CHAPTER FOUR
A BRIEF HISTORY OF DISCRIMINATION IN INDIA

4.1   The Republic of India — An Overview

India's affirmative action or preferential policies stems from an entrenched classification system based on a persons caste in society. The first aim of this chapter is to understand the ideologies of the caste system which has led to discriminatory practices in India. Secondly, it will analyse the historical basis for this system. Like the principles of apartheid, the caste system is a contradiction of an egalitarian theory of a democratic country. This chapter will attempt to show how social hierarchy was integrated into and legitimated by a categorical or classification system. It will be shown how socially constructed values are taken as custom, culture or the norm of a particular society and therefore further validated. It will attempt to give an understanding of how the method of classifying people was more than just a cultural consequence or product but was a system that was invented and passed on from one generation to another.

One such classification system was the *varna*[1] or the caste system as it is popularly known. In ancient India there developed a social system in which people were divided into separate close communities. These communities are known in English as caste.

4.2   Understanding Caste and the Caste System

Caste is defined as a rigid social system in which a social hierarchy is maintained generation after generation and allows little mobility out of the position to which a person is born.[2] The caste or *varna* system is a characteristic determined by one's birth into a particular caste, irrespective of the faith practised by the individual. Caste is therefore, descent based and hereditary in nature.[3] This system dates almost 3000 years back and

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[1]   *Varna* means colour in the sense of 'characteristic' or 'attribute'.

[2]   Benton W India and Pakistan (1972).

[3]   In much of Asia and parts of Africa, caste is the basis for the definition and for the exclusion of distinct population groups by reason of their descent. Over 250 million people worldwide continue to suffer under what is often a hidden apartheid of

was formed based on the need to form a social order in ancient India. It is still very prevalent as part of India's society, as the system itself has roots in ancient Indian society. Caste was not present in India since time immemorial. There were many migrations and conflicts among various groups. Discrimination on the basis of group began during this time, and religious and judicial notions were developed to justify caste.

Caste is therefore, fundamentally, a version of a classificatory strategy brought to India by the Indo-European invaders.[4] The original caste system came about when the Aryans migrated from the north to India around 1600BC. During the Vedic age, Manu[5] founded four social orders based on four main goals of both humans and society. A social classification system of four different classes (*varnas*) was thus devised so that the human race could have a smooth and ordered life in society.

The word caste is especially used by Europeans to denote different classes into which the Hindus are divided.[6] *Varna* or colour and *jāti* or race are the Indian versions of class or caste.[7] Much of India's discriminatory practices can be traced back to the practice of the caste system. Indeed, India's affirmative action measures itself are a response to this system of caste. According to Bouglé, the caste system divides the whole society into a

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segregation, modern-day slavery, and other extreme forms of discrimination, exploitation and violence. Caste imposes enormous obstacles to their full attainment of civil, political, economical, social and cultural rights.

[4]   Smith Brian K Classifying the Universe The Ancient Indian *Varna* System and the Origins of Caste (1994) (Smith).

[5]   The founder of this ancient Hindu or Aryan society and the leader who survived the mythical flood and established the new social order, reflecting a return to spiritual values from an earlier and materialistic humanity. See Frawley D The Vedic Social Order, From The River of Heaven (1990).

[6]   According to Rose H A Caste (1945) 4ed at 976-86 the word was used by the earlier Portuguese travellers in the sense of tribe or even race, being often applied to the lowest Indian classes in contradistinction to their overlords.

[7]   *Chaturvarnya*, the country of the four colours, is an ancient distinguishing epithet of India. To the present day, caste is regarded by other nations of the earth as the characteristic feature of the Hindus. In the earlier ages of society the system prevailed extensively throughout the world; but in the course of time it was abandoned in all countries except India and Ceylon (now Sri Lanka). Among no other nation was it ever observed with such strictness or enforced by such severe penalties as among the Hindus.

large number of hereditary groups. These hereditary groups can be both distinguished from one another and connected together. The connection of these groups can be classified by three characteristics: separation in matters of marriage and contact, whether direct or indirect[8]; division of labour[9] and finally hierarchy, which ranks the groups as relatively superior or inferior to one another.[10] Legally the government disallows the practice of the caste system and has a policy of affirmative discrimination for the benefit of the backward classes.

The Constitution of India[11] authorises the identification of historically disadvantaged castes, which are entitled to affirmative action in employment and other benefits.[12] These are known as "scheduled" tribes and castes. They include India's aboriginal inhabitants, or *Adivasis*, who comprise nearly 200 ethnic and culturally distinct peoples who speak more than 100 languages.[13] The persons most likely to benefit from these programmes are the *dalits* or the untouchables of India, as they are the persons most adversely effected by this system of caste[14].

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[8]   For example food.

[9]   For example each group having, in theory or by tradition, a profession from which their members can depart only with certain limits.

[10]   Bouglé C English translation in the introduction in Contributions to Indian society (1958) V(II) (Contributions to Indian society).

[11]   The Constitution of the Republic of India of 1950 is the world's lengthiest written constitution (with 395 articles and 8 schedules) and was passed by the Constituent Assembly on November 26 1949. It has been in effect since January 26, 1950.

[12]   This includes the *Dalits* and tribals (members of indigenous groups historically outside the caste system).

[13]   See the Background Paper on Refugees and Asylum Seekers from India (October 1998) UNHCR Centre for Documentation and Research Geneva.

[14]   "*Dalit*" is a term first coined by Dr. BR Ambedkar, one of the architects of the Indian constitution of n1950 and revered leader of the Dalit movement. It was taken up in the 1970's by the Dalit Panther Movement, which organised to claim rights for "untouchables", and is now commonly used by rights activists. Dr. Ambedkar was born in 1891 into the untouchable Mahar caste and is widely regarded as one of the most ardent and outspoken advocates of the rights of Dalits in twentieth century India. At a time when less than of his caste was literate, he obtained a Ph.D from Columbia University in New York and a D.Sc. from the University of London. See the book by Keer D Dr. Ambedkar — Life and Mission (1990).

