

**A CRITICAL REVIEW OF POLITICAL REPRESENTATION OF KENYAN-ASIAN
WOMEN**

BY

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Dissertation Declaration Form

I, RUKHSAR MUNIR MULJI, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: R.M.

Date: 30/5/2018

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:  30 May 2018

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Abstract

This paper is about women who are members of the Kenyan-Asian community which was recently declared to constitute one of the 44 tribes of Kenya. I endeavour to define what a tribe is in the twenty-first century, followed by initiating a discourse on the participation of Kenyan-Asian women in politics. The paper looks at different theories that have created the modern day perceptions of African feminism and whether or not that feminism is racially exclusive. Moreover, the paper shows the developments made by way of legislation and use of affirmative action policies that have been enacted, or are in the process of being enacted, to assist in getting rid of discrimination against women.

Furthermore, this paper addresses the status of the Kenyan-Asian as a minority group in Kenya, and draws the necessary conclusions for rights that are to be bestowed upon such groups.

1.0 Background

1.1 Introduction

Gazette Notice number 102 for 2017 was the Presidential Proclamation by President Uhuru Kenyatta. The proclamation stated the following:

“I do hereby recognize, proclaim and order,

1. That Kenyans of Asian Heritage constitute a community that is one of the Tribes of Kenya;
 2. That from now henceforth, the community of Kenyans of Asian Heritage are Kenya’s 44th Tribe”
- President Kenyatta.”¹

The Kenyan-Asian is therefore understood to be a member of any one of the sub-Asian, but primarily Indian communities. There is an anomaly in the definition, and this is because in Kenya there are different types of Asians and not all can claim the identity of a Kenyan-Asian. This statement and apparent proclamation is therefore erroneous because it has opened up doors that point towards the condoning of racist and tribal preferences by the state.

This proclamation is said to have more than one constitutional basis, and for the purposes of this paper, Articles 11 and 44 are of particular relevance. Article 11 of the Kenyan constitution deals with culture and states that:

“(1) This Constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.”²

Enshrined in this provision, is the fact that Kenya, as a nation, is comprised of many different cultures, otherwise known as tribes and ethnicities. This includes the Kenyans of Asian origin. Article 44 of the constitution talks about language and culture. It states that every person has the right to enjoy the use of any language and practice any person's culture, provided it is not against their will. In an article published in *Awaaz magazine*³, Zarina Patel and Jill Ghai make an

¹ Cited in Patel Z and Ghai J, ‘A tribe, a nation, a people- or just Kenyans?’ *Awaaz Magazine* (2017).

² Article 11(1), *Constitution of Kenya*, 2010.

³ Patel Z and Ghai J, ‘A tribe, a nation, a people- or just Kenyans?’ *Awaaz Magazine* (2017).

interesting observation. They say that the most important aspect of the inclusion of Kenyan-Asians in Kenya as the 44th tribe has been based on culture and not about involvement in public life or even about equality.⁴

Ordinarily, a Kenyan-Asian is anyone who is descended from the Asian-subcontinent, namely from present-day India, Pakistan, or Bangladesh. The Kenyan-Asian community in Kenya, now a tribe, is comprised of several denominations and sub-communities, namely the Shia Ismaili Khoja Community (Aga Khan Foundation), the Jain Community (Visa Oshwal Community), the Patel community, the Bohra community, the Sikh community (Guru Nanak Foundation), the Shia Ithna Shri community, Lohana community, Sthanakvasi community (a branch of the Jain community), Darji community (tailors), Dhobi community (launderers), Varan community (barbers) and Brahman community (priests), to name a few.⁵

They brought in with them food, culture and lexicon that fused with that of the land.⁶ Kenyan-Asians have played a major role in creation of Kenya as a nation, yet feel removed from its politics today.⁷ In fact, very little is recognised about the massive influence Kenyan-Asians have had in Kenya. A lot of this information has been suppressed, or otherwise disregarded in the country and continents' history. Kenyan-Asians are looked at in the same way as the white-settlers, when in fact, the migrants had very little choice in the matter.⁸

1.2 Background of the Kenyan-Asian:

It is essential to address the question of the representation of minorities in elective and public offices in Kenya. The colonial government, in the period between 1915 and 1920, passed discriminatory laws against the Kenyan-Asian.⁹ In addition to this, legal segregation in towns was instituted in 1918, and elective representation to Legislative and Municipal Councils was denied to the Kenyan-Asian community in 1919.¹⁰ The Kenyan-Asians were further discriminated in the

⁴ Patel Z and Ghai J, 'A tribe, a nation, a people- or just Kenyans?'

⁵ Hindu Council of Kenya, log books, 06.09.2017.

⁶ Drabu O, 'The 44th tribe: How Kenya's Asians are navigating the upcoming election', *Huffington Post* (2017).

⁷ Drabu O, 'The 44th tribe: How Kenya's Asians are navigating the upcoming election'.

⁸ Nelson D, "Problems of power in a plural society: Asians in Kenya", 28-3, *Southwestern Journal of Anthropology* (1972) 255-264.

⁹ Atieno-Odhiambo E S, "The political economy of the Asian problem in Kenya" 4-1 *Transafrican Journal of History 1888-1939*, (1974) 135-149.

¹⁰ Atieno-Odhiambo E S, "The political economy of the Asian problem in Kenya", 135-149.

Public Service and this was by having policies in place which allowed for favoritism of the colonialists, and denial of acknowledgement of the role of the Kenyan-Asians.

There was an extraordinary outburst of nationalist activity in India in 1907,¹¹ which then further ignited the consciousness of the Kenyan-Asians in Kenya, as members of the British colonies. In 1908, Lord Elgin decided that the Highlands would only be occupied by the white settlers,¹² this action infuriated the Kenyan-Asians and caused them to revolt, albeit on a minor scale. This decision was affirmed by Lord Millner in May 1920, and was later confirmed by Winston Churchill at an East African dinner in 1922.¹³

In 1938, a policy of cooperation came into existence for the elected representatives of the Indian community in the legislative, executive councils and in other public bodies, it changed the system of making the views of the East African Indian National Congress¹⁴ known and felt entirely. The policy made elected members, instead of Congress, the executive mouthpiece of the Kenyan-Asian community for all practical purposes. This provided the Kenyan-Asian community, at the time, with an avenue and a platform to make their views heard by the government and other communities in Kenya.¹⁵ However, the independence party, Kenya African National Union (KANU), formed in 1960, refused to enroll non-African members¹⁶. This was one of the first clear examples of discrimination towards the Kenyan-Asians after independence.

1.3 The question of citizenship

India, as a state had not taken any adverse actions towards Kenya¹⁷. In fact, India gave strong support to Kenya at the time the latter attained independence.¹⁸ It offered training facilities, urged the Kenyan-Asians to take out local citizenship and, to show its good faith, refused the Indian-

¹¹ Aiyar S, 'Empire, race and the Indians in colonial Kenya's contested public political sphere 1919-1923' 81-1 *Print Cultures, Nationalism and Publics of the Indian Ocean* (2011), 132-154.

¹² Rice S, "The Indian question in Kenya" 2 *Foreign Affairs* (1923) 258-269.

¹³ Atieno-Odhiambo E S, "The political economy of the Asian problem in Kenya", 135-149.

¹⁴ East African Indian National Congress, the National Archives Catalogue, UK, (1939), Reference Number- CO 533/504/7.

¹⁵ Interview with Khan A, who is a Member of County Assembly for Kisumu County on the 10 of October 2017. During this interview he pointed out that initially it was extremely difficult for Asians to secure positions in political parties, or even to be nominated.

¹⁶ Interview with Khan A on 10 October 2017.

¹⁷ Nayak P, "Kenya Asians: apportioning the blame" 6-18 *Economic and Political Weekly* (1971) 923-926.

¹⁸ Interview with Khan A on 10 October 2017.

born Kenyan-Asian the kind of security that the British government gave the British-born Kenyan-Asian by the 1964 British Nationality Act¹⁹. This Act²⁰ not only enabled the British-born residents of Kenya to acquire Kenyan citizenship, but also allowed them to renounce it at any time of their choosing and to revert to being British if they wished to return home to Britain²¹. No such security was given to the Indian-born Kenyan-Asian in Kenya. The Indian government could have passed comparable legislation applicable to the Indian-born Kenyan-Asians in Kenya but it did not.

In 1962, the conservatives in the British Parliament passed the Commonwealth Immigrants Act²² which stipulated that although the colonial passport holders were technically citizens, they no longer had an unfettered right to enter Britain.²³ When Kenya became independent in 1963, British passports were no longer issued by the Kenyan authorities. The Kenya Independence Act (UK)²⁴ created a new kind of British citizen: non-Indians and non-Kenyans who remained British by default.²⁵ This was outlined in Section 2 of the said Act, which stated as follows; “a person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(2) of this Act if he, his father or his father's father (a) was born in the United Kingdom or in a colony; or (b) is or was a person naturalised in the United Kingdom and Colonies; or (c) was registered as a citizen of the United Kingdom and Colonies; or (d) became a British subject by reason of the annexation of any territory included in a colony”.²⁶

Section 3 of the same Act further stipulates that; “A person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(2) of this Act if he was born in a protectorate or protected state, or if his father or his father's father was so born and is or at any time was a British subject”.²⁷ This created a dilemma for the Kenyan-Asian and led to discussions about nationality and citizenship.

¹⁹ Nayak P, “Kenya Asians: apportioning the blame”, 923-926.

²⁰ British Nationality Act, Cap 22, 1964.

²¹ Nayak P, “Kenya Asians: apportioning the blame”, 923-926.

²² Commonwealth Immigrants Act, 1962 (now repealed).

²³ Hansard discussions of the Commonwealth Immigrations Act, 1962, available at <https://api.parliament.uk/historic-hansard/acts/commonwealth-immigrants-act-1962>, accessed on 05 April 2018.

²⁴ Kenya Independence Act (UK) Cap 54, 1963.

²⁵ Nayak P, “Kenya Asians: Apportioning the Blame”, 923-926.

²⁶ Kenya Independence Act, (UK) Cap 54, 1963.

²⁷ Kenya Independence Act, (UK) Cap 54, 1963.

1.4 Literature review

The passing of the 1968 Immigration Act by the United Kingdom certainly resulted in adding a new dimension to Kenyan-Asian attitudes. Before the Act, the relationship of India with the Kenyan-Asians in Kenya and elsewhere was more ambiguous. Duncan Sandys wrote in *The Spectator* (London) in March 1968 that the Immigration Act was never intended to admit the Kenyan-Asians freely into Britain.²⁸ The only intention was to provide an escape clause for those who were British and wished to opt out of taking Kenyan citizenship²⁹. The measure, which was originally designed to enable a few thousand Europeans to opt out of Kenyan citizenship when the going became rough, instead resulted in over 120,000 Asians finding themselves continuing as British citizens³⁰.

The main objection to the Commonwealth Immigrants Act (UK) 1968 was that it left the British Asians in Kenya virtually stateless.³¹ Kenya was not willing to let the British Asians stay on indefinitely. Officially, however, they were not acceptable anywhere else either, unless Britain accepted ultimate responsibility for them, which was denied by the Act.³²

Some, among the sensitive circles, however, resent the materialism, the arrogance, the wealth and the political fence-sitting of the Kenyan-Asians³³. This is mainly because precious little is known about their past and the circumstances that led to the community adopting a defensive posture. What added to these tensions was the stance that the independence party took against allowing even those Kenyan Asians who had voluntarily taken up citizenship to be allowed to be members and represent the individual interests of their community³⁴.

²⁸ Sandys D, 'A shameful and unnecessary act' *The Spectator* (UK), 1 March 1968. <http://archive.spectator.co.uk/issue/1st-march-1968> on 29 September 2017.

²⁹ Sandys D: 'A shameful and unnecessary act' *The Spectator* (UK), 1 March 1968 <http://archive.spectator.co.uk/issue/1st-march-1968> on 29 September 2017.

³⁰ Nayak P, "Kenya Asians: Apportioning the Blame", 923-926.

³¹ Article 2, *UN Convention on Statelessness*, 1954, Treaty Series, vol. 360. Established the legal definition of a stateless person as "someone who is not recognized as a national by any state under the operation of its law. Simply put, a stateless person is one who does not have the nationality of any country.

³² Commonwealth Immigrants Act (UK) Cap 9, 1968.

³³ Nayak P, "Kenya Asians: apportioning the blame", 923-926.

³⁴ Interview with Khan A on 10 October 2017.

1.4.1 Are Kenyan-Asians a tribe?

The Cambridge English dictionary defines a tribe as the following:

“ a group of people, often related families, who live together, sharing the same language, culture, and history, especially those who do not live in towns or cities; for example, a tribe of Amazonian Indians, the Maasai tribe.”³⁵

If we are to look at the definition of a tribe, and then reflect on the few subdivisions of the Kenyan-Asian community mentioned earlier, we can reasonably assess, that by definition, the Kenyan-Asians cannot constitute one tribe, but are in fact, a collection of tribes. The proclamation therefore, is inaccurate. According to the 2009 Kenya Census, the results recorded 46,782 ‘Kenyan-Asians’ and 35,009 ‘Asians’³⁶. The distinction was made on a basis of nationality, where Kenyan-Asians held Kenyan Citizenship, and Asians could include anyone from the Asian subcontinent who was not a Kenyan citizen.

The word *tribe* is mentioned eighteen times in Kenyan legislation and is usually with regards to non-discrimination, where one should not be discriminated against on the basis of tribal affiliations.³⁷ Issa Shivji in his letter-to-the-editor of *Awaaz Magazine*³⁸ said that

“In this day and age, and in the concrete conditions of Kenya, nothing could be more dangerous than tribal flag-waving.”³⁹

1.4.2 Discrimination of women in Kenyan politics

Since Kenya attained formal independence in 1963, women have been seeking to effectively participate alongside men, in governance and decision-making in all aspects of public life. But for

³⁵ Cambridge English Dictionary- Definition of a tribe, <https://dictionary.cambridge.org/dictionary/english/tribe> on 2 January 2018.

³⁶ Patel Z and Ghai J, “A tribe, a nation, a people- or just Kenyans?”.

³⁷ ‘Issa Shivji: Letters to the Editor’, *Awaaz Magazine*, 27 October 2017, <https://awaazmagazine.com/volume-14-issue-2/other-articles/item/911-letters-to-the-editor-issa-shivji-comments> on 23 December 2017.

³⁸ ‘Issa Shivji: Letters to the Editor’, *Awaaz Magazine*, 27 October 2017, <https://awaazmagazine.com/volume-14-issue-2/other-articles/item/911-letters-to-the-editor-issa-shivji-comments> on 23 December 2017.

³⁹ ‘Issa Shivji: Letters to the Editor’, *Awaaz Magazine*, 27 October 2017, <https://awaazmagazine.com/volume-14-issue-2/other-articles/item/911-letters-to-the-editor-issa-shivji-comments> on 23 December 2017.

the first three decades of postcolonial governance, progress was painfully slow due to a combination of structural obstacles.⁴⁰

There has been a history of discrimination against women in Kenya and among other African societies, representation of women in Kenya's parliament has been and remains minimal.⁴¹ Only 9.8% of the 10th parliament comprised of women, and only 20.7% of the 11th parliament [was] women- the lowest in East Africa.⁴²

Kenyan-Asian women have been at a disadvantage and this has resulted in the marginalisation of the communities and the lack of participation in public and elective offices of the tribe as a whole. There has been little or no effort made to encourage the sensitisation of Kenyan-Asian women, or to promote their participation in local and regional politics.

1.5 Statement of the Problem

This paper aims to study the historical injustices towards Kenyan-Asians as a minority group in Kenya, with a focus on Kenyan-Asian women and whether or not there have been sufficient improvements in bettering the conditions of women across the board since the promulgation of the new Constitution in 2010.

1.6 Hypothesis

Minority rights with regards to Kenyan-Asians have been abused due to tribalism, existing inequality and racial discrimination.

In addition to this, cross-sectional discrimination against women as a minority has barred Kenyan-Asian women from attaining sufficient representation and having a voice.

⁴⁰ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action." *Institute of Diplomacy & International Studies*, University of Nairobi (2011)

⁴¹ Oluoch F, 'More women elected in Kenya, but the numbers still fall short', *The East African*, 12 August 2017.

⁴² "Actualisation and Implementation of the 'Two-thirds Gender Principle' in Kenya", www.sidnt.net/content/actualisation-and-implementation-two-thirds-gender-principle-kenya accessed on 20 March 2016.

The presidential proclamation has led to some members of communities feeling more elevated than others, also the distinction has done little to change the mindsets of Kenyans towards the Kenyan-Asians.

1.7 Justification of the study

Based on the definition of minorities stipulated in the United Nations Minorities Declaration, the Kenyan-Asians would then identify as a minority group in Kenya.

This would then justify them as minorities under Article 27 and Article 21 of the constitution. The same provision further creates a mandate on the part of the State to enable and implement the use of affirmative action programs to elevate the rights of women and minority groups in Kenya.

1.8 Research Objectives

- To find out whether there is discrimination against Kenyan-Asians in politics, specifically Kenyan-Asian women;
- To establish whether or not the current legislative framework is inclusive and whether it encourages political participation by Kenyan-Asians;
- To enquire about the discrepancies in affirmative action programs and evaluate their effectiveness.

1.9 Research Questions

The purpose of the study is to answer the following questions:

1. What are the provisions in Kenyan law and what policies can be used to allow for the protection of minorities and minority rights representation, specifically the rights of Kenyan-Asian women in Kenya?
2. What have other countries, like the USA and India done to address the question of minority rights representation?
3. How can the Kenyan government promote the rights of ethnic minorities like the Kenyan-Asian women?

1.10 Limitations:

1. While conducting interviews it was obvious that people were uncomfortable discussing apparent discrimination, and people constantly wanted to be on the right side of the political divide.
2. The research was limited to one geographical area because of inability to travel, however, internet sources and papers written on the same subject matter were extremely informative.

1.11 Chapter breakdown

This paper aims to critically analyse the representation and participation of Kenyan-Asian women in Kenya's public sphere.

This chapter provided the outline and framework of the research, it states the purpose of the study and the justification for it.

Chapter two critically analyses the theoretical frameworks that may be applicable to this issue and also helps to explain why there is a problem in the first place.

Chapter three looks at the historical influence of the Kenyan-Asian in Kenya, pre-independence, during the independence struggle and post-independence. Furthermore, it also evaluates what representation is, the different types and the extent of discrimination against women.

Chapter four is a comparative analysis between the representation of Kenyan-Asian women and men since the promulgation of the new Kenyan constitution. Moreover, it also looks at the use of affirmative action policies in different countries and their effects.

Chapter five provides certain recommendations and conclusions for this paper.

1.12 Conclusion

The presidential proclamation stated that the Kenyan-Asian community should from then on constitute a community that is one of the tribes of Kenya. However, this statement is in fact inaccurate because of the various discrepancies in the definition of what is a tribe and ethnicity in Kenya. It raises questions about the identity of minority groups from the Asian subcontinent and

requires an in depth understanding of the culture and heritage of the Kenyan-Asians, which this paper aims to provide.

2.0 Theoretical Framework

2.1 Introduction

This chapter looks at some of the theories and conceptual frameworks that can help ascertain why there is a problem with the representation of Kenyan-Asian women in Kenya. The root cause of the issue is one from many centuries ago, that has led to a defined way of thinking and perceiving of the Kenyan-Asian. This chapter aims to address some of these issues from the viewpoint of three separate theoretical frameworks.

Firstly, one must understand what identity politics is and how it has shaped the purview of the Kenyan-Asian in the political realm in Kenya.

The second, is the concept of African feminism and whether or not it allows for the representation of women in the political space, and more particularly, the representation of minority women.

And thirdly, using Prof. Ali Mazrui's triple heritage theory of Africa, we are able to trace some of the injustices in minority representation to the initial oppression of the African by people of different races and the fusion of cultures and traditions that has influenced the development of modern African constitutions.

2.2 Identity politics and the Kenyan-Asian

According to the Merriam-Webster English Dictionary, identity politics is politics in which groups of people having a particular racial, religious, ethnic, social, or cultural identity tend to promote their own specific interests or concerns without regard to the interests or concerns of any larger political group.

"Identity politics took its modern form during the second half of the last century. It emerged as an emancipatory mode of political action and thinking based on the shared experience of injustice by particular groups—notably blacks, women, gays, Latinos and American Indians."

—Orlando Patterson⁴³

⁴³ Patterson O, definition of identity politics, Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/identity%20politics>, accessed on 05 April 2018.

The colonial state deliberately fostered racial segregation, because it offered the Kenyan-Asian better economic opportunities than the African. Thus it became common belief that the Kenyan-Asian was exploiting the African, this being the basis of the Kenyan-Asian dilemma in political representation.⁴⁴

As a direct result of this belief, KANU refused to admit any non-Africans to the party, thereby claiming to endeavour to preserve the culture and the integrity of the African Kenyan people.

Onaiza Drabu, Jill Ghai⁴⁵, and Zarina Patel⁴⁶, all noted that it was the members of the Kenyan-Asian community that had begun to agitate for recognition as a tribe in Kenya. One of the reasons for this may have been to attain more prominence in politics and other leadership positions in the country. Shivji goes on to state that “on the part of the leaders of the petitioners, in my view, it was politically opportunist to adopt a tribal fig-leaf to defend their property while offering security to their community- “tribalism” does neither.”⁴⁷ He further goes on to state the tribalism provides neither a sense of solidarity or security to the members of the Kenyan-Asian community in Kenya, but rather opens them up to more discrimination and scrutiny.⁴⁸

Zahid Rajan has also criticised this move as a political ploy by saying that “The delegation, while being composed of some members of the Asian community in Kenya, has no right or authority to speak on behalf of the entire community, and, worse still, commit to a certain line of action. The fundamental tenet of free and fair elections is that every citizen has a right to vote. And that every citizen is free to cast that vote how-so-ever he/she wishes to and in complete confidentiality. To make this a group exercise is not only unconstitutional and unjust but also undermines the whole ethos of ‘election’.”⁴⁹ Patel and Ghai have also added that

“Any right thinking Kenyan should be advocating for the purging of tribalism so that we can begin to assess our politics on the basis of vision, competence, and actual performance and not the ‘tribe’ of the proposed leaders.”⁵⁰

⁴⁴ Atieno-Odhiambo E S, “The political economy of the Asian problem in Kenya”, 135-149.

⁴⁵ Patel Z and Ghai J, “A tribe, a nation, a people- or just Kenyans?” *Awaaz Magazine*, (2017).

⁴⁶ Patel Z and Ghai J, “A tribe, a nation, a people- or just Kenyans?” *Awaaz Magazine*, (2017).

⁴⁷ Shivji I, Letters to the Editor, *Awaaz Magazine*, 27 October 2017.

⁴⁸ Shivji I, Letters to the Editor, *Awaaz Magazine*, 27 October 2017.

⁴⁹ Rajan Z, “Asians don’t seek to be 44th tribe”, *The Star Newspaper*, (2017).

⁵⁰ Patel Z and Ghai J, “A tribe, a nation, a people- or just Kenyans?” *Awaaz Magazine*, (2017).

Upon further analysis, Drabu has noted that

“Theirs (the Kenyan-Asians) is a diaspora of no return and of no connections to their homeland. Kenya, for them, is home.”⁵¹

Rajan wrote that “The Kenyan-Asian community is different from the Makonde community which was recently recognised as the forty-third tribe of Kenya. The Makonde are a group of people at the Coast who have been marginalised and discriminated against for more than fifty years. They have had very little (if any) economic or political influence. They had not been able to register as voters and did not even have access to basic healