted redistribution of the public subsidy to HE. (Section 2.26).

Stress has been made on the fact that ensuring equity of the access must be complemented by a concern for equity of outcomes. Increased access must not lead to a "revolving door" syndrome with students with high failure and drop out rates. (Section 2.29). There was an understanding that in order to improve equality of out come, the HE system is required to respond comprehensively to the articulation gap between the demands of higher education programme and the preparedness of school leavers for the cadmic study. It will be necessary to accelerate the provision of bridging and access programme within further education, but the learning deficit are widespread that systematic changes in the higher education progarmme, (Pedagogy, curriculum and the structure of degrees and diplomas) will continue to be needed. The development and the provisions of the student support servites, including the career guidance, counseling and financial aid services, are other essential requirements. In addition, an enabling environment must be aerated through out the system to uproot the deep rooted racist and sexist ideologies and practices that inflame relationships, inflict emotional scares and create barriers too successful participation in learning and campus life. Only a multifaceted approach can provide a sound foundation of knowledge, concepts, academics, social and personal skills, and create the culture of respect, support and challenge to which self-confidence, real learning and inquiry can thrive. (Ibid, 2.32). Similarly it was reorganized that academic development structures and programmed are needed at all higher education institution to promote the development of teaching skills, curricula, courseware and student support services as a main stream programme development (Ibid, 2. 33).

It is important to note that no perspective target or goals were set for the institutions. Instead, the White Paper indicate that the ministry requires institution to develop their own race and gender equity goals and plans for achieving them, using indicative targets for distributing publically subsidized places rather than firm quotas (Section 2.28).

Further, incongruence with higher education act, and on the basis of principle of institution autonomy student admission placed under the authority of higher education institution. Self regulation and administrative independence as also is given in respect to curriculum. Methods of teaching and assessment, research, establishment of the academic regulations and the internal management of resources generated from private and public sources. Such autonomy is a condition of effective self-government. However, there is no moral basis for the principle of institutional autonomy as a pretext for resisting democratic change or in defense of mismanagement. Institutional autonomy is therefore inextricably linked to the demands of public accountability (Section 1.24).

By adding public accountability clause the institutions are made answerable to governing bodies and broader society in matter of spending of money for institutions that are receiving public funds; demonstrations of result achieved through resources at their disposal and, demonstrate how they (institutions) have met with national policy goals and practices (Section 1. 25).

2.3.(c) HIGHER EDUCATION ACT 101 OF 1997

The White Paper Three was followed by adoption of HEA of 1997, it provided legal foundations for policies that were developed by NCHE and White Paper Three. This act has nine chapters. The preamble of the act declares that it is desirable to establish a single coordinated HE system which promotes cooperative governance and provides for programme based HE; restructure and transform programmes and institutions to respond to development needs of the republic; redress past discrimination and ensure representative and equal access; provide optimal opportunities for learning and the creation of knowledge; promote the values which underline an open and democratic society based on human dignity, equality and freedom; respect freedom of religion, belief and opinion; respect and encourage democracy, academic freedom, speech and expression, creativity scholarship and research; pursue excellence, promote the full realization of potential of every student and employee, tolerance of ideas and appreciation of diversity; respond to the needs of public and of the communities served by the institutions; contribute the advancement of the all forms of the knowledge and scholarship, in keeping with the internal standards of the academic quality; and whereas it

is desirable for HE institution to enjoy freedom and autonomy with their relationship with the state within the context of public accountability and national need for advanced skills and scientific knowledge.

Therefore, in its preamble the HE act of 101 of 1997 gives a vision and provides a landscape for the post apartheid South Africa which will be a single coordinated educational system that would restructure and transform the institutions for the development of South Africa. Need to redress past discrimination and representation, and equal access has been stressed. The need for the autonomy and freedom of public institution in matter of public accountability and advancement of skill has been highlighted in the case of relationship of the state.

This act has gone through three amendments, HE Amendment Act 55 of 1999, HE Amendment Act 54 of 2000 and HE Amendment Act 23 of 2001. The debates on amendment of section three of this act ponder a questions like how much autonomy should institution enjoy related to HE. Section three as amended gives the minister greater power like determining policy on higher education and determined the scope and range of HE institutions. The amended section 40 limits the autonomy of public HE institutions in financial matters by HE amendment act 55 of 1999 and HE amendment act 54 of 2000.

2.4 SOUTH AFRICAN HIGHER EDUCATION STRUCTURE

To understand the mechanism of implementation of AA in education it becomes important to be acquainted with the structure of the HE in South Africa. Therefore I proceed with a brief introduction of HE sector in South Africa and the functions they play in implementation of policies.

2.4 (a) *COUNCIL ON HIGHER EDUCATION:*

The CHE was established as an independent statutory body in May 1998, in terms of HE of 1997. it serves as an advisory body tot the minister of Education on matters related to HE policy issues and assumes executive responsibility for quality assurance within HE and training. (www.che.org.za).

2.4 (b) *SOUTH AFRICAN UNIVERSITIES VICE CHANCELLORS ASSOCIATION (SAUVCA):*

As a statutory body SAUVCA[13] is required to make recommendations to the minister and director general of education on matters referred to it or on any other issues which it considers to be important. It also appoints persons or nominates persons for appointment to a statutory council and committee on which the university to be represented. It is responsible for the formulation of the joint statutes and joint regulation related to the university sub-sector of HE system, which contains several important provisions regarding aspects such as transfer of students between universities or other institutions and the minimum period of study for the bachelor degree. SAUVCA plays a role in maintaining the most basic order in academic matters and regulating academic standards.

An important related function of SAUVCA is statutory responsibility for matriculation board (MB). It advises the minister on the requirement of matriculation endorsement and exemption from the endorsements requirements, which represent the minimum requirement for registration for the university degree[14].

2.4 (c) *CENTRE FOR HIGHER EDUCATION TRANSFORMATION (CHED)*:

This centre mobilizes Trans-disciplinary skills for specific projects by taking available expertise in the national and international HE sector. A non-hierarchical, flexible management style, modern information technology and a heavy reliance on consultance and steering committee affords CHED the capacity to respond to the HE needs. CHED

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[13] The committee of university principle (CUP) was established by section 6 and 7 of university act 1955. It was established as a statutory body, and the membership, justice personality and functions of SAUVCA are regulated by the university act, Act 61 of 1955 as amended. CUP is known as SAUVCA today.

[14] SAUVCA advances the interest of university system by pro actively engaging in policy or practice which affects the system as a whole. It consults widely with other old players in HE system to ensure that it can act proactively and effectively. It fulfills its mission by engaging in discussion and debates, commenting on proposed legislations, representing the university on national structures and committees, hosting and participating in workshops, presenting papers in conferences or taking part in workshops, presenting papers in conferences and taking part in bilateral and multilateral talks. SAUVCA served by specialist committee that advice it on matters of common concerns. The present committees are executive committee, equity committee, finance committee, education committee, legal committee, research committee and intellectual property sub committee of legal committee. (www.sauvca.org.za)

also provides the forum for interaction between different structures and stake holders in HE. To this end, CHED is currently collaborating with Ministry of Education, CUP, Committee of Technikons principles, Committee of College Education Rectors, and National Centre for Student Leadership. International collaboration includes American Council on Education, The Association for American Universities, The Commonwealth Higher Education Services, Centre for Higher Education Policy (Netherlands). (www.ched.org.za)

2.4 (d) *HIGHER EDUCATION QUALITY COMMIITTEE (HEQC)*:

Simply stated in terms of their respected mandates, the CHE advises the Minister of Education on matters relating to HE and the HEQC manages the quality assurance activities of all public and private providers operating in the HE band.[15] In terms of its mission and vision, the HEQC supports the development, maintenance and enhancement of the quality of public and private higher education provisions in order to enable a range of stakeholders to benefit from effective HE and training. The HEQC performs its quality assurances duties also in terms of South African qualification authority Act (SAQA), 1995 (Act No. 58 of 1995) and the SAQA regulations of 1998. as an educational and training and quality assurance body (ETQA) for higher education, the HEQC is responsible accreditation of public and private institutions and their learning progarmme.

The underlining objective of HEQC with regard to the quality assurance is to ensure that institutions deliver education, training research and community services effectively and efficiently which are of high quality and which produce socially useful and enriching knowledge as well as relevant range of graduate skills and competencies necessary for social and economic progress.

The HEQC has statutory responsibility to conduct institutional audit as indicated in Higher Education Act 1997. In terms of the act the specific functions of HEQC are to accredit programmes of HE, audit the quality assurances mechanisms of HE institutions and promote quality in HE. (www.che.org.za/heqc)Requirement to provide indicators of

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[15] According to Council on HEQC, reaccreditation of MBAs 003 documents the HEA (101 of 1997) set out quite clearly the roles and responsibilities of CHE and its permanent sun-committee, the HEQC, with regard to policy and quality assurance related matters in the HE sector.

success and evidence of effectiveness, takes the audit beyond the checklist of policies and procedures.[16]

2.4 (e) *THE SOUTH AFRICAN QUALIFICATION AUTHORITY (SAQA)*:

SAQA is a body of 29 members appointed by the minister for Reduction and Labour. The members are nominated by identified national stake holders in education and training.

- the function of the authority are to oversee the development of NQF, by formulating and publishing policies and criteria for the registration for bodies responsible for stabling the education and training standards or qualification and for the accreditation of bodies responsible for monitoring and auditing achievements in terms of such standards and qualification.

- To oversee the implementation of NQF by ensuring the registration, accreditation and assignment of function to the bodies' referred to above as well as registration of national standards and qualifications on the frame work. It must also take steps to ensure that registered standards and qualification are internally comparable. (www.saqa.za)

2.4 (f) *NATIONAL QUALIFICATION FRAMEWORK (NQF)*:

The NQF is a set of principles and guidelines by which a record of learner achievement are registered to enable national recognition of acquired skills and knowledge, there by ensuring an integrated system that encourages lifelong learning. The NSBs recommend standard and qualification for registration on NQF to SAQA. Each NSB is responsible for recognizing or establishing standard generating bodies (SGBs) for registrations. SBGs in turn develop standard and qualifications and recommend them to the NSBs for the registration. SGBs are found according to sub-fields and members are key role players

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[16] The scope of audit covers broader institutional arrangements for assuring the quality of teaching and learning, research and services learning programmes as well as other specified areas. Governance, finance and other institutional organizations will not be a focus. One central principle emerging was that the primary responsibility of quality assurance rests with the HE institutions themselves.

drawn from the sub-field in question. For example, the SGB for teachers, educators is made up of School Teachers, Professional Teacher Bodies, University, College and Technikon Teaching Staff.[17]

SAQA accredits education and training assurance bodies to ensure that the education and training which learners received of high quality. This body in turn accredits providers to offer education and training in accordance to the standard and qualification registered on the NQF.

2.4 CONCLUSION

Some type of distributive justice among groups is necessary for long-term peace and development after negotiated settlement in societies like South Africa with a history of institutionalized discrimination. Hartzell points out that groups that fear for their safety, have immediate concern of ensuring that control of economic resources does not provide some group with the means to exclude. Open market competition is likely disproportionately to favor those groups that are already economically advantaged; groups concerned about the control of economic resources by rival parties are unlikely to rely strictly on market processes of distribution. Rather, these groups will seek to curb the flow of resources and economic opportunities to an economically privileged group. This is likely to entail the use of public policies and/or administrative allocations that direct resources, public and perhaps even private, toward any economically disadvantaged groups. Settlements seeking to achieve this type of distribution of material resources and economic opportunities are likely to rely on the use of preferential policies.(Hartzell,1999). South African case is a distinct one where majority seeks preferential policy after a negotiated settlement that lead to end of apartheid. The fact that South Africa could achieve end of apartheid through negotiation brought forth AA in liberal democratic framework. There were two parties involved in South African case;

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[17] SAQA's aim is o ensure the development and implementation of a NQF. The NQF is a framework; it sets boundaries, a set of principles and guidelines which provide vision, of philosophical base and organizational structure for construction, in this case, of a qualification system. Detailed implementation is carried but within these boundaries. It is national because it is national resource, representing a national effort at integrating and training into a unified structure of recognized qualification. It is a framework of qualification that is records of learner's achievement.

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NP, representing the dominant minority, and ANC, representing the oppressed majority. Both parties had their immediate concerns in mind; white minorities, securing their economic position, and the black majority, concerned about share in national wealth and development from which it has been historically deprived. Liberal democratic framework and open economy, at one hand, provided opportunity to the white minority to secure their position in society and principle of non discrimination and redress, on the other hand, gave blacks one of the tools to transformation; AA. Both Employment Equity Act and Higher Education White Paper focuses on redress of past discrimination, equity and representation. The concept of non discrimination has been raised time and again in legislations related to employment and education. The nature of the act has been determined by the context that the policies came in as mentioned in the earlier. This chapter tried to capture the nature of the policies providing AA in South Africa, the concepts within the act and mechanisms to implement. The structure of Higher Education sector has been given for a better understanding of implementation of the policies and to know how the mechanism of the policies works. The next chapter looks into the debates that are centered on AA in South Africa.

ISSUES AND DEBATES

CHAPTER 3
ISSUES AND DEBATES

3.1. INTRODUCTION

Affirmative action is invariably contentious and raises a number of complex questions. These questions can be clubbed together as related to goals of AA-Does AA aim at redress of past injury or compensation of ongoing disadvantage or reversing discrimination?[18] Questions that are related to class- should there be differentiation between disadvantaged groups on the basis of class, should AA be class based or identity based?; The question on the outcome of AA- does it lead to racial stereotypes? Does it serve its purpose of attaining equality? Question on the implementation like-to what extent state should use control or incentive? How much autonomy should educational institutions have? How political considerations impact on implementation? There is hardly any disagreement on adoption of some form of inclusive policy but there is little agreement on the basic questions related to nature, implementation and outcome of AA. In this chapter I attempt to look into debates centered on AA in South Africa in the field of education and employment. This chapter takes up the debates in six sections, taking up different debates on AA in South Africa. I propose to take up each debate, discuss it briefly and take it up at length in the following chapter.

The debates on AA in South Africa shows polarized visions on policy challenges in post-apartheid South Africa. These debates put up some basic questions on who should be target group for these policies, the mechanism of implementation and the outcome. The first position in the debate is well-expressed by the statement "The debate on AA becomes rather more contentious the more it is applied to concrete situations or field of law..."as in case of public services (Henrard; 2002:25).Only policy level there is hardly any debate as to if any mechanism to overcome disadvantage is needed or not. But as soon as these policies are drafted and implemented on the ground of race, opposition starts. On what grounds the benefit of AA will be given is debated and different

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[18] Devesh Kapur and Megan Crowley (2008) point out related questions, while dealing with equity and access as new challenge to higher education, such as "how should institutions weight different forms of disadvantage?, Is race merely a proxy for a deeper form of inequality such as socio-economic status?, What weight should be assigned to different aspects of deprivation?, How are group rights balanced against individual rights?" Kapur, Devesh and Crowley, Megan (2008), *Beyond the ABCs: Higher Education and Developing Countries,* Working Paper Number 139, Center for Global Development, February. pp. 60-61.

contesting views are expressed on implementation of the policy. AA policies implemented till now especially in field of education and employment has been controversial. For opponents, complaint focus on rigid way of implementation of AA, leading to overemphasizing of number and lowering of standard. But, there is no doubt that debates on AA for redress of past discrimination reigns supreme on the debate (Henrard, 2002:34).Quite distinct from notions of AA in North America, in South Africa, a union driven vision of transformation that is related to living and working condition of majority competes with narrower business advocacy of advancement of black managers in response to market demands (Adam,k.1997:231) South African case(and that of Malaysia) is different from other parts of the world because majority is given AA. It brings the focus on the fact that cast out status is not the case with minorities only. Therefore, the rejection of AA merely on the ground that it is inspired from policies adopted in North America where minorities are the target is problematic. In any case, policies are not transplanted from one part of the world to another and it was not the case with South Africa as well. Common perception is that of threatened feeling because of the far reaching effects of AA. The emphasis on racial category is seen as further racializing the society and compensatory aspect of the policy is perceived as replacement of one evil with another; AA for those who oppose it, is turning of tide where previously disadvantaged groups will get a chance to attain success over the previously advantaged ones. This later proposition characterizes members of formerly advantaged groups as "victims" (Lindsay, 1997).

3.2 TWO CENTRAL ARGUMENTS OF THE CRITICS

Critics have made two central complaints about AA, first, that the policy is unfair to the members of a group who are not targets for AA and, second, that the policy lowers productivity and efficiency in the workplace. The first criticism assumes that in the absence of AA there will not be any kind of discrimination or any special advantage for dominant group. It holds that meritocratic terms will be used to judge and evaluate. It argues for a race blind society where there is no white privileged class. Now, this conception is well contested because such environment did not exist nor prior to the

adoption of AA nor will be there in absence of AA. It is historical fact that societies have given boost to privileged classes either for there economic status or group membership.[19]

3.3 CASE OF MERIT

The problem of merit is one issue that reoccurs in the debate centered on AA in South Africa. Critics argue that AA not only undermines merit principle thereby lowering the efficiency standard of organizations and institutions but also hinders in the growth of the target groups as they feel stigmatized. These claims put forward the question that in the absence of AA, is merit the only criteria for appointments and admissions and how neutral is the merit criteria in itself. Moreover, the point to deliberate is that whether AA creates stigmatization or is it an antidote to the same.

3.3 (a) MERIT/ SUITABILITY

The suitability criteria in EEA have left it open for criticism on grounds that it undermines the merit principle and therefore reinforces the stereotype towards the disadvantaged communities availing AA. Examples are sited from European commission which makes it clear that AA is applied when two candidates are "equally qualified"(McHarg,2006).The managerial class puts forth the argument that appointing a person merely by virtue of being a member of a disadvantaged group is self-defeating. A threshold of performance must be employed to attain a certain position. Many a claims are made for upholding the meritocracy as a principle and thereby attaining justice. Completely different concern is shown by some scholars who place more value on institutional transformative measures, redistribution of resources and the fact that disadvantaged groups are often targeted as being lower in meritocratic criteria and thereby excluded. Mamdani, writing way back in 1992 expresses that,

> "...no matter how open the access to minority white institution in the name of 'affirmative action', will this not simply alter the racial composition of that minority with little consequences for the oppressed majority accept to legitimize their exclusion as based on merit this time around? In final analysis, will not embracing the language

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[19] South Africa's white minority was a kind of affirmative action policy which accorded benefits to nation's poor whites at the expense of blacks. Whites received preferential treatment in terms of access to jobs, housing, and education. White males in particular received advantages in particular for dominance in position of power and status in South African society. See, Ramphele(1996).

and vision of 'affirmative action' obscure the task that must be central to democratization in 'new' South Africa, that of institutional transformation?"

What he points out here is the fear that AA would further legitimize exclusion of the oppressed minority, this time around on the basis of a concept that is taken for granted. He calls to address the issue of institutional transformation.

It is important here to understand that the meritocratic discourse has a self sufficient, taken for granted quality that is assumed as moral and normative standard that needs to be upheld(Augoustineos, Tuffin and Every; 2005:315). This argument is closely related to the notion of formal equality. It holds that law should play its role in removing discrimination and opportunities should be awarded on the basis of individual merit and not on the membership of any particular group or colour of the skin. The discourse of AA in the private sector revolves around the issue of reconciling the maintenance of standards and merit (Adam, 1997). The question of merit has been rising time and again against AA in South Africa especially in job allocation and admission of students of disadvantaged communities in the field of higher education. Scholars have come up with views claiming that argument in favour of meritocratic policies is based on under defined concept of merit and therefore is exclusionary.

Similarly, while talking about Indian case of AA, Aswini Deshpande(2005:20) points out that the assumption that without AA, merit is the sole criterion for hiring/admissions is false.[20]Moreover, it is argued that by providing AA basic concept of equality is undermined. To this point Ockert Dupper states that South African experience with AA measure is unique in a number of respects, of which two stand out. In relates to the constitutional and legislative framework, both the Constitution and the Constitutional Court hold AA fair is a measure to advance substantive equality.

"...secondly, in giving meaning to the notion of substantive equality, the legislature and the judiciary in South Africa have challenged many conventional wisdoms in the area of AA, one of the most significant being what I reluctantly call the "traditional" or "conventional" understanding of the notion of merit. The most common way in which

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[20] University examination has been grossly bias towards dominant groups which acts like a de facto AA for the privileged classes. Apart from South Africa,these cases of discrimination are prevalent in India(Deshpande,2005),United States(Darity and Mason,1998),and in Brazil(Htun2004).

the merit is currently defined is that a position should be awarded to the most "qualified" applicant for the position in question. The manner in which the EEA envisions the allocation of positions represents a significant deviation from this understanding. It provides that in order to benefit from affirmative action measures, a candidate must be "suitably qualified", and this as we have seen, includes those who may not have the formal qualification or experience required for the position, but (merely) the capacity to acquire the ability to do the job in question within a reasonable time period."(Dupper, O; 2006:158-159)

Friedman and Erasmus (2008) point out at the fact that the argument in favour of or against racial redress are made on competing normative view which stresses on morality of merit over reverse racism.

3.3 (b) SELF IMAGE/STIGMATIZATION

Talking about AIM programme in university of Cape Town's Graduate School of Business, Kanya Adam talks about perceptions about AA in South Africa.[21] Critics of AA state that racial preferences lead to collective and individual demoralization. It lowers the self image of blacks because it leads to the mindset of victimhood. Instead of being a creative agency it leads to assumptions of charity. The end result is a vicious circle of perpetuation of the very condition that the beneficiary is trying to overcome (Steel,S. in Monk,R.C; 1994 cited in Adam, k.2000).

Contrary to this view that AA leads to lowering of self image of beneficiaries, Adam argues that beneficiaries see themselves as holding the capacity, commitment and well suited for the place that they selected for. Blacks see AA as owed in order to create equality of opportunities rather than a favour of apartheid injustices. She argues that

"...ethos among some of the upwardly mobile blacks paints racial preferences as an insult to the differential capabilities of people who merely need to be rewarded fairly on the basis of their performance rather than skin colour. In contrast, beneficiaries in other societies labour under the pretense of an unprejudiced, meritorious order and therefore

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[21] The Associate in Management Programme (AIM) is a project in Graduate School of Business of University of Cape Town which enables under qualified managerial students to compete for entry into MBA. No formal educational requirement is specified for it. Most students are sponsored by companies.

can never be certain whether failure has to be blamed on individual performance or racial discrimination."(Adam, 2000:50)

While there is no empirical study conducted on the psychological consequences of AA for beneficiaries (ibid,48), problem lies not only in the fact that beneficiaries of AA are seen as passive recipients of the policy but also due to the misconception that AA leads to lowering for self image. Many of the beneficiaries, as pointed out by Adam, are perceived by white peer as unsuitable and lower in merit. This is a result of racial mindset and can not be expected to fade quickly. The argument that AA stigmatizes member of recipient group calls on to examine what is the source of stigma. It is important to note that stigmatized status of a recipient group in the absence of AA calls on proactive measure because the absence of any such measure facilitates their exclusion. AA is an antidote to effects of stigma rather than the source of it (Darity, 2005).

3.4 CLASS

One of the main points of criticisms of AA is that as implemented, it is a policy that advantageous for rising black middle class and in effect broadens the cleavage between classes. The BEE, in practice benefits the upper and middle class among blacks in South Africa. It is the progress of these groups that are being sold as result of transformative measures taken by the ANC.

Reality is that besides the government, there is hardly anybody who doubts that the benefit of such measure is going to a few influential people (Alexander, 2006). Adam puts forth the case of 'anticipatory compliance'[22] and argues that large businesses in South Africa regard AA as an essentially pragmatic response to a number of perceived problem such as; the potential threat of impeding legislation, the uncertain allegiance of the black middle class, the competition to capture black consumer market and, the skill shortage that has potential to hamper economic growth. Most employers perceive South Africa's education system as being far too slothful to widen the pool at the pace that they like. Despite the 'anticipatory compliance', she argues that AA policy benefits a small

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[22] A concept she borrows from Raul Hilberg's work, *The Destruction of European Jews(1961)*.He argued that jewish leaders moved in advance to satisfy German tormentors because they could do little else. Throughout their long history jews had learnt the necessity of placating their enemies if they were to survive.

segment within the target group and primarily those who are already privileged in class status hence, it exacerbate class differences. AA focused on race facilitates the acquisition of wealth by an already advantaged class (Adam, 1997).

Waddy argues,

"Even if only flaw of affirmative action in South Africa were its faulty judgments based on broad and stereotyped categories, this would be more than enough to condemn such programs as incompatible with the avowed nonracial character of the country's new democracy. However, there is an additional factor that makes affirmative action unacceptable in the South African context...it has been observed in America that it has been mostly middle-class and educated blacks who have benefitted from affirmative action programs. Poor and inner-city blacks, on the other hand, have remained trapped in a cycle of desperation and neglect, and affirmative action has had little to offer them. Much the same thing has happened in South Africa. Blacks in townships who have little education or work experience have virtually no chance of landing a desirable job in the private sector or the civil service, with or without the help of affirmative action."(2003-4:5)

Unlike USA, South Africa might be able to implement AA on the basis of class rather than race and still blacks would disproportionately benefit as poverty and race intertwine strongly and blacks are majority. In other parts of the world, minorities are target population. Although poverty ratio within the minority population may be high, when taken together with majority group, the major beneficiaries of class based AA will again be dominant majority unlike South Africa. Therefore, class base AA in other parts of the world is problematic (DarityJr, 2005)[23] .Many scholars suggest addition of class category within the AA on racial grounds.

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[23] Darity explains the difference by a numerical example .In case of a community of 100 where white is 20, blacks are 80 and poverty ratio among whites is 10 percent, where as among blacks it is 50 percent; race based AA would all eighty blacks and no whites and class based AA would make 40 blacks and 2 white as beneficiaries. This is a simplified form of the South African case. In contrast to this, in a community of 100 where 85 are whites and 15 are blacks, poverty rate among whites is 10 percent and among blacks it is 30 percent; race based AA would render all blacks and no whites and in case of class based AA 5 blacks and 9 whites would benefit. "In general, "class-based" affirmative action becomes less effective as a substitute for "race-based" affirmative action as a means of changing the racial composition of institutions. The greater the extent to which the dispossessed group is a numerical minority and the less wide the gulf in poverty status between them and the dominant group."Darity(2005)

3.5 REVERSE DISCRIMINATION

While dealing debates on AA, which is defined as a policy of redress, automatically a question arises in mind- how is the "now-disempowered white minority"[24]responding to the new status (Murray&Simeon, 2007)? Claims of reverse discrimination and victimhood have not been new in societies where positive discrimination has been adopted to redress past discrimination and so is the case of South Africa. However, two unique feature of South Africa make the application of policies adopted in North America or India problematic to adopt (Vos, Pierre De.1995).

> " First, 'positive discrimination' stands accused of being *apartheid*-in-reverse. The dominant ideology of non-racialism is said to be incompatible with racial preferential treatment. Secondly, the major beneficiaries of the policy would be numerical majority. The debate elsewhere focuses mainly on how discriminated minorities can be incorporated into the mainstream, although action taken in favour of women resemble the argument about the preferential treatment of black South Africans."
> (Adam, 1997:233)

Despite the fact that the majority in South Africa is in a disadvantaged position due to legacy of apartheid, AA is perceived as apartheid in reverse in post-apartheid South Africa. It becomes important here to mention that this critique of AA does not lead to negation of the fact that some or the other form of inclusive policy is needed in South Africa.

3.5 (a) THE DILEMMA OF AA

This is a case of dilemma. Many scholars argue that reverse discrimination is a problem of AA, although the policy is provided as a mechanism to redress past injustices it is based on the very ground of discrimination. Critics argue that instead of uprooting the discrimination itself it creates further discrimination, discrimination in reverse. Robert Fullinwider suggests that if preferential hiring is not used discrimination is permitted to exist, but if preferential hiring is used it leads to further discrimination. "The dilemma is

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[24] Murray and Simeon(2007), use this term to mean the white minority that was empowered before 1994 and the black majority was disempowered and disenfranchised. Post 1994, the black majority came into power and the role shifted, however, the white minority is not disenfranchised.

that whatever we do, we permit discrimination."(Fullinwider, 1980:156).To this dilemma Young (1990) has an answer, she suggests that oppression and not discrimination is the primary concept naming group related injustice. In present context where law declares discrimination that excludes disadvantaged communities illegal, explicit discrimination decreases. The problem is that when discrimination is not explicit and held wrong in public sentiment it is difficult to prove it. Young argues that it is better to restrict discrimination to explicit policies of exclusion and that discrimination is not the only wrong that disadvantaged groups face. "If one focuses on discrimination as primary wrong groups suffer, then the more profound wrongs of exploitation, marginalization, powerlessness, cultural imperialism, and violence that we still suffer go undiscussed and unaddressed"(Young,1990:196-197).Moreover, she claims that historically discrimination has been wrong not because they distinguish people according to attributes but because they restrict the opportunity of groups. They have been wrong because they contribute to, as Young claims, and help enforcing oppression. If discrimination serves the purpose of undermining the oppression of a group AA is not only permitted but also required.

3.6 PERPETUATION OF RACIAL IDENTITY

Neville Alexander (2006) argues that the usage of terms as "blacks", "coloured", "Indians", and "Whites" in normal public discourse leads to perpetuation of racial identities. Usage of categories of apartheid South Africa is problematic and therefore avoidable. Categorizing of human beings through any measure is a disturbing process (Lindsay,1997).[25] Lindsay quoting example of U.S, states that racial categories are in constant state of flux due to changing identification standards, including those of bi-racialness. Ramphele(cited in Lindsay,1997:528), suggests that attention should be paid to the following question:

When the colour-based classification system has been omitted, how will officials identify affirmative action recipients?

Should self-classification be permitted?

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[25] It is argued that categorization leads to tension within the society, in any social context. See, Butler (1996), Gates(1986),Golberg(1990), Hollinger(1996) and, Mare(1993).

In late 1980s the central question for policy makers and scholars was what sort of democratic institution will be secure and stable. ANC was deeply committed to a nonracial system where ethnicity had no relevance.[26]The scholars and policy makers differed in their opinion concerning democratic institution because there was a fundamental disagreement on about what course the ethnicity will take in post apartheid South Africa. This can be found out in the debate between Lijphart and Horowitz, both of them agreed that the fundamental division in South Africa society went on well beyond black-white division. Both agree on the fact that once apartheid will end, these differences would gain prominence. [27] The reason to bring in this debate is that in present context although the calculation that they were making about spurring up of racial/ethnic differences has not occurred(Murray&Simeon,2007) but the debate on perpetuation of racial identity certainly cloud the policy measures taken up by government to reduce institutionalized discrimination in post apartheid South Africa. The question whether to institutionalize or blur racial identity, has become central theoretical and practical question in literature on management of differences in modern society. Representatives of the Indian and coloured community raise concern that earlier they were marginalized under the white minority rule and now they are marginalized under black majority rule. Earlier they were not white enough and now they are not black enough.

3.6 (a) QUESTION OF PRIORITIZING BENEFICIARIES OF RACIAL REDRESS AMONG DISADVANTAGED GROUPS

Another aspect regarding the perpetuation of racial identities is that although the EEA defines the term 'Black' in generic terms, critics argue that racial majority is given priority. Modisha holds that "there is need to consider racial/ethnic other" while

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[26] Murray&simeon(2007) argue that ANC's view was supported by scholars such as Macdonald(1992), and Southhall(1983).They advocated a westminister-style majoritarian democracy. The N.P argued for a power sharing model that was supported by scholars such as Giliomee&Schlemmer(1989), Lijphart(1985) and Horowitz(1991).Also see,Lodge(1983).

[27] Both Lijphart and Horowitz agreed that in such divided society with extreme lopsided majority and minority, simply majority rule will would not be useful. It would result in either civil war, or exclusion of white minority or both the cases. The point that differ from is on what sort of rule then be adopted. Lijphart's answer was consociational democracy which would give substantial autonomy to each group and promote accommodation among elites through power sharing.Horowitz argued that consociationalism would perpectuate the very division it was meant to accommodate. Horowitz held that ethnic and racial differences were more of social construct. For him the preferred strategy was integrationalist model that would create conditions for elites for building coalition.See Murray &Simeon(2007).

discussing AA policy. Although these groups are included in the list of designated groups while implementing the policy there is very little discussion on coloured and Indians. The discussion is always focused on the gap between whites and blacks. It is important to note, as Modisha observes, "what is the implication of this for the implementation of the policy?" He points out at the latest debate on inclusion of South Africans of Chinese Origin in the definition of designated groups (2008:174). Significance of this debate is how far the list of beneficiaries will be stretched and would it lead to further perpetuation of racial identities. Moreover, it becomes important to ask the question that how does one prioritize who should be the beneficiary of racial redress, is it not significant to give preference to worst, economically and socially, among disadvantaged groups for a better implementation of AA?

Mare (1993) examines the "culture of racism" in South Africa and contends that such a culture can not be easily wiped out with a few years of affirmative action nor should one group be held higher against the other. He suggests that South Africans should look for other arenas that would further deemphasize their politicized racial identities. However, he argues that without critical ideological base AA will be powerless. A pedagogical and curricular change is needed for Higher Education.

3.7 TOKENISM

The appointment of a black person solely on the basis of race or sex is seen as counter productive to the development of South African economy. This point of view, as the position on merit, is immediately linked to efficiency. It is argued, as I pointed out earlier (in section 3.2) that token appointments lead to lack of efficiency. Economists claim that appointment of undertrained and unskilled people led to disaster in public and private sectors.(Terblanche,S. 2002). He further points out that these tokenist appointments weaken the neo liberal state. These "unintentional" appointments on preferential basis "loose the nuts and bolts of the civil services and of the public sector of the economy" (Terblanche, 2002:447-448.).There are cases where set-aside policy has led to formation

of enterprises that have a black as front person while the business is actually run by whites.[28]

3.7 (a) TWO QUESTIONS RAISED WITHIN THE ISSUE OF TOKENIST APPOINTMENTS

There are two points in the issue of tokenistic appointment .First point deals with appointment of blacks for the sake of it; to fulfill the requirement of having black candidate, unqualified and under-skilled appointments are made. This arguably leads to lowering of standard. This point is closely related to that of efficiency. Second point is related to acquiring of contracts where an organization run by a black is given preference. Here, businesses actually run by whites make a token appointment of a black candidate in the board or as a director to grab contracts from government. All the black director has to do , or as the case may be, has to do is to shake hands and sign on papers.

3.8 SKILL SHORTAGE

EEA(1995) section 15(1) emphasizes that AA measure should ensure that suitably qualified[29] people from designated group get equal employment opportunity and they are equally represented at all occupational categories. It stresses on acquisition of skills within the framework of broad based BEE framework.[30]Broad based BEE attempts at economic transformation of the country.

3.8 (a) ISSUE OF BRAIN DRAIN

Adam holds that there is a rising anxiety in South Africa that AA is driving skilled professionals out of the country which has resulted in heightened resentment towards the

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[28] Similar cases can be found in Malaysia and US where cases of businesses becoming eligible for disadvantaged set-aside by having a nominal owner while actually run by a member of dominant group.

[29] Section 20(3) defines suitably qualified people as constituted by any one or combination of the following qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job.

[30] Broad based BEE's main focus on skill development is in line with Skill Development Act(no.97 of 1998).It provides institutional framework for devising and implementing national, sectorial and work place strategy to develop skills. National Skills Authority and Sector Education and Training Authorities are two important institutional structures provided by the act. NSA advices the minister of Labour on national skills policy, whereas SETAs see the implementation of these policies. These mechanisms seek to address the problem of labour market discrimination of disadvantaged communities by providing skills to them.(see, Modisha, 2008:156) The Skill Development Act holds a lot of value because most of the argument against AA are centered around lack of skills there by leading to lowering of standard of the workforce, It is obvious that without any support to develop skills AA holds nominal value and would not help the disadvantaged groups to compete in the labour market which is dominated by technically skilled male whites.

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policy (1997:232).John Kane Berman states that South Africa may risk damaging its growth if preferential policies 'chase professionals out' from South Africa which already faces chronic shortage of skills. This 'reverse discrimination' caused many whites in public services to take early retirement whereas getting job in private sector is difficult for white males (Berman, J.K, 1995:20,cited in Adam:1997:233).Another problem related to skill shortage in South Africa has been pointed out by Angus Bowmaker-Falconer when he claims that the corporate activities are centered on training a small pool of available black managers rather than helping to create managers in significant numbers. A 'black managerial aristocracy' (Adam, 1997:239) is emerging at the expense of vast unskilled masses.[31] There is a "white flight" from South Africa (Mbabane, 1998) and at the same time a dreadful shortage of trained blacks to fill up positions. The few blacks who are qualified, they hop jobs for better individual deals (Tummala, 1999). According to DPSA report (2006:15) AA is one of the major reasons why employees move from one organization to other. There is severe skill shortage in the labour market and due to the pressure to comply with AA measures both in public and private organizations there is a lot of poaching for skilled black professionals. They hop from one job to another and this leads to vacant seats in the organizations.

3.8 (b) QUESTION OF SMALL POOL

Chipkin (2008:148) argues about another reason for switching over jobs among black employees, lack of skills among those who are employed. Now this is a contrasting view yet important one. Therefore we have two reasons for one trend-hopping of jobs by black employees, one being the demand for skilled blacks in the labour market leading to skilled black professionals leaving for better (paid) jobs, and another being the change of job by under- qualified black professionals who find it difficult to survive in jobs. He points out two prominent projects related to transformation of state in South Africa, First

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[31] Here Adam borrows from Lenin's labour aristocracy and applies it to black managerial class meaning the growing black managerial class who are benefitting from the AA. The danger of this corporatist deal on AA is that it does not benefit the unemployed who need it.

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concerning motive to achieve representation within public service, and the second moving away from public administration to public management.[32]

> "The move away from public administration to new public managerialism has created the following untenable situation: leadership positions in government departments are frequently poorly defined and/or require a combination of skills that are difficult to find in any single individual. This makes it difficult to find suitably qualified candidates. In turn, departments sometimes hire un or under-qualified persons. We have no wonder, in this regard , whether the current system of public management is not setting up young black recruits for failure."

He further points out that recently the public departments make no appointments at all which leads to vacant seats in middle and senior management government departments and this tendency is compounded by equity legislation. What comes out here is that Skill shortage is an effect of combination of factors; in this case the proposed transformation agenda is not backed by skill training to new entrants. The exact problem is that it is difficult to get right combination of skills in case of public management which in turn is a result of vaguely defined post requirements(ibid:148). Young black entrants are not trained which leads them to either quitting the job or landing in a mess up.

Skill shortage is a massive problem in developing economies of Africa as is the case of South Africa. There are several trends related to skill shortage pointed out above. But to blame brain drain of qualified whites from South Africa to other developing countries of the world would be hurried conclusion, a miss calculated one.

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[32] Section 195(1) of the constitution of Republic of South Africa (Act No.108 of 1996) stipulates that 'Public Administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.' The White Paper on Transformation of the Public Service (Department of Public Service and Administration, 1995) AA serves to improve the responsiveness of the state to the commands of new political operators. The idea is that black managers share the same vision with that of state. The document explains that democratization is the aim of public service which goes well beyond right to vote. It requires a comprehensive approach to the development of democratic and accountable public service. Chipkin(2008:131) argues that that equity is being pursued in the context of a new politics of the state.

3.9 ROLE OF ANC AND THE OPPOSITION

The debate on the press coverage[33] of South African scene is an example of pressure for legislation for AA(Adam, 1997). The ANC argues that process of transformation is being portrayed in a biased and superficial manner. Nelson Mandela described AA as a corrective action aiming to bring previously disadvantaged to the same competitive level as that of advantaged, but how ANC proposes to do it remains unclear. Problems in defining what AA is and how to implement it remains vague(ibid,1997:240).Albie Sachs explains on this point,

> "Whatever form might emerge or whatever definition be given, everyone knew what affirmative action was: it meant taking special measures to ensure that black people and women and other groups who had been unfairly discriminated against in the past would have real chances in life. In particular, it signified a concerted effort to enable them to overcome the obstacle that had been put in their way, to develop their capabilities to the full and receive appropriate reward for their efforts."
> (1994:2)

The problem of defining AA does not restrict itself to mere trouble at the time of implementation; rather, vaguely defined concept leads to an attitude on part of the government to term any measure as AA.

3.9 (a) UNDER DEFINED CONCEPT

The problem here is that AA is used as a 'catch all' concept which is portrayed as encompassing all measures designed to redress inequality. The question, as Adam(1997) puts is-what is to be equalized; opportunity in terms of exposure or result? Moreover, "to describe any strategy that seeks to enhance the benefit available in society as affirmative action is surely to stretch the concept so wide that it becomes meaningless."(Shubane, Khehla, 1995:1)

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[33] The programmes that emphasize on numerical results are most contested and debated .Labour Ministry has strict regulations in terms of adoption of diversity in a firm which are attached with prosecution in case of none compliance. Companies accused of discrimination are expected to prove their innocence, therefore the burden lies on them. One measure that was much debated was proposal to end promotion of white officers in certain ranks.(see, *cape argus,*25 April 2003, *Economist*, 24 Feb 2001, *Sunday Times*, 3 Aug. 2003, and *Los Angeles Times*, 19 June 2002)

3.9 (b) SHIFT IN ANC POSITION

The scope of contestation and debate over policies such as AA in political circle has declined rapidly. Two reasons for this development can be marked out. First being the dominant position of ANC and its attitude towards any political opposition, and secondly, the weak or rather lack of opposition. Both these issues are interlinked and call for analysis. Scholars argue that in post-apartheid South Africa ANC has misused its position as a dramatically elected government to extend its dominance over state and society. With electoral dominance, it terms opposition as racist and delegitimizes its position. AA is being used to empower a black elite and the transformation agenda is used as a card when and where necessary(Giliomee& Simkins(1999), Myburgh & Schlemmer (2001)).Moreover, claims have been made about the disagreement within the Tripartite Alliance over a number of matters. "In this context, strains have begun to appear within the alliance, with mounting debate about its continuing viability and desirability" (Southall,2003:61). It has been argued that the alliance partners of ANC hold a lesser position in the alliance and their voice is undermined (Habib& Taylor(2001), McKinley(2001)).Southall(2003:75) makes two important points about the ANC:

> "First, the struggles within the alliance are fought out according to certain ideological conventions and political constraints .Increasing the leadership of the ANC makes no secret that socialism as a goal has been abandoned. Even so, internal battles continues to be fought out in the dreary phraseology of the NDR, a device which has lost all relevance in the post-Cold War era, and as Solvo pointed out so long ago, can be used to justify virtually everything."

There has been severe contestation on the matters related to the broad economic agenda of ANC within the Tripartite Alliance and scholarly circles. Bezuidenhout(2008) explains about mining industry where subcontracting are justified as BEE. He discusses about ERPM case where Pseka Ncholo, a former public servant in the South African government formed Khumo Bathong Holding which took over the loss making ERPM and in 2001 the mine made its first profit after acquisition. However, no sooner issue of forced (two died and fourteen injured) while protesting against enforced lockout by management. The problem that came up during this episode was that mine officials were

using labour brokers to avoid paying minimum wages. It nevertheless illustrates the tension between two notions of BEE. One that focuses primarily on creation of black bourgeoisie, and the other on more holistic approach concerning decent employment standards, skill development and employment equity. ERPM case shows that the empowerment of some is often built on disempowerment of others (Bezuidenhout,2008:186). Unions argue that BEE is used as a smokescreen in these cases to hide the scraping of labour standards. Externalization[34] of workers is a challenge for empowerment measures adopted by government. It is especially awkward when mining industry has proven pivot of black empowerment and created new elite class. Research findings show that these profits are at the expense of working conditions of mining employees. There is a tendency of government that suggests black empowerment as something related to ownership and employment equity about labour. Now this is tricky if we keep in mind the growing cleavage between black middle class and black working class. The mining case highlights an approach to redress that takes contradictory terms of policy intervention into account (Bezuidenhout,2008:199-200).

Sanchez(2008) argues that overall SMMEs have been both beneficiaries and victims of transformation process. On one hand where they grew by ANC's initiatives in institutional framework and policies like BEE, on the other hand need for generic score card augmented the economic costs. Likewise, finding skilled black managers and black partner to fulfill the ownership criteria proved the biggest challenge. For many black enterprises it was difficult to get accredited. Government's approach of using SMME policy as a method to achieve BEE objective has had adverse effects on SMMEs. At local level need for skill development is most needed since they are in direct touch with SMMEs. Without identifying how local area can develop capacity redress policy can not be properly implemented. Another problem has been that better qualified individuals and big entrepreneurs have gained most because they have better excess to support mechanisms. In case of SMMEs government has failed to inform people in order to

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[34] There are three processes that erode standard contracts of employment: casualization, externalization and informalization. Casualization implies deviation from full time contract employment which implies part time work, fixed term contract or casual work Externalization implies a third party entry in employment relationship leading to triangular contract. It evolves employer, intermediary labour broker and the employee.The result of casualization and externalization is informalization where the relationship is no longer subject to regulation by state.(see Bezuidenhout,2008:186-187).

empower them. Service delivery failure in SMMEs has been a result of problematic approach adopted for it, diverse range of businesses were included in it for the purpose for redress (Sanchez,2008). She further argues that support for entrepreneurs has been used with overtly relief programmes aswell as racial redress.

In the field of education the problem is of different kind. The mergers have led to previously white and previously black universities coming together. In this case precondition for admission is same level of qualification and payment of same amount of money. It's unlikely for a previously black university to lower the admission level, leveling it to historically black universities. This would further marginalize black students instead of equalizing. In matter of government funding as well, at one hand where courses like mathematics and sciences get more funding other disciplines do not get adequately funded. Funding therefore is provided by either non governmental sources or the universities manage from their own resources. Poorest universities have least resources and the suffer the most(Morrow,2008).

There is a popular perception that ANC has failed to deliver on the promises that it made in elections. Large section of the white, coloured and Indian population feel alienated as a result of AA. As a result of intra party tension within tripartite alliance the ANC is centralizing power and bypassing party and state structure in formulation of policies(Adam and Tyler,2001:208). As a result democratic order in itself is weakening. Adam and Tyler (2001) suggest that existence of parliamentary opposition will be able to direct the dissatisfaction of the government towards the/a party and would avoid erosion of faith in the system as such. In South Africa both mainstream media and academia have reinforced the indispensible role of opposition. Political leadership of ANC is aware of the fact that its policies not very popular within ANC(or partners), in this case it is unlikely that any other mechanism, structure within the party or corporatist mechanism, apart from vibrant opposition can be useful to challenge these policies(Adam&Tyler,2001).Guillermo O'Donnell analyzing Latin American democracies and similar cases in post communist societies as Delegative Democracies where representative structures are week and power is centralized. Adam and Tyler argue that this shift towards Delegative Democracy is unlikely to give space to internal party

structure or corporatist mechanism to make state accountable to citizenry. Giliomee and Simkin(1999:246) maintain that the favoritism in bureaucratic appointments and awarding of state contracts leads to production of state sponsored black middle class which in return supports dominant party instead of realizing a need for a opposition. Adam& Moodley(1997) cite the case of Cyril Ramasphosa who moved from head of militant mineworkers' union and secretary general of the ruling party to chief executive of a business conglomerate and main board member of the Anglo American Corporation signifying a state where non ideological practicality exists.

3.9(c) WEAK PARLIAMENTARY OPPOSITION

As for the second reason (the weak opposition) coming together of two opposition parties in form of DA was seen as beginning of opposition politics in South Africa. However, DA was a difficult marriage of DP and NNP because both these parties differ in their philosophy. Southall argues that DP presented itself as a party of liberal principle and combative opposition whereas NNP viewed itself as dedicated to minority right and conservative agenda in hand. Yet, DA aimed at taking majority of coloured votes along with the combined votes of whites and there by restricting ANC in electoral politics up to 50 percent. In reality it never occurred. NNP not only walked out of DA but also joined ANC again. Southall(2003:75) comments that DP remained opposition for opposition's sake. Adam and Tyler point out to the fact that lack of viable opposition is not the product of ANC's policies only. A major role is played by the way opposition parties project themselves and hat kind of policies do the choose to adopt. The policy choice offered by parliamentary opposition parties' appeal only to white, coloured and Indian population. These parties have no appeal to Africa working class which is most organized base in African population and capable to serve as a social base for opposition.

3.9 CONCLUSION

The debates around AA in South Africa can be divided on two levels- those concerning with AA on theoretical level and those concerning with AA on implementation level. The debates are polarized but voices against AA on theoretical level are dimmer than those concerning implementation of the programme. Keeping in mind the twin objective highlighted in the constitution of South Africa: redress of historical disparities and creation of a single nation(Adam,2008), the challenges ahead are multifold. In a deeply divided society on racial and class lines development is a difficult goal to attain. With problems of skill shortage, perpetuation of racial identities, growing class divide; role of both government and opposition parties becomes all the more important. In the next chapter these issues are discussed and assessed.

DISCUSSION AND ASSESSMENT

CHAPTER 4

DISCUSSION AND ASSESSMENT

4.1 INTRODUCTION

"Political communities are defined, in the final analysis, not by a common past but by a resolve to forge a common future under a single political roof, regardless of how different or similar their pasts may be" (Mamdani, 2001:661).

South Africa is confronted with central dilemma post apartheid era- how to redress the historical disparities along with building a single national identity (Bentley& Habib2008).Discrimination of past shadow South Africa's present and influence its road to future too. Therefore, there is not only moral but also pragmatic rational for AA in South Africa. However, AA has faced severe criticism on theoretical and implementation level. Critics who challenge AA fall into three categories: first, those who feel that AA is unfair to the group not protected by the policy measure and thus it falls against a race blind society thereby leading to 'reverse discrimination'. Second, those who feel that AA is in fact harmful for its target groups, those who are protected by the policy measure per se. Finally, are those who feel that the standard is being sacrificed by taking in unqualified candidates.(Tierney,1997:186) A completely different set of criticism comes from the scholars who support the AA but differ from AA programme/plan. They argue on the ground that as implemented, the programme/plan is creating new bourgeoisie within the blacks and the benefit is not trickling down to the poor masses. One point is clear in case of South Africa that there is a clear difference of opinion regarding AA on theoretical level and on AA plan level, which is the way it is implemented. The debates can thus be divided on theoretical debate and debate on implementation. I would divide the discussion on the debates on AA in South Africa on two levels and then discuss and analyze them.

4.2.1 THEORITICAL LEVEL: AFFIRMATIVE ACTION

AA has been contested issues since its inception in South Africa. Those who support it argue it on the grounds of social justice, compensatory justice, non discrimination, equity, as a cure of lingering effects of injustices and so on. Those who oppose it, they challenge it on the grounds that it is discrimination in reverse, perpetuation of racial identities; it undermines merit principle and stigmatizes its recipients. Much parity can be drawn from experiences around the world to analyze the criticism raised on theoretical level on AA. What is needed is a firmer theoretical understanding of AA.

4.2.1(a) MERIT

When we start to ask questions about merit one of the things we find at risk is the privileged moral place that intellectual qualities have previously held. The fact that merit is a social construct (Tahmindjis, 1997; Tomei, 2003) and the pedestal upon which differential treatment rests is significant, because we can then start to ask important questions about who is behind this construction and who it benefits from it. Social arrangements are not neutral. According to Reed (1995:19) "there is no idea of merit that is innocent of prejudice". Inevitably, those who champion the place of merit in the "determination of fair or just distributions" (Young, 1992:319) are those who possess the qualities to fare well in such a competition and, in fact, who have been conditioned for this type of competition.

Amartya Sen (2000:6) opines that the merit of action and persons who are performing actions can not be judged independently from the idea of good/acceptability in society. There is a 'standstill' in present day understanding of merit. He argues that Rawlsian theory of justice involves a particular compromise between priority of liberty and significance of efficiency and equity. Still it gives importance of these concerns. To avoid the 'incompleteness of theories of justice, he argues for the 'standstill'. The author stressed on the fact that inventor of the term 'meritocracy' was very critical of the term, but it has not gathered much attention.[35] He argues that the incentive base of merit

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[35] Very interestingly, he cites (2000:7) fontana dictionary of modern thought : "A word coined by Michael Young(The Rise of Meritocracy,1958), for government by those regarded as possessing merit; merit is

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competes with action priority where the result does not matters. In incentive base of merit actions are rewarded on the good that t does to society. The incentive view, where the outcome of the action matters is under defined. Therefore if economic inequalities are taken into account, the merit of the action will be judged accordingly. Therefore, Sen concludes that most fundamental problem of meritocracy is that it is distanced from idea of rewarding the merit, an action that should be judged keeping in consideration its outcome. To take Sen's argument further, if any action leads to creating inequality it is deemed to be harmful for the society. Thus, present meritocratic order, that sees merit rooted in inequality primary, does not create equality and therefore can not claim undue benefit to be continued. Equality in Sen's perspective is important and therefore AA is justified.

Furthermore, if we agree on the point that blacks were historically disadvantaged, they were discriminated against then it follows, as Fiscus(1992:13-14) puts:

> "This means that white individuals who would have won for themselves a given benefit in racially fair world and males who would not have won a given benefit in a non-sexist world, are not entitled to claim those benefits, then white males would have achieved N percent of a given set of benefits, then white males who claim benefits beyond that percentage are claiming benefits they are not entitled to, whether or not they appear to have "earned" the benefit according to accepted criteria. The criteria are likely to be right for measurement of merit; they were wrong for measuring merit viewed from a larger perspective. They are wrong for measuring distributive justice. The merit claimed by these individuals is in fact false merit because it is based on unfair competition...And this means that white males who are disadvantaged by affirmative action programmes, and who are ostensibly being discriminated against because of their race and/or gender, are in most cases not being treated unfairly at all- not, that is being discriminated against at all."

It is clear that there has never been a neutral position of merit. Some or the other form of elevated social positioning gave whites the way to today's position. There by, not

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equated with intelligence-plus-effort, its possessors are identified at an early age and selected for an appropriate intensive education, and there is an obsession with quantification, test-scoring, and qualification. Egalitarians often apply the word to any elitist system of education or government, without necessarily attributing it the particularly grisly features or ultimately self-destroying character of Young's apocalyptic vision."

adhering to meritocratic norms, as it being a tool defined by dominant minority, is not at all unfair.

Tierney (1997) argue that underlining assumption in criticism of AA on the ground of merit is twofold, one can admit a black candidate who has equal qualification and lack of qualified candidate is the root of the problem. If we carry the criticism a little further it tumbles down like cards from its own weight. To the critics, repealing of AA will lead to meritocracy where individuals will be judged on the basis of ability. The stigmatization will stop, reverse discrimination will be eliminated. One other alternative that comes out from the debates is that of class- based AA. Most vociferous comments come from those who see the benefits of AA going to the middle class blacks or the elite among the blacks. However, if so implemented meritocratic arguments will still be raised against less qualified blacks of low income family. Such a plan will still be targeted as discriminatory against a group of people: this time around for the wealthy. It will still be considered stigmatizing: this time: for the poor .The objection will simply be shifted from one group to the other (pp.189).

Any thought to change the AA necessitates bringing into question meritocracy and what do we want to achieve in society. Young (1990:202) argues that, firstly, most jobs are too complex and multifaceted to allow for a precise identification of their tasks and thus measurement of levels of performance of those. Secondly, in complex industrial offices it's not possible to identify the contribution individuals make. Thirdly, a great many jobs require wide discretion in what the worker does. Finally, the division of labour in most organizations means that those evaluating the worker do not actually know the work process of the worker. Thus the superior is often not competent to evaluate. In these cases where even the merit principle requires impartial technical definition. But the criteria used include particular set of values. There is need to emphasize that these principles of merit and standardization are as biased as racism itself.

4.2.1(b) REVERSE DISCRIMINATION

Critics argue that AA has not replaced discrimination but only the groups have been replaced. If every one has to be treated equally, then no group should be given preference. There is one argument that stands opposed to individualist criticism and holds

that a degree of individual right has to be given up to get benefit for the community to attain social justice. This argument weakens the stand of AA because at the onset it implicitly accepts that individual interest is sacrificed due to AA. However, I would argue that it is these discriminations that are being overcome by AA. Fairness demands that everyone plays on equal playing field. It is historical fact that whites in South Africa got undue benefit out of the discriminatory acts under apartheid rule. Since individuals in society do not exist in level playing field and all AA does is to enhance the rights of individual by leveling the playing field. Tierney (1997) provides a common response to such criticism, an example of race tracks[36] to establish that much depends on the playing field and thus starting point is decided. Crosby (1994) states that treating everyone equally does not mean treating everyone identically. If despite knowing that blacks in South Africa can not starting from same point where the whites are, then it makes a case of differential treatment all the more important. Moreover, neither the effects of past discrimination have died nor discrimination blacks in society has ceased.

Iris Marion Young (1990) justifies arguments that AA policies counteract the current biases. She claims that although explicit discriminatory policies are no longer legal and institutions eliminate explicitly bias policies; stereotypes, reactions and discrimination against women and people of colour still continue, often unconsciously; by decision makers who remain to be white and male . Further more they argue that meritocracy has never been able to built on the qualities that it fiercely arguesd for. Excellence or competence have never been the only defining factors and have never been applied impartially. It is just that "no one has ever said [these other factors] lowered quality until they began to be applied for the benefit of people of colour and women" (Stein, 1995: 46). Critics confront AA with the claim that it is based on the very notion of discrimination, whatever one does it invariably leads to discrimination and that they claim is the dilemma of AA. As suggested in last chapter, adoption of Iris M. Young's framework where stress from discrimination as the primary principle of justice at stake to

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[36] On an oval track the runner on the inside has an advantage over her competitor on the outside. To balance this, the runners are staggered at their starting position. Similarly, there can be another argument that if two people are hanging on a cliff not same size rope can help both .A person who is hanging deepest needs a longer rope to climb up the cliff.

oppression saves one from the dilemma of AA. This shift of focus from discrimination to oppression might as well work for AA.

Tierney (1997:190) opines that AA rests on the idea of compensation, correction and diversification: Compensation of past wrongs/redress, correction of on going discrimination and creation of conditions of diverse future. If the objection is that why a black person of today should be compensated for the wrong done to a generation before then we are falling short of understanding of complex implication of race today. It is a legacy that has been created by colonialism and apartheid that has to be confronted. Compensation is not for discrimination faced by earlier generation a decade or two ago but for the after effects of such discrimination. The aspect on compensatory justice will be discussed in the later.

4.2.1(c) STIGMATIZATION

Tierney(1997) argues that regarding stigmatization of target groups of AA, even if they come without the help of AA their achievements are discredited. Claims of dropping of self-esteem decontextualizes issues of race, claiming as if there was no negative stereo type of blacks in the absence of AA. More importantly, preference for veterans, army professional's kin never raised alarm. Furthermore, Adam (2000) argues that most recipients of AA do not seem themselves as stigmatized. Stigmatization or victimization is mostly others perception of about beneficiaries of AA. This perception does not get effected either in the absence of AA or in the presence of it. As stated earlier, it has to with racial biases and stereotypes that the dominant community holds towards the disadvantaged majority.

4.2.1(d) AFFIRMATIVE ACTION AS UNFAIR

The theory of justice is often called upon by detractors of AA who claim that it (AA) violates principles of fairness. However, what is never taken into account is the fallibility of the supposition that a person with greater natural endowments deserves possessions and the superior character that makes their development possible, especially when one considers that character and ability depends in largely upon fortunate social circumstances for which that are never taken into account (Rawls, 1972:104). Even more

specious is the claim of high qualities and authorities to distribution of social goods and opportunities, more often claims of justice is made for such act. This is surely not in the intended spirit of Rawls' 'veil of ignorance', which requires that individuals responsible for formulating social-policy to decide on the rules and principles to distribute social goods without knowledge of their own status or personal characteristic. It also certainly does not maximize the expectations of the most vulnerable, one of the central tenets of Rawls' theory of justice. However jobs and university placements lead to income, wealth and power – that is why any attempt to include the excluded classes in these are contentious. Since it is more difficult to see and trust those who are different we prefer those who share our beliefs, values and attitudes as this reinforces or validates our sense of self and gives meaning to the way we live our lives. It is clear then how culture (national, ethnic, organisational) can create "a form of blindness and ethnocentricism" (Teicher and Spearitt (1996), Stein(1995)). This in return leads us to question anything that takes our(unfair) benefits away from us.

"...what if, suddenly, there was the very real possibility that we could no longer assume our 'rightful' places in the centre of things? What if the rules of the game were to be changed so as to rearrange the patterns of dominance and subordination? Questioning the validity of the things that we value is disturbing enough, but of truly apocalyptic dimensions is the tilting of our world so that the things we have honoured are toppled from their lauded place, and replaced by things that we find unintelligible at best, and deliberately beyond our reach at worst. The momentousness of this is directly proportional to the extent and depth of the hegemony of market managerialism, and by implication consequences are not confined to those countries which have adopted policies of affirmative action, but are global." (Burns& Schapper, 2007:377)

Affirmative action is not the "grave affront to...principles of justice" that some claim it to be" (McGinnis, 1996: 62). In many cases across the world recognition of difference has led to chances of equality in real terms where inclusive policies have been adopted, whereas undermining of differences has led to systematic exclusion which these policies attempt to overcome.

The problem here lies in the fact that minority whites fear loosing the ground on which they used to decide the norms of the game, criteria for selection and there by exclude the blacks for decades or centuries (depends where one counts from, colonization or apartheid). "Realistically speaking, post-apartheid South Africa consists of two separate nations-one prosperous, comfortable, and exclusively white, and the other impoverished, fragmented, and overwhelmingly black. These "two nations" coexist simultaneously ...and unevenly intersecting and overlapping with one another. The border-lines- spatial, cultural, symbolic- between these two worlds are unmarked and undefined, but they are easily recognizable"(Murray,2000:41). It is in this context that AA is criticized for being unfair to white males who get displaced by AA even if they see themselves as one who has not caused harm to any black person. This 'unfair' treatment leads to argument of victimization or 'innocent person'(Fiscus,1992).The charge is that if they have not personally participated in the discrimination then they are invariably innocent, thus any AA measure against them is unfair. Fiscus argues that acceptance of this argument whether explicit or tacit means that the only difference is that of willingness to sacrifice rights or not. What he offers here is to see AA in the framework of distributive justice rather than compensatory justice. Argument is that compensatory justice assumes to compensate for 'harm done' (Fiscus, 1992:8) where as distributive justice as a matter of equal protection under fair conditions that an individual or a group may get. It stands for whatever the limits for fair treatment are; it should be same for everyone. Compensatory justice seems to stops at the harm already made and does not extend to lingering effects of historical disadvantages; it is therefore as Fiscus puts (1992:9), retroactive- of justice in or of past. In cases where the past effect continues distributive justice incorporates compensatory justice. Here Fiscus points to another problem of compensatory justice, punishing or rewarding a person just because of membership of a group. If distributive justice framework is used for AA then it solves another problem that comes up in case of compensatory justice used, that is, compensation should be paid by one who harms to one who is harmed.

4.3. AFFIRMATIVE ACTION ON IMPLIMENTATION LEVEL

Implementation of AA had some effects that may or may not have been intended. A lot of concern has been shown over the embourgeoisement of the blacks. These new emergent elites were either close to ANC or made up its support base. The way BEE has been used to support emerging black elite raises question on class, role of ANC and the role of opposition in the implementation or problematic implementation of AA in South Africa. There are some challenges that come up from the debates on AA, both on theoretical level and on implemental level. These challenges be taken up in the next segment.

4.3(a) THE PROBLEM OF CLASS

Ironically, the end of apartheid has not ended hierarchies; it has only been altered into new status hierarchy. Post transition South Africa saw rise of new black middle class which comprised of politically influential black people returning exiles, skilled professionals and people related to trade unions. Reaction to these rising black middle class has been mixed. Some see it as a welcome development while others criticize the disproportionate presence of elite black people in the list of beneficiaries from AA in South Africa. Critics have charged that "most black empowerment deals simply 'rewarding the already empowered' rather than magically trickling downward to assist the 'poorest of the poor' (Murray,2000:45).

Problem has been there in the way black economic empowerment and employment equity has been approached. These two measures have been mingled up with no clear cut agenda to demarcate their boundaries resulting into growing disparity between the black middle class and vast black poor masses. AA has been vaguely implemented that has diluted its effect. Although AA can not be burdened with greater responsibility of institutional transformation no clear cut strategy for implementation of AA plan has attracted severe criticism. Large scale businesses have restricted black empowerment to share acquisition and preferential tender considerations. Many white owned corporations act opportunistically when they deal with small black owned companies to acquire contracts (Murray,2000).Casualization of Labour has left black labour force exposed to exploitation.

Critics demonstrate that privileged people within the disadvantaged group have successfully accessed the rights created by redress legislation. This applies across all social categories. Rich black entrepreneurs have been more successful in accessing benefits associated with BEE than their poorer counterparts. In order to direct the benefits of redress programmes to wider layers of the population, it is suggested by some scholars, class criteria also be considered as an element defining who the beneficiaries should be. This would require both policy reform and rigorous implementation and monitoring to ensure that the spirit of the policy is adhered to. Such an approach would not only enable scarce resources to be prioritised in the direction of the most needy and disadvantaged, but it would also mediate the possibility of redress polarising society along racial lines. This is a point worth noting due to the perpetuation of racial identities in present day South Africa. Khehla Shubane (1995) states that such racial reassertion has only enabled the affirmation of elite within the disadvantaged groups.

However, despite the beneficiaries being predominantly from upper classes among blacks, redress in the form of racial representivity has been most effectively(and comparatively) realized in state institutions and in organisations in which the state exercises significant control. If the state continues to advance the redress agenda and monitor its implementation then the interests of poor and marginalised people in public sector is mostly likely to be achieved (Ndletyana 2008, Naidoo 2008) .It shows that an active state support can bridge these gaps in implementation. An active support programme to the redress initiative, involving capacity building, shadowing and other innovative interventions, can also reconcile the tension between redress and efficiency. This has of course already been recognized by the state though the support programmes have not in all cases been actively implemented.

4.3(b)ROLE OF ANC

The growing affinity between the largely white business class and the ANC led government gives clear signal that business interests have been paid richly by ANC leadership. Current economic policies show a clear shift from what was otherwise claimed to be pro-masses and transformative measures. Praise of ANC's moderate actions by corporate is not a surprising element anymore. Tendency to avoid political

disorder and social conflict has led to acceptance of authority of ANC by propertied classes. Black professional managerial elites have been incorporated in the predominant white corporates. "South Africa's leading companies have embarked on an adept strategy of accommodation and co-optation, introducing "affirmative action" plans, inviting well known black notables to sit on their expanded boards of directors, "Africanizing" their corporate images, and engaging in public acts of philanthropy and charitable "good deeds"(Murray,2000:43).

The change in ANC's policy had much to do with the nature of the transition. NP realized that economic costs to continue the apartheid regime were too heavy so it decided to go ahead for negotiation where it can pressurize for a beneficial deal as possible. ANC on the other hand found a military solution dimming with the change in international and regional scenario as explained in chapter2. However, the 'pacted transition' (Andereasson,2006) brought significant constraints on the both parties involved. Moreover, a complete transformation of aspirations occurred in ANC in 1990s to become a 'petty bourgeoisie with bourgeoisie aspirations'(Andereasson,2006:306) and call to black bourgeoisie by a minister in ANC government not to be hesitant from becoming 'filthy rich'. The alliance partners have been disappointed over this change post-transition politics and betrayal of National Democratic Revolution (NDR). Andereasson draws similarity between apartheid era attempt to use black middle class as buffer between white minority and black masses, using black bourgeoisie for deflecting popular resistance to a capitalist order. A shift from RDP to GEAR is marked by reliance on linking up with the global economy and improving competitiveness to develop the economy. He further argues that what emerged out of the new policy adopted by the ANC was 'generic cocktail' of market capitalism, state authority and oligarchic power. The decision making elites were strengthened within the government whereas opposition to any policy by the government weakened.

The process of embougeoisement of key cadres of ANC has led to integration of ANC cadres into structures of economic power. Critics see it as a mechanism of government to establish control of the state. ANC has responded harshly to its critics.

Adam& moodley(1997) argues that the peaceful transition of power in south Africa has been facilitated by state resources which were used to bye off potential trouble makers on

payroll by the state or by better paying private business. "This purchased revolution has rapidly produced a new black elite, whose lifestyle discredits the legitimacy of the ANC-led liberation."(ibid, 1997: 113)[37] Adam & Moodley (1997) argue that ANC is in a dilemma. It has adopted neo-conservative economic policies but balanced with socialist lip service to redistribution. However, the ANC is constrained by unfavourable circumstances both in the country and internationally that it cannot translate an ideological commitment into practical policy if it clashes with vital business interests .ANC stands between free-market economic commitments and alienating its left, the ANC is frequently paralysed. To overcome this deal lock ANC is trying to buy criticism of alliance partners successfully without even shifting its policies. Economic interests have united the ANC and opposition parties in search of new opportunities. Adam& Modley(1997:126) further argue

"The lobby clamours for more preferential treatment, particularly in state tender procedures. While affirmative action for disadvantaged minorities is generally accepted world-wide, what is highly contested is the extent to which a state should favour one rich consortium over another unevenly on the basis of skin colour. Capitalizing on past restrictions, the 'patriotic bourgeoisie' plays on colour to reap advantage. Even Thabo Mbeki has warned the new Black elite to avoid being perceived as a parasitic class that thrives only on pillaging state resources."

They hold that black embourgeoisement does not show sings of trickling down to the poor. Black empowerment initiatives are limited to existing economic activities and do not create new employment. The new South African elite banks on unlimited economic growth where poor masses are kept at periphery. These policies erode ANC's socialist promises and there is clear difference between policy and implementation. The ANC is loosing its moral high ground by taking sides of black bourgeoisie. It can be argued that

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[37] Referring to the intelligence service, Adam&Moodley(1997) point out to the fact that instead of an envisage cut of 20 per cent in intelligence services budget, a 66 percent increase was made in 1995. This was caused by integration of ANC intelligence agents, the PAC security services and three homeland spy agencies. Thus at the end National Intelligence Agency had three times more staff than during apartheid period. It is important to note that at this time health and teaching jobs were cut in the cause of economy.

South African government merely complied with global imperatives but truth is that its policies have shown a twist towards self interest.

4.3(c) ROLE OF OPPOSITION PARTIES

The unfavourable set of power relation needs to be challenged which requires development of institutional mechanisms such as viable opposition that ensures that policies such as AA is implemented well through questioning the lack of implementation, the output that these policies are providing and to analyze who is the beneficiary. This becomes more important keeping in view the fact that the voices of dissent in ANC (and its alliance partners) are either being ignored or harshly neglected.[38] South Africa has shifted towards a delegative form of democracy where internal party structure and other mechanisms are unlikely to hold state elites accountable. Many criticize the presence of racialized identities as accountable for the lack of parliamentary opposition in South Africa.[39] However, the real problem with the electorate is that of a policy choice in terms of macro-economic policy which the opposition parties fail to provide. The existing opposition political parties tend to fish in shallow pool with targets being only the minority racial groups.

Since there is no clear cut ideological difference between political parties in South Africa, racialization may hamper the cause of equity with more black elites benefitting on the cost of poor masses and the real threat is that the benefit may never tickle down the class ladder. With 85 percent of poor being blacks and 65 percent of blacks being poor, this is a heavy cost to bear. Present parliamentary political parties do not engage the people in articulation of interest. Although the masses face economic hardship, the opposition

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[38] Pointing out at the neo-liberal policy adopted by ANC and its opposition within the party circles, Andereasson (2006:310), argues that policymaking is centered in the hands of the President, a few party members and ministers "Finance (Trevor Manuel), Public Enterprises (Alec Erwin; previously Trade and Industry), the Presidency (Essop Pahad) – the Reserve Bank (Tito Mboweni)." The SACP and CASATU have consequently found their positions weakened by erosion of say in key political matters and the change of ideological stance by the government. Moreover, cooptation of economically beneficial positions by the alliance members weakened their position.

[39] However, how true this derivation is is not proven. South Africa's society shows strong over lap in matter of racial and class categories. Electoral outcomes are not strictly defined on racial terms.(see, Adam& Tayler, 2001)They argue that the fault lies with the strategies of the opposition parties themselves.IFP for example projects itself as defender of Zulu interests. NNP is seen as defender of Afrikaner interest whereas DP is seen as serving the interest of the English speaking whites. Moreover, within these racial categories there are layers of identities that decide the voting pattern.(see, Institute for Democracy in Southern Africa's Public Opinion Reports.)

parties do not present an alternative to the present order. Poor masses being the mass base of ANC, shift of policy from ANC's side is not carried out to people. Opposition parties still hold crime to be the biggest threat to the nation instead of poverty. They are not focusing on the vacuum created by the ANC. Competitive politics over AA as well as other transformative measures is lacking in South Africa.

4.4 ASSESSMENT

Many challenges come out of the debate related to AA, both on theoretical level and on implementation level. The question of class is the most frequent one asked about AA the way it is implemented. There is an attempt by the state to provide benefits to those close to the party. Many a times internal dissent is bargained by providing benefits in matter of appointment or awarding of contracts. This embourgeoisement may also be judged in the light that rhetoric and ground realities differ for present day ANC, a shift of policy can very well be observed. ANC's corporatist links are examples of such shift in policy. Aim of AA is redress and equity, although it is agreed that AA can not transform the institutions (nor it aims to do so), and that AA has to be backed by other macro-economic level initiatives; linking empowerment with AA in variably creates confusion. The case of SMMEs is an example that separate sector wise measure is needed and separate policies are desired for better results. Opposition parties are failing to provide a viable opposition and absence of any such mechanism is leading to lack of choice for electorate.

There is a need for acknowledging race as an ongoing factor in society. It is because all parties do not carry equal accountability argument of reverse racism that it stands nullified. Issues such as brain drain drawing parallels between forced migration and migration of skilled white (as well as skilled black professionals in post apartheid South Africa) is sweep to generalization. The young white South Africans leaving under current circumstances have often had the very best opportunities the country can offer, an education that equips them for employment in many other countries, and choose to move away from a situation where they may no longer get the automatic privilege of whiteness in competing for employment. Moreover, once settled in other parts of the western world, they are automatically part of the privileged white class where they enjoy advantage over

the black people in those societies (Scho"nfeldt-Aultman 2001).Blacks left South Africa in apartheid regime to get away from oppression where as Brain drain is a common problem of developing economies and by no chance unique to South Africa. Rising of such issues does not solve purpose. Moreover, appeal to democratic norms and justice seems most superficial when it is intended to back white-domination. Taking broad philosophical stands while opposing AA, is an attempt to play down the racial discrimination that is going on today. DA's election propaganda makes feel as if crime and not poverty is the biggest problem of South Africa. The problem of opposition to AA by arguing that it is racism in reverse is that although it begins by accepting AA in theory but opposes the AA plan as it is implemented. The very base of opposition is sectional self interest, it is argued that New South Africa is antithetical to white interests so whites are opting out of the nation, if I may extend the argument, instead of playing a part in reconstruction of the nation. Presenting whites' victimhood underplays the dominance of whiteness in larger schemes of past and present global arrangements (Steyn & Foster, 2007). However, non-racialism, the attempt to build a society where racial disadvantage do not persist is probably the main objective that drives the policies of the government. The challenge in front of government is not to confront these shallow allegations but to build one nation in such a way that the policy of redress does not get undermined. Politicizing racial identities has its own shortcomings. Denying the effects of radicalization in form of colour blindness is a powerful mechanism to building white consensus and enabling the reproduction of racism (Essed 1991; Van Dijk 1992, p. 96; Gallagher 2003).

In sector like HE, need to redress is all the more important. However, there are related challenges that should be addressed. Autonomy and financial allocation is a big problem. The historically black universities face finance dearth, after mergers equations have changed and so has the nature of challenges. Likewise, any policy such as AA needs checks. This creates problem of autonomy in HE sector. Progressive staff and students have been asking for greater Africanisation of institutions of higher education along with demands for greater access to higher education and state financial support. On the other hand, there were mostly white management and academics who felt strongly about university autonomy. It was alarmingly true about South Africa, as it was in other cases

of Africa, that a conflict broke between expatriates and locals. Mamdani(1993) expresses in relation to rest of Africa that expatriates called for freedom and autonomy, standards and centres of excellence whereas the locals demanded a national character be given to universities, ensuring Africanisation. The expatriates "lost the battle because their notion of rights was so exclusive that it ran counter to any notions of justice for those who have been historically excluded on racial and national grounds"(Mamdani,1993:4). One point to be noted here is that policy debate on higher education in South Africa started quite early and by the time transition phase was over, it was sophisticated. Non racialism had been the base of policy debate in South Africa and it has not altered since then. Question of institutional autonomy has been coming up time and again related to AA. Moja, Muller and Cloete(1996) differentiate between substantive and procedural autonomy, Substantive autonomy dealing with the power of an institution to determine its own goals and programmes and procedural autonomy is the power to determine the means by which the goals and programmes will be pursued. They suggest following ingredients of autonomy:

- The freedom to select and examine students;
- The freedom to select and retain staff;
- The freedom to determine curriculum and standards;
- The freedom to allocate funds within institutions.

The AA or Africanisation is a contentious matter in relation to staff appointment and intake of students.[40] "Combined with the additional polarizing effects of an apartheid higher education policy that created institutions for specific language and racial groups, it is small wonder that the field of policy debate in contemporary South Africa is shot through with unnecessarily polarized alternatives: equity or excellence; equal opportunity or affirmative action; africanisation or internalization; merit or open access; democratization or elitism; control or autonomy" (Moja, Muller and Cloete(1996:151-152). Lindsay (1997:536) states that several institutions are encountering challenges that require ongoing vigilance and commitment to AA. These challenges are regarding professional development programmes for faculty and academic staff and academic

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[40] Another matter of contention is that of the inflow of Non African academic staff who compete with south Africa staff members for positions I south African Universities. In case of establishment of new courses although government approval is needed, institutions have control of curricula and examination.

bridge programmes for underprepared students, Lindsay argues that these programmes and policies are to equitable distribution of fiscal resources. Higher education funding is the most difficult part. Fiscal allocation to meet needs of different demographic groups is crucial.

Crouch(1996:135) explains that South African society embodies both first world and third world standard of living. In education it meant that the first world segment carried out first world type of policy characterized by a degree of equity and economic rationality typical to developed world. To overcome these effects of 'social engineering'[41]he suggests more means testing subsidy as in subsidy at individual level rather than university level more budgetary and intellectual attention to pre-university level.

Shifting the slanted terms of the AA debate needs moving from preference for members a community to a position based on the general interests of the community and the disadvantaged within it. Thus, concentrations of public benefits for disadvantaged in hands of a few upward mobile elites groups should give way to AA be folded in universal systems of provision so as to keep politically exploitable resentments at bay which is at the same time, attached with targeted programs. Racism may never be erased entirely. No utopia will remove the pathological need of some injured and deprived people to demonize the 'other', displace feelings of unworthiness, or exploit physically distinguishable or weaker people for gain. Poverty and race are like two concentric circles within which blacks are caught. One cannot remove racial deprivation without beginning at the wider concentric circle of poverty. In order to continue, affirmative action must be reconnected to the larger sphere of political power and economic distribution. The excluded and discriminated groups certainly require special attention to eliminate discriminatory practices. Support for affirmative action can be increased and solidified not by widening its net to new categories of groups but by tackling the spatial consequences of racial/class polarization.

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[41] The public policy adopted by the first world section in South Africa was subjected to social engineering, apartheid was the most severest experiment of social engineering in recent human history, where first world carried out first world type of public policy and repressive-cum-populist type of public policy for the rest. In education in meant steering of relative privileges to certain section of disadvantaged groups.(See, Crouch,1996:135)

Compliance with the regulatory mechanism is yet another problem. International experience shows that legislations regarding AA do not guarantee compliance or reporting reliable information regarding the compliance with the government norms. These compliance measure are also related to development of skill. Changing the skill capacity of South African work force remains a major challenge. It will require organizations to build a more coherent strategy towards education and training. To allow organizations to compare and prepare benchmark it is important that the reports by the organizations are analysed and reported back in order to help the organization.(Bowmaker-Falconer, Horwitz, Jain & taggar,1997)

In South Africa the Affirmative Action Policy Development Forum notes that apartheid suppressed the cost of labor so that 'the middle 60% of South Africans earned far less than the norm in Third World countries' (SAAADF, 1996: 2-7). 5 percent of whites enjoyed vast educational and economic advantages. Job market discrimination ensured skilled whites to get 30 percent higher pay than similarly skilled blacks and a white was 5000 times likelier to be ensconced in management (Alexander&Jacobson,1999). Inequalities in race and gender do not arise solely from discrimination in employment but the distribution of income is immensely unequal with whites owning nine-tenths of assets (Green Paper on Employment and Occupational Equity South Africa, 1996). The forum found that affirmative action alone is futile unless it forms it is associated and assisted with broad measures that enhance overall social and economic equality to support productivity, democracy, and diversity' (ibid). This approach, lodged within the government's post-apartheid Reconstruction and Development Programme, does depend on the improbable achievement of sustained growth of 6% and creation of hundreds of thousands of new jobs (Alexander&Jacobson,1999). South Africa, above all, is burdened by having to meet necessary basic societal goals such as primary health care, electrification, and clean water at a time of rising debt and a declining tax base (Lodge, 1998: 43). Today regional development programs must promote reconfigured locational rules for increasing equity in accord with economic capacity and the play of interests within the state (Rogerson, 1998: 192).

4.5 CONCLUSION

Of course there is much debate on one or other aspect of the redress strategies and the debates are polarized. No definitive conclusions can be drawn from the performance of current redress strategies initiated in post apartheid South Africa. It is a short time to analyze the effects any transformation exercise intended to redress effects of colonization and apartheid. If it was taken that just by advent of democracy playing field will be equalized and that access at all levels were to be left simply to the market, then the consequence would be a reproduction of the historical disadvantages. The constitutional priority is to create an equal playing field and address in a proactive way the consequences of the injustices of apartheid. Adam(2008) holds that redress, as a constitutional mechanism of social justice, must then be constructed in a manner, and undertaken in a form, that is compatible with the goal of realizing the establishment of a single nation. He further argues that redress must enable citizens to make the political choice of forging a common future through the establishment of a single political entity. Any assessment of redress, he suggests, should be based on two distinct criteria; first, on how successful it is in advancing a social justice agenda defined by addressing the historical disparities; and second, whether or not it facilitates emergence of a national consciousness.

Debates on AA in South Africa bring forth very important questions, questions relating to the shift in policy of ANC and the nature of opposition parties. Fate of any policy depends how it is being implemented. Neither the ANC seems bother to alter the AA on class lines (or include class criteria within its fold) nor is the opposition bothered to raise issues central to implementation of the policy. Need for skill development is as central to AA as regulation of compliance measures. The policy in its present form is disproportionately benefitting black elites. Among these, the biggest concern of the day is to implement redress in such a way that it help to build South Africa in one nation.

<u>CONCLUSION</u>

CHAPTER 5

CONCLUSION

Some type of distributive justice among groups is necessary for long-term peace and development after negotiated settlement in societies like South Africa with a history of institutionalized discrimination, Hartzell points out that groups that fear for their safety, have immediate concern of ensuring that control of economic resources does not provide some group with the means to exclude. This is likely to entail the use of public policies and/or administrative allocations that direct resources, public and perhaps even private, toward any economically disadvantaged groups. Settlements seeking to achieve this type of distribution of material resources and economic opportunities are likely to rely on the use of preferential policies.(Hartzell,1999). South African case is a distinct one where majority seeks preferential policy after a negotiated settlement that lead to end of apartheid. The fact that South Africa could achieve end of apartheid through negotiation brought forth AA in liberal democratic framework. There were two parties involved in South African case; NP, representing the dominant minority, and ANC, representing the oppressed majority. Both parties had their immediate concerns in mind; white minorities, securing their economic position, and the black majority, concerned about share in national wealth and development from which it has been historically deprived. Liberal democratic framework and open economy, at one hand, provided opportunity to the white minority to secure their position in society and principle of non discrimination and redress, on the other hand, gave blacks one of the tools to transformation; AA.

The debates around AA in South Africa can be divided on two levels- those concerning with AA on theoretical level and those concerning with AA on implementation level. The debates are polarized but voices against AA on theoretical level are dimmer than those concerning implementation of the programme. Keeping in mind the twin objective highlighted in the constitution of South Africa: redress of historical disparities and creation of a single nation(Adam,2008), the challenges ahead are multifold. In a deeply divided society on racial and class lines development is a difficult goal to attain. With problems of skill shortage, perpetuation of racial identities, growing class divide; role of both government and opposition parties becomes all the more important. Both

Employment Equity Act and Higher Education White Paper focuses on redress of past discrimination, equity and representation. The concept of non discrimination has been raised time and again in legislations related to employment and education. The nature of the act has been determined by the context that the policies came in as mentioned in the earlier. The second chapter tried to capture the nature of the policies providing AA in South Africa, the concepts within the act and mechanisms to implement. The structure of Higher Education sector has been given for a better understanding of implementation of the policies and to know how the mechanism of the policies works.

Although progress has been made in enhancing racial and gender representation in the workplace, this is an incremental process that has to be supported by coherent human resource development priorities through the implementation of the skills development legislation and changes in the organizational culture(Jain,2002:143). This is vital at both public policy and organizational levels. An increasing earnings gap has an adverse impact on mainly black people— this, in spite of the increasing diversity and multiracial character of a growing middle class. The biggest priority must be human resource development and education in skills and competencies needed in a society in transition. This reality has been recognized by the government and the Black Economic Empowerment Commission. The Commission has made important recommendations to the government to "kick-start" the economy and enhance economic growth through state-driven measures to ensure black participation in the mainstream economy. Proposed measures include a national integrated human resource development strategy, legislated deracialization of business ownership in the private sector, national targets—which include land distribution and ownership, equity participation in economic sectors. The Commission further recommends targets for senior and executive management in private sector firms of more then 50 employees to be black. The commission's proposals, which have been accepted by the government in principle, are a significant policy basis for improving access to capital and skills and economic empowerment for the majority of South Africans. These overall measures, along with the progress in implementing employment equity, will greatly improve the chances of majority blacks to have their just share in the South African economy.

Assessment of the debates on AA brings forth a very important point, it is not only the negotiated transition that effected the nature of policy to be adopted for redress provided in the constitution but the shift in the ANC position that effected the AA as policy measure for transformation. The negotiated transition made sure that the nature of AA in South Africa will not be hard (quota or redistribution) but it will be soft (preferential treatment).The study shows that black economic empowerment measures disproportionately benefit the black elite class. There is however lesser chances of the benefit tickling down to the poor black masses. There is growing class difference not only between white upper class minority and black poor majority but also between black elites and black poor masses. This disproportionate growth is a matter of concern within the tripartite alliance as well but it is not voiced, whatever dissent is shown is received negatively from ANC. In this situation where ANC has comfortable majority and opposition from within the party (or the alliance is feeble), it becomes all the more important for competitive politics on AA. State of affairs of the parliamentary opposition is complimentary for ANC to control both government and the state without much hassle. This study started with the hypotheses that- Affirmative action in South Africa came in the context of compromise between the White Regime and the ANC, leading to open, market economy and majoritarian rule. Therefore, the affirmative action was limited in nature. ANC's absolute majority and very weak opposition left limited space for competitive politics on affirmative action. Therefore the hypotheses stand proved.

In conclusion, one can say that there is much debate on one or other aspect of the redress strategies and the debates are polarized. No definitive conclusions can be drawn from the performance of current redress strategies initiated in post apartheid South Africa. It is a short time to analyze the effects any transformation exercise intended to redress effects of colonization and apartheid. If it was taken that just by advent of democracy playing field will be equalized and that access at all levels were to be left simply to the market, then the consequence would be a reproduction of the historical disadvantages. The constitutional priority is to create an equal playing field and address in a proactive way the consequences of the injustices of apartheid. Adam(2008) holds that redress, as a constitutional mechanism of social justice, must then be constructed in a manner, and undertaken in a form, that is compatible with the goal of realizing the establishment of a

single nation. He further argues that redress must enable citizens to make the political choice of forging a common future through the establishment of a single political entity. Any assessment of redress, he suggests, should be based on two distinct criteria; first, on how successful it is in advancing a social justice agenda defined by addressing the historical disparities; and second, whether or not it facilitates emergence of a national consciousness.

Debates on AA in South Africa bring forth very important questions, questions relating to the shift in policy of ANC and the nature of opposition parties. Fate of any policy depends how it is being implemented. Neither the ANC seems bother to alter the AA on class lines (or include class criteria within its fold) nor is the opposition bothered to raise issues central to implementation of the policy. Need for skill development is as central to AA as regulation of compliance measures. The policy in its present form is disproportionately benefitting black elites. Among these, the biggest concern of the day is to implement redress in such a way that it help to build South Africa in one nation.

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