The issue of caste is a very complex and complicated one. Caste is perceived as "an exclusively Indian phenomenon which is not paralleled by any other institution elsewhere in its complexity, elaboration and inflexibility".[15] Kroeber describes the caste system as a "system of social stratification, examples of ranked aggregates of people, that are usually rigid, birth-ascribed, and permits no individual mobility".[16] In the caste system everyone is classified.[17] The castes, like the system of apartheid and racial discrimination, teach us a fundamental social principle; hierarchy.[18] This classificatory system assumes that certain traits, qualities, functions, characteristics or powers are inherent in and definitive of each of the *varnas*. This system of caste is enormously complicated and not easily understood. This chapter attempts to simplify the issue of caste so as to give the reader an understanding of how the system works.

There has been a lot of debate about whether caste in India and much of South Asia is same or similar to the class systems in other countries like the USA. The following paragraph deals with this issue. An understanding of the caste and class systems is important in attempting an analysis of affirmative action policies in the USA, SA and India.

4.3   The Evolution of the Theories of Caste and Class

In order to understand the process of legislative and judicial attempts in promoting equality in India, one has to have a perspective of the history of the diversified, hierarchical Indian social structure. Caste was not present in India since time

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[15]   Chambers E Encyclopaedia (1951) at 150.

[16]   Kroeber A L Caste in Encyclopaedia of the Social Sciences (1930) V(3) at 254 (Kroeber).

[17]   Searle-Chatterjee M & Sharma U (ed) Contextualising Caste — Post Dumontian Approaches (1994).
The first three *varnas* are called the twice born and has nothing to do with reincarnation. Being "twice born" means that you come of age religiously, making you a member of the Vedic religion, eligible to learn Sanskrit, study the Vedas and to be able to perform the Vedic rituals. The intention in these two births is to the natural birth and to the ceremonial entrance to the society at a much later age.

[18]   Ghurye G S Features of the Caste System in Caste and Race in India (1969).

immemorial. There were many migrations and conflicts among various groups. Over a long period of time a homogenous culture developed and intermarriage was normal. Later, with groups enclosing themselves, caste and endogamy became the rule. Discrimination on the basis of group began during this time, and religious and judicial notions were developed to justify caste.

Several studies suggest that social classes exist in India today and are distinguishable from the caste or *varna* systems.[19] However, researchers are of the view that positions in the secular order (i.e. the class system) is indistinguishable from positions in the sacred or ritual order (i.e. the caste system). According to Karl Marx's theory, class society is the product of a determinate sequence of historical change.[20] Marx states that if one had to look at the primitive forms of human society, there was no class system. There only existed a low division of labour and if there were any property in common then it was owned by the members of the community. It would therefore appear that in the history of mankind all men were at one time equal. He however argues that due to the growth of private property and increased levels of wealth, man alienated himself and this created division in society.

Further, the system of class has evolved differently in each society and what constitutes a "class" is not necessarily identical in each type of class society.[21] According to this theory, the class system based on race in SA and the USA and the system based on caste is similar although they have evolved differently because of the different historical and social contexts of these three countries. Accordingly, class is equated to caste.

Kroeber, in his interpretation of caste and class states that —

> "Caste, is a special form of social classes, which in tendency at least are present in every society. Class differs from social classes, however, in that they have emerged into social

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[19]   Driver D Edwin and Drive E Aloo Social Class In Urban India (1987) at 32 (Driver).

[20]   There is a lot of literature on the Class System. See for example Fromm Erich Marx's concept of Man (1966) at 163 for more information.

[21]   Also see further Giddeons A The Class Structure of the Advanced Societies (1980).

consciousness to the point that custom and law attempt their rigid and permanent separation from one another. Social classes are the generic soil from which caste systems have at various times and places independently grown up.....”[22]

In this sense caste is considered an extreme form of class. According to Dumont, the reason that caste is an extreme form of class is that caste is “at once rigid and relatively rare, whereas class is more flexible, vague and relatively very widespread”.[23]

According to Weber's theory of class and social inequality, a class “is any group of persons occupying the same ‘class status’ or ‘situation’”.[24] According to the original Weberian formulation of class, “class situation is ultimately a market situation”.[25] It will be shown how economic factors plays a major factor in identifying ones class. According to Murdoch, J,[26] caste arose from two chief causes which included difference of race and difference of employment. In former times it was considered sufficient to follow the custom. This led to a stationary condition of society.

At the risk of sounding too simplistic on this complex issue it is submitted that the caste system is similar to, if not the same as, the class system or is an extreme form of social stratification. The difference is that whereas race is a physical construct, caste is a social one. Apartheid in SA and segregation policies in the USA was based on ones physical appearance but caste is based on one's social position. In SA and the USA race is an immutable and obvious physical trait but in India a low-caste Indian may very well look like a high-caste Indian, the difference is on which social scale they were born.

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[22]   Kroeber *op cit* 16 at 245b.

[23]   Dumont L trans. Mark Sainsbury Homo Hierarchicus (1970) at 241(Dumont).

[24]   See the book by Berberoglu B Class Structure and Social Transformation (1994).

[25]   Weber Max The Theory of Social and Economic Organisation (1964) at 183 (Weber).

[26]   See the book by Dr. Sharma K L Review of Caste in India with a new introduction (1977).

There have been some judicial pronouncements on this issue of caste and class. The most famous one is the case of *Balaji*, where the court stated that there ought to be a clear distinction between "caste" and "class".[27] Other judgments have maintained that caste is also a class of citizens.[28] In the *Periakaruppan* case, the court restated what was held in the *Rajendran* case, and held that "a caste has always been recognised as a class".[29]

(4.3.1) Caste and Closure

One theory regarding the origins of the caste system is closely linked to the issue of closure. Caste is closely linked to the concept of closure. Ambedkar has argued that caste practices might have arisen when one social group enclosed itself from others. Exclusion and enclosure may have entailed advantages for this group. From this he argued that only the more socially powerful group would have both found benefit in such enclosure and also had the ability to isolate itself in this manner. Others followed, either by imitation of the more powerful social class or because they had no choice anyway.

This concept of closure does not only refer to the exclusion of certain categories of persons from certain particular roles or types of roles, even though this is an essential part of closure.[30] It refers also to what Ulf Hannerz would describe as closure in relational access and relational conduct.[31] When one talks about closure in relational access, it means that a person is allowed to act in certain roles, but only in relation to certain categories of others.[32] On the other hand, closure in relational conduct refers to a situation where a person has access to a particular role but is deprived of some of its usual rewards because he is expected to mould his conduct to fit some other attribute of

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27   *M R Balaji v State of Mysore* (1963) AIR 648 (SC).

28   *P Rajendran v State of Madras* (1968) AIR 1012 (SC).

29   *A Periakaruppan v State of Tamil Nadu* (1973) AIR 2310 (SC).

30   Molund Stefan First We Are People — The Koris of Kanpur between Caste and Class (1988) (Molund).

31   Hannerz Ulf Exploring the City: Enquiries towards an Urban Anthropology (1980) (Hannerz).

32   *Ibid.* As under rules of exogamy and endogamy for example.

his.[33] The issue of caste as a mechanism of closure relates to the issue of the extent to which there is a role and relational closure on the basis of caste in economic, political and religious life.[34]

The problems that closure had fashioned on the people of India are varied. With regard to the labour sector, the system of reservations for the SC's in politics and government employment has been minimal as best. Small fractions of the low-caste population have progressed in society, but otherwise low-caste persons are rarely in a position of command and patronage because of their traditional caste superiors. In the social division of labour their role is largely that which it has always been; to provide heavy manual labour and perform the tasks regarded as particularly polluting and degrading.[35]

In every respect, caste rejects the notion of human equality and thus justified enclosure of each Caste within its own boundaries on the basis of graded inequality. In this set-up the idea of common good existed only within each caste group.

In order to understand the caste and *varna* systems, one should have an idea of the philosophy which justified the system in the first place. Without this knowledge it would be very easy to condemn people for their doctrines which to most of the world is unjust and cruel. The following paragraphs deal with the origins of the caste system and whether or not it has any basis in religion. Since the end of the seventeenth century the question of whether caste is in essence religious or simply "social" has constantly arisen.[36]

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[33]   For example his gender, ethnicity or his caste. Hannerz *op cit* 31.

[34]   Molund *op cit* 30 at 11.

[35]   See Blunt E A H The Caste System of Northern India (1931).

[36]   Dumont *op cit* 23 at 245.

4.4   Origins of the Cast System

(4.4.1)   The Religious Theory of the Caste or Varna Systems

There are many and varied theories about the establishment of the caste system. There are religious theories, biological theories[37] and there are historical theories. The origin of the caste system is in Hinduism, but it has affected the whole Indian society.   A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over time.   Thus, caste is a many-layered social hierarchy developed several millenniums ago. According to Hindu tradition the caste system owes its origin to the four *varnas*.[38] The religious theories explain how the four *varnas* were founded.[39]

This social system of "gradation" was given religious sanction by a verse in the ancient sacred writings of Hinduism and the earliest document of Indian history called the *Rig Véda*. According to the *Rig Véda*, the ancient Hindu book and the earliest literary source of Indian history, the primal man, Purush, destroyed himself to create a human society.[40] The oldest known passage from the *Rig Véda* which makes mention of the fourfold origin of the Hindu race is the ninetieth hymn of the tenth Book, called *Purusha Sukta*, or the hymn to the Purusha.[41]   The different *varnas* were believed to have been created from different parts of this primal mans body. The Brahmans were said to have been created

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[37]   The biological theory of the caste system claims that all existing things have essentially three qualities in different ratios. *Sattva* qualities include wisdom, intelligence, honesty, goodness and other positive qualities. *Rajas* include qualities like passion, pride, valour and other passionate qualities. *Tamas* qualities include dullness, stupidity, lack of creativity and other negative qualities. People with different doses of these inherent qualities adopted different types of occupation. It was this difference in qualities and occupation that was the origins of the caste system. See for instance Manu The Laws of Manu (1969) V(25) Trans. by George Buhler (Manu).

[38]   Buhler G The Sacred Laws of the Aryans as taught in the Schools of Apastamba, Gautama, Vasishta and Baudhayana V(ii) in Müller Max (ed) The Sacred Books of The East (1879) (Müller).

[39]   Doniger Wendy The Laws of Manu (1991) Trans. by Smith K Brian.

[40]   Manu *op cit* 37.

[41]   *Ibid*.

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from his head; the *Kshatrias* from his hands; the *Vaishias* from his thighs and the *Sudras* from his feet. The *varna* hierarchy is determined by the descending order of the different organs from which the *varnas* were created. Other religious theories claims that the *varnas* were created from the body organs of *Brahma*, who is the creator of the world.[42]

The caste system in the religious form is a division of society in which there are four castes arranged in a hierarchy and below them the outcast, but socially the caste system was more complicated, with much more castes and sub-castes and other divisions. The highest *varna* is of the *Brahmans*. Members of this class are priests and the educated people of the society. The *varna* after them in hierarchy is *Kshatria*. The members of this class are the rulers and aristocrats of the society. After them are the *Vaisia*. Members of this class are the landlords and businessmen of the society. After them in hierarchy are the *Shudra*. Members of this class are the peasants and working class of the society who work in non-polluting jobs.[43]

According to the *Rig Véda*,[44] there are only four orders and the Untouchables have no place in it.[45] Each *varna* has certain duties and rights. Each *varna* member has to work in a certain occupation which only that *varna* members are allowed. Each *varna* has a certain type of diet.[46] The caste hierarchy ends here. Anyone who does not belong to one of these castes is an outcast. It is these people who are considered to be outcasts who are the untouchables to the four castes.[47] The untouchables of Indian society work only in jobs considered to be degrading; like cleaning the sewages or clearing away dead animals etc.

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[42]   Federal Research Division India — A Country Study (September 1995) edited by James Heitzman and Robert L Worden (Federal Research Division).

[43]   See the book by Bhattacharya J Hindu Castes and Sects (1896).

[44]   Smith *op cit* 4 at 125.

[45]   Manu *op cit* 37 at 35.

[46]   Hocart A M Caste — A Comparative Study (1950).

[47]   They are considered to be without a caste and are regarded as 'untouchable' because they are seen as ritually polluting for caste Hindus. See Federal Research Division *op cit* 42.

The first three castes had social and economical rights which the untouchables did not have. The first three castes are also seen as "twice born". This concept of "twice born" does not relate to the Hindu beliefs of reincarnation. Being "twice born" means that one come of age religiously, making the person a member of the Vedic religion, eligible to learn Sanskrit, study the Vedas[48] and to be able to perform the Vedic rituals. The meaning of these two births is related firstly to ones natural birth and secondly to the ceremonial entrance to society at a much later age.

Each *varna* and also the untouchables are divided into many communities.[49] These communities are called *jat* or *jāti*.[50] The *Shudra* is the largest *varna* and it has the largest number of communities. Each *jat* is limited to professions worthy of their *varna*. Each *jat* is limited to the *varna* diet. Each *jat* members are allowed to marry only with their *jat* members. People are born into their *jat* and it cannot be changed. This is the how the caste system is supposed to be in its religious form but in reality it is much more complicated and different from its religious form.

A defining feature of Hinduism, caste, seems to have been described as a system encompassing a complex ordering of social groups on the basis of ritual purity.

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[48] The *Vedas* and all their parts are *shruti*, "revelation". However, it looks like even the oldest parts of the *Rig Véda* do not antedate the arrival of the Aryan in India, although the gods and elements of the stories are older, since they are attested with Iranian peoples and the Mitanni, with parallels in Greek and Latin mythology. The word '*veda*' is from the root *'vid'*, "to know", making for other derivates like *vidya*, "knowledge," and *avidya*, "ignorance". Vedas are traditionally taught by a Brahmin teacher (*guru*) orally to a student (*brahmacâârin*) in sequences (called "branches") of associated *samhitââs*, *brââhmanas*, *ââran.yakas* and *upanishads*. See Contributions to Indian Sociology *op cit* 10.

[49] See the book by Carstairs G Morris — The Twice-Born A Study of a Community of High-Caste Hindus (1961) (Carstairs).

[50] *Ibid. Jāti* means race; *varna*, colour, arising from the difference of race. For example the Brahmans have Jats called Gaur, Konkanash, Sarasvat, Iyer and others. The outcasts have Jats like Mahar, Dhed, Mala, Madiga and others.

(4.4.1.2) **The Theory of Purity**

The caste system is supported not only by theological doctrines like *Karma*[51] and the Transmigration of the Soul (*Dharma*), but also by ideas like those regarding purity and pollution. The pre-existence of caste is founded on ideas of purity and pollution.[52] The theory of purity relates to both, a prohibition on contact between the different castes and to food. These prohibitions played a vital role in the caste system as it accounts for the contrast between the Brahmins and the Untouchables.[53]

The Brahmins, who were priests, are considered to be of supreme rank in the caste system and therefore the purest caste. The Untouchables were the lowest rank, tasked to perform all the "dirty work" and were therefore the impure servants and largely segregated from the rest of the persons in the caste system. The Untouchables were therefore not allowed to associate with or use the same wells, enter the same temples or even use the same facilities of the higher castes.

Articles of food were divided into pure and impure by degrees.   The various sections of the country differed greatly in sacredness and impurity.   A principle that actions alone that are holy and sacred ought not to be done with impure associations appears to have been well recognised. Purifying agencies and ceremonies for purification existed. Purity was closely associated with good omen, i.e., those things which were supposed to bring good results or fortune, by their association, as good omens do, and impure things would bring misery. Various substances were graded on the principle of purity. This affected who gave food to the higher caste people, or how food was obtained etc. Together with impure articles there existed two other kinds of articles, which may be called pure and purifying.

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[51]   The law of *Karma* teaches that responsibility for unskilful actions is born by the person who commits them.

[52]   Hocart A M On Caste — Religion and Power in Dumont L & Pocock D F Contributions to Indian Sociology *op cit* 10.

[53]   Bouglé C The Essence and Reality of the Caste System (1958) (Bouglé).

This policy of segregation was based on the notion of the untouchables being ritually polluting. By the same token different castes could not work together for fear that contact with the untouchables rendered them impure. The main purpose for a discussion on the ideas concerning purity and pollution is that such a discussion will enable the reader to understand the reasons why the existence of the caste system depends on that which is pure and that which is polluting.[54] It is believed that caste in India is strong and rigid because the ideas of the people regarding purity and pollution are rigid.[55] The Brahmans are at the top of society because he is considered to be more pure and sacred than the other castes, whilst the "untouchables" for example, are at the bottom because they are considered to be impure. This purity or impurity, depending on how one looks at it, is the pivot on which the entire system turns.

(4.4.2) *The Historical or Indo-European Theory of the Caste System*

According to the historical theory, the caste system began with the Indo-Europeans invasion of India.[56] A series of migrations by Indo-European-speaking semi-nomads took place during the second millennium BC known as the Aryans.[57] Due to this invasion by the Indo-Europeans in India another theory of the history of the caste system seems to have its origins.[58] As there is no concrete evidence to this effect, it appears that the *varna* system does have ancient roots and is fundamentally a version of a classificatory strategy brought to India by the Indo-European invaders during the second

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[54]   *Ibid*. The *Brahmans* are at the top of society because he is considered to be more pure and scared than the other castes, whilst the "untouchables" for example, are at the bottom because they are considered to be impure. This purity or impurity, depending on how one looks at it, is the pivot on which the entire system turns.

[55]   See in general, Robert Madhura Sutta on Caste (April 1984) JRAS at 360-66.

[56]   Federal Research Division *op cit* 42.

[57]   *Ibid.*

[58]   Dumont *op cit* 23 at 249.

millennium.[59] It has been argued that the social classes are as a direct result of foreign rule.[60]

According to this theory, it was due to the Indo-European influence that the Aryans organised themselves into three groups. The first group were of the warriors called the *Kshatrias* and the second group were the *Brahmans*.[61] These two groups struggled politically for leadership among the *Aryans*. In this struggle it is believed that the Brahmans got to be the leaders of the Aryan society.[62] The third group consisted of the farmers and craftsmen and they were called *Vaisia* or the *Shudras*.[63] The Aryans who conquered parts of North India made the locals their servants. In this process the *Vaisai's* who were the farmers and craftsmen became the landlords and the businessmen of the society and the locals became the peasants and the craftsmen of the society.[64] According to this theory, the roots of the caste system was as a direct result of the Indo-European invasion of India.

There exists, along with the ritually ranked system of *Jatis*, another ranking system, based on landownership or property-ownership. Considerations surrounding a person's status generally came in the way of judging a person by the type of work being done, for

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[59]   Smith *op cit* 4 at 79.

[60]   The first effect that the British had on the caste system was to strengthen it since they gave the British the *Brahmans* special privileges. It seems that the British had favourites and their favourites became higher classes and their non-supporters were kept poor. The caste system was however, eventually broken up greatly during the period of British rule in India. See Driver *op cit* 19 at 29.

[61]   Elmore W Theodore Dravidian Gods in Modern Hinduism — A Study of the Local and Village Deities of Southern India (1915).

[62]   It is important to take note that the early Hindus were always anxious to perform the service of their Gods. It was believed that it was the gods who conquered the enemy, it is the gods who vouchsafe a rich harvest. Health, wealth, children, friends, flocks and gold are all gifts from the gods. Among a nation of this peculiar stamp the priests were certain to acquire great influence at a very early period, and like most priests, they were as certain to use it for their own advantage. See Dumont *op cit* 23.

[63]   Das A The Vaisya Caste I The Gandhvanijs of Bengal (1903) (Das).

[64]   Karan P P and Weiner M India The World Book Encyclopaedia (1985).

e.g., a property-owner doing manual work was rated low and therefore a property-owner doing this type of work was considered lower than that owner not doing such work. The actual work of cultivation on land was carried out by tenants, hereditary servants and casual labourers. Each family of landowners or property-owners were served by members of a specialist caste such as a carpenter, blacksmith, potter, laundryman, barber and priest. These so-called "serving families" were then rewarded with an agreed-upon quantity of grain which would be given to them at the end of each harvest. The Indian community during this period of time was largely a barter economy with cash playing a minimal role.

The landowner was considered to be the patron of those who performed various services for him, and also to others who sought his support and protection. These patron-client relations dominated caste relations across the board, and formed the basis of division between the people of India, and each village was divided into two or more different castes. These divisions are as much as part of village life as is the caste system. So it can be said that the rural areas in most parts of India is characterised by the existence of dominant castes, which own a substantial amount of land suitable for cultivation, enjoy strength of numbers, have a higher status in the local order, and exercise significant power over the other castes. Traditionally, it was the council of the dominant castes who were the one's responsible for the maintenance of law and order in the villages and punished wrongdoer's, and were therefore very powerful people. In this way the division of the people and the caste system were further segmented.

As can be seen from the above discussion there are various theories regarding the ancient roots of the caste or *varna* systems. Some scholars searching for the roots of the Indian theory of the social classes concentrate very little on the Indo-European origins and more on indigenous evidence found in the texts called the *Dharma Sūtras* and *Sãstras*. These texts are an extension of what is to be found in the Vedas and are considered to be the *locus classicus* of the Indian formulation of *varna*. According to Dumont, caste has no place in the Vedas.[65] Max Müller argues that the government of India ignores the origins

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[65]   Dumont *op cit* 23 at 25.

of caste for the purposes of identification of persons and taking of census.[66] Müller's theory of the origins of caste is complex and further argues that caste is a social situation, i.e., caste is dependent on ones birth and is also relative to the degree of ones education. Weber too argues that caste is a particular kind of status group and has nothing to do with religion.[67]

Taking into account the various opinions on the origins of caste, what remains constant is that whichever theory is adopted the caste system still remains rigid, hereditary and discriminatory in nature.[68]

(4.4.3) The British and India

It should be borne in mind that another theory relating the beginnings or origins of caste has to do with the time that India was colonised by the British. India was once a British colony. The British left behind them in India a legacy of their ideologies and culture and even today it is evident that English, a language of their oppressors, is a very important and respected language in India. The British influence is apparent even in most of the laws in India. Some laws, like SA, have been directly adopted and adapted from the English laws.

Some scholars suggest that the resulting depiction of the caste system was as much a product of European racist theories, and the interests of colonial rule, rather than Indian cultural realities. Modern scholars further suggest that prior to the colonial period castes were much more open and flexible. There are several passages in the *Vedas* which indicate that the four *varnas* were initially based on professions and not simply determined by birth. It was during a later period that the current rigid caste system came into place.

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[66]   Müller F Max Chips from a German Workshop (1867) V(II) at 297-356.

[67]   Weber Max The Protestant Ethnic and the Spirit of Capitalism (1930).

[68]   Dumont *op cit* 23 at 250.

However, with regard to the caste system, the first effect of consequence that the British had on the caste system was to strengthen it. In fact, the British saw the advantages in preferring some groups above others. As the Brahmins were once very powerful in influencing the people of India, they gave the Brahmans back special privileges that the previous Muslim rulers had taken away.

So even though there were privileges given to certain of the groups in India, for the most part the discriminatory practices that were practised amongst the various groups were completely ignored by the British. Some have argued that this attitude was seen as a form of indirect support for the caste system by the British. The overall British policy towards caste was seen as a policy of non-interference. Further, during this period of British rule in India, the practices of untouchability as well, received limited and for the most part indirect support from the law.

However, the caste system was eventually broken up greatly during the period of British rule in India.[69] It has been argued that the British government of India had a considerable, transforming impact on the country's Hindu social structure. The establishment of both a countrywide legal system and a widespread consciousness of rights took hold.[70] Importantly, the vast machinery of protective discrimination for the SC's was developed chiefly in the 1930's and 40's under the British. Services under the state became the focus of attention for historical and economic reasons. The British brought change by passing many important laws designed to aid the marginalised lower castes. However, the British could not find a lasting solution to the problem of castes, particularly since the British saw themselves as a privileged ruling class.

The courts themselves attempted to champion a standard of equality before the law and, with a few exceptions, applied the same rules to all. For example, in the application of Hindu law to family and ceremonial matters, *varna* and caste distinctions remained

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[69]   Lamb B India — A World in Transition (1970).

[70]   On the general character of the legal system see Galanter M Competing Inequalities — Law and the Backward Classes in India (1984) at 1968b (Galanter).

relevant in some areas, but these legal categories did not spread to other fields.[71] The abolition of slavery in the middle of the nineteenth century extended basic rights to many untouchables.[72] At least formally then the untouchables of the caste system enjoyed equality in the eyes of the law and had access to it. In practice however, establishments often adapted themselves to accepted patterns of discrimination. However, the general features of the *legal system* were not in concert with the expressed discrimination of the *social system* and appraised inequality continued on a social level.

While scholars differ on the origins of the caste system in India, they agree that it is a very ancient institution.

4.5   Economic Privileges and the Division of Labour

Division of labour exists in all countries. However the division of labour according to the Hindu caste is peculiar. The caste system links the division of labour with hierarchy. This system of caste also distinguishes the Indian form of social division of labour from the modern economic form, which is orientated towards individual profit and in which the market is left to regulate the whole.[73] Here, the knowledge and skill acquired by the father descends to the son.

Importantly, in traditional Indian society, the fourfold *varna* theory describes a broad functional division of labour. Though the caste system has not prevented occupational mobility for caste Hindus, many untouchable communities have been forced to continue their occupations as leather workers, disposers of dead animals, or scavengers, and to

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[71]   As customary law was supplanted, the use of caste as a criterion in the application of general criminal, civil, and commercial law was restricted and eventually discarded.

[72]   Legal enforcement of slavery was outlawed by the Indian Slavery Act V of 1843; possession of slaves was made a criminal offence by the Indian Penal Code Act XLV of 1860 section 370.

[73]   *Contributions to Indian Sociology op cit* 10.

perform other tasks deemed too ritually polluting for upper castes. If a person belonged to the *Brahman varna* then the occupations that were open to them were various.[74]

The upper castes always had the privilege of following the occupation of their inferiors but not of their superiors. *Shudras* too were allowed a considerable margin of occupations. All the trades, like carpenters, physicians, barbers, elephant trainers and goldsmiths were allowed to a *Shudra*. This was in direct contrast to the type of jobs that could be done by the lowest class in India, the Untouchables. In the idealised Hindu *varna* system, being born into a high *varna* was seen as a reward for virtue in a previous life. Similarly, being born in a low *varna* was seen as punishment for sins in a previous life.

The "twice born" account for about forty-eight percent of Hindus.[75] The rest are *Shudras* and Untouchables. The *Shudras* may represent the institutional provision that the Aryan made for the people they already found in India. The *Shudras* thus remain once born, and traditionally are not allowed to learn Sanskrit or study the *Vedas*.[76] Their *dharma* is to work for the twice born, but even below the *Shudras* are the Untouchables, who are literally outcastes, without a *varna*, and are regarded as "untouchable" because they are ritually polluting for caste Hindus. Some Untouchable sub-castes are regarded as so polluted that members are supposed to keep out of sight and do their work at night: They are called Unseeables.[77] Throughout India's history, movements have appeared within Hinduism criticising preferential treatment according to caste (or *varna*).[78]

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[74] He could become a priest, an occupation which was considered proper for his caste, or he could become a soldier, an officer of the state, a money-lender or even a farmer, but he was not to become a domestic servant.

[75] Carstairs *op cit* 49.

[76] *Ibid*.

[77] Bhattacharya J Hindu Castes and Sects (1896).

[78] These movements have included *Buddhism*, *Jainism*, *Bhakti* poets and saints, the *Lingayats*, *Sikhism* and philosophers such as Mahatma Gandhi and Dr. BR Ambedkar.

According to Hocart, caste and profession are linked through the intermediary of religion. However, according to Dumont, there are some religiously neutral professions which are followed by a number of different castes.[79] According to Blunt each caste could be made to correspond to an occupation or "groups of connected occupations". He states that people were divided according to the types of work that they did. It was this division in labour that caused their formation from others.[80]

Dumont summarises the relationship between caste and profession as follows —

> "The link between caste and profession is primarily a matter of status, the important thing is the hereditary profession provided it is not contradicted by following too inferior a profession, and that the system has probably always carried with it some plasticity of this sort, while village specialities, ritual or other; constitutes its solid core."[81]

All humans are born unequal in the caste system, and what can be observed from the four major "*varnas*" is that the labouring caste (or class) is lowest in the social hierarchy. The caste system invariably has ensured that manual labour has no dignity.

(4.5.1) The Untouchables and Segregation

Untouchability has its roots in India's caste system, which is supposed to be more than 1,500 years old. The untouchablity feature in the caste system is perhaps the world's longest surviving social hierarchy. In different parts of India the Untouchables were treated in different ways.[82] The Untouchables are not allowed to touch people from the four *varnas* and were not allowed to enter the houses of the higher *varnas* because of their impure status.

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[79]   Dumont *op cit* 23 at 93.

[80]   Blunt E A H The Caste System of Northern India (1931).

[81]   Dumont *op cit* 23 at 97.

[82]   In some regions the attitude towards the untouchables was harsh and strict. In other regions it was less strict. In regions where the attitude was less strict the untouchables were seen as polluting people and their dwellings were at a distance from the settlements of the four *Varna* communities.

Like the system of segregation and apartheid in both the USA and SA, the untouchables were excluded and barred from entering the temples; they were not allowed to use the same wells used by the *varnas* and on public occasions they were compelled to sit at a distance from the four *varnas*.[83]   Even punishments as with privileges were systematically graded according to *varna* or social class category.[84]   The courts too cemented the ideals of the caste system in various decisions before it.[85]   The Courts upheld caste by issuing injunctions and awarding damages for purificatory ceremonies after lower caste persons had "polluted" a sanctuary.[86]   It was considered a criminal offence for a member of an excluded caste to knowingly pollute a temple by his presence.[87] Against this background the caste system was allowed to fester.

It has been argued that the caste system is not purely and simply a professional system[88] but there seems to be a definite relationship between caste and profession. Caste tends to make professions hereditary and thereby prevents the full development of peoples own faculties.   Caste also leads to a stationary civilisation and makes labour degrading. Keeping in mind that caste and professions are linked through the common theory of religious beliefs then the more pure or cleaner the job the higher the caste will be of the person performing that job. Bouglé writes that "in the Hindu civilisation it is above all religious views, rather than economic tendencies, which determines the rank of each group".[89]

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[83]   The Human Rights Watch Broken People — Caste Violence Against India's Untouchables (1999) (The Human Rights Watch).

[84]   Thus Brahman's crimes were punished less severely than were those of the *Kshatriyas*, whose crimes were punished less than those of the *Vaishyas*, and so on.

[85]   See the cases of *Anandrav Bhikiji Phadke v Sankar Daji Charya* (1883) ILR 7 Bombay 323 and *Sankaralinga Nadan v Raja Rajeswara Dorai* (1908) 35 IAC 176.

[86]   *Chathummi v Appukuttan* (1945) AIR 232 (Mad.) and *S K Wodeyar v Ganapati* (1935) AIR 371 (Bom.), where damages were awarded although the parties agreed that there should be no finding on the question of pollution.

[87]   *Atmaran v King-Emperor* (1924) AIR 121 (Nag.).

[88]   *Contributions to Indian Sociology op cit* 10 at 49.

[89]   *Ibid* at 50.

(4.5.2) Discrimination and Exploitative Forms of Labour

In the Indian context the social division of labour takes place on the basis of the role they play within the economy. This division which was clearly a hierarchy was called the *Chatur Varna* i.e. four *varnas* or castes.[90] The second division was based on the occupational specialisation of the caste-groups and this sub-division took place essentially amongst the *Vaishya-Shudra* and was called *jāti*.[91] Expulsion from a caste meant expulsion from the caste system itself. Such expulsion meant that a person could no longer practice the occupation of the caste system from which he had been expelled, neither could he become a member of any other caste as membership of a caste could be acquired only by birth in that caste. Thus being expelled from the caste system was as good as being expelled from society itself.

Only the membership of a caste entitled a person to practice the vocation allotted to that caste under the caste system. This kind of a relationship between occupation and caste made it in the direct interests of members of various castes to observe the caste vocations strictly and thus also the caste system. Infringement of caste rules of vocation could lead to expulsion. Thus a *chamar* (shoe maker) had to remain a *chamar* all his life.[92] This also meant that every member of a caste had to observe all other caste rules like untouchablity, unapproachability, endogamy, etc., under the threat of expulsion from his caste if he dared to break the caste rules. Some force, be it either social, religious, psychological, physical or political was necessary to hold this division of society.[93]

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[90]   Das *op cit* 63.

[91]   The *jāti* division functioning within the *varna* hierarchy represented only an occupational sub-division of what was basically the producing function. The creation of social groups who would undertake production was a logical pre-requisite for an occupational division to take place amongst it.

[92]   If he tried to become a *kumar* (potter) or *darji* (tailor) he was in danger of being expelled from the *chamar* caste and obviously under the caste rules he would not be admitted into any other caste in spite of his having the knowledge of any other vocation.

[93]   In India, the system was held together with the caste system and the belief of birth and re-birth and in the west it was held together by portraying the view that blacks were both intellectually and morally inferior to whites.

Within the caste system, *dalits* have been assigned tasks and occupations that are deemed ritually polluting for other caste communities. A majority of *dalits* are bonded labourers.[94] According to government statistics, an estimated one million *dalits* are manual scavengers.[95] Bondage, like the other professions of the untouchables, is passed down from birth. Occupations like scavenging and prostitution are also hereditary. *dalits* face discrimination when seeking other forms of employment and are largely unable to escape their designated occupation even when the practice itself has been abolished by law.[96]

(4.5.3)   Manual Scavenging

Manual scavenging is also a caste-based occupation. The term "manual scavenging" is used to describe the daily work to manually clean and remove human faeces from dry (non-flush) latrines (lavatories) in most parts of India. D*alit* manual scavengers exist under different caste names throughout the country, such as the *Bhangis* in Gujarat, the *Pakhis* in Andhra Pradesh, and the *Sikkaliars* in Tamil Nadu. Members of these communities are invariably placed at the very bottom of the caste hierarchy, and even the hierarchy of *dalit* sub-castes. Though long outlawed, the practice of manual scavenging continues in most states.

The exploitation of low caste labourers and the rigid assignment of demeaning occupations on the basis of caste keep lower caste populations in a position of economic and physical vulnerability. The triple burden of caste, class and gender effectively ensures that lower caste women are the farthest removed from legal protection.

4.6   Reform

It was the Industrial Revolution that finally made a dent in the caste system and brought a new awareness to Indians that social mobility might be possible. Industrialisation

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[94]   The Human Rights Watch *op cit* 83 at 334.

[95]   Manual scavengers are people who clean public latrines and dispose of dead animals.

[96]   National Campaign for Dalit Human Rights Black Papers — Broken Promises and Dalits Betrayed (1999) (*Broken Promises*).

encouraged urbanisation, as villager dwellers of both high and low castes moved into the cities for better jobs. There, they were introduced to new technologies. In the urban areas, the rigid, age-old, caste — centered thinking gave way to a more liberal outlook, encouraging the mixing of castes without distinction. Trade unions and other associations had members from all castes working together.

The strongest, most systematic attack on the caste system has come in the twentieth century through the Constitution of India, adopted on November 26, 1949. India's constitution guarantees the right of all its citizens to justice, liberty, equality, and dignity. It has been a long journey from ancient caste distinctions based on Hindu philosophy and religious traditions to the constitutional pledge of a democratic government with equality, dignity, and justice for all human beings.

Further, there were two leaders who fought for the betterment of the untouchables. The first, Mohandas Karamchand Ghandi, emerged as the leader of the nationalist movement; and he linked the eradication of untouchablity, as well as unity between Hindus and Muslims with the goal of independence from Britain.[97] The other reformer was B R Ambedkar, a Columbia University educated lawyer and statesman, who was also an untouchable.[98] He wrote into the Constitution the world's first affirmative-action programme. This system of "reservations", or quotas, gave untouchables and other underprivileged groups, proportional representation in legislatures, government jobs, and educational institutions.

Presently, India has tough laws against individual discrimination on the basis of caste. There is a policy for the socio-economic upliftment of the erstwhile lower castes, by the provision of free education till graduation, reservation of admission seats in institutions for higher education, a fifty percent quota in government jobs with faster promotions.

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[97]   Owen Hugh Ghandi (1984).

[98]   Dr. Ambedkar tried to root out the worst excesses of the caste system by making discrimination against untouchables a criminal offence. See Gore M S The Social Context of an Ideology — Ambedkar's Political and Social Thought (1993).

Further, resolutions and orders confirming the right of Untouchables to equal use of governmental facilities, schools and wells were passed in Bombay[99] and Madras as well as in several of the progressive princely states.[100] In 1923 the Bombay Legislative Council resolved that Untouchables be allowed to use all public watering places, schools, dispensaries etc.[101]

In 1932 the number of reserved seats in Parliament was made proportionate to the number of untouchables in the population. The occupants of such reserved seats were elected by the total voting population and not by an electorate of untouchables alone. This arrangement continues today. Through the process of reservations and quotas one in seven seats in central and state legislatures is occupied by an Untouchable representative. Largely due to the efforts of Ghandi and Ambedkar in the 1920's, a number of bills were passed in central and state legislatures and, in princely states, to open temples to all and the protection of low castes from various disabilities was legislated.

Further, a conference of caste Hindus, convened in Bombay on September 25, 1932, to ratify the Poona Pact which unanimously adopted the following resolution —

> "This Conference resolves that henceforth, amongst Hindus, no one shall be regarded as an untouchable by reason of his birth, and that those who have been so regarded hitherto will have the same right as other Hindus in regard to the use of public wells, public schools, public roads, and all other public institutions............"[102]

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[99]   Now known as Mumbai.

[100]   The Princely States included Rajastan.

[101]   Government of Bombay (State Committee) (1930) at 52.

[102]   The Poona Pact, agreed to by Leaders of Caste-Hindus and of Dalits, at Poona on 24-9-1932.
The following is the text of the agreement arrived at between leaders acting on behalf of the Depressed Classes and of the rest of the community, regarding the representation of the Depressed Classes in the legislatures and certain other matters affecting their welfare:
1. There shall be seats reserved for the Depressed Classes out of general electorate seats in the provincial legislatures as follows: Madras 30; Bombay with Sind 25; Punjab 8; Bihar and Orissa 18; Central Provinces 20; Assam 7; Bengal 30; United Provinces 20. Total 148. These figures are based on the Prime Minister's (British) decision.

The Poona Pact is significant in that it initiated a pattern of political compromise between "caste" Hindus and the Depressed Classes in the allocation of legislative representation and government jobs.

In 1938 the Madras legislature passed the first comprehensive and penal act to remove social disabilities, making it an offence to discriminate against Untouchables not only in regard to publicly supported facilities such as roads, wells, and transportation, but also in regard to "any other secular institution" to which the general public was admitted, including restaurants, hotels, shops etc.[103] The Act also barred judicial enforcement of any customary right or discrimination based on membership in such a group. In spite of these affirmative actions, identification and discrimination based on castes is quite common in the Indian society. Matrimony between members of different castes is still looked down upon and not very popular.

4.7   Summary

After looking at India's history of discrimination it can maybe be understood why there is a need for progressive legislation in that country. India is considered to be the largest working democracy and its efforts to transform an essentially unequal and hierarchical society into a democratic Republic has lasted well over fifty years and could continue for a further fifty years or more. Even though the reform of the caste system began over fifty years ago discriminatory practices still continue today. Notwithstanding these protective measures taken discrimination against the *dalits* still occurs on a wide scale in India. The following chapters will focus *inter alia* on the opportunities and reservation policies that are in place for the people of India, who form the scheduled castes and scheduled tribes. It will also discuss the effectiveness of the legislation of India with regard to its policies relating to the advancement of the previously disadvantaged.

Looking at India's more than fifty years of experience in its affirmative action programmes and the USA's decades of experience too, SA will benefit from looking at

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[103]   Madras Removal of Social Disabilities Act, 1938 (XXI of 1938).

both these countries so it can develop affirmative action programmes that are suitable to its goals and learn from the other two countries mistakes and triumphs. Before affirmative action programmes are dealt with in more detail an understanding of what affirmative action is and knowledge of some basic concepts is required. The next chapter will focus on giving affirmative action a definition and what is meant by affirmative action in all three countries. The clarification of what affirmative action means and the understanding of certain terms will give the reader a basic and broader understanding of the meaning of affirmative action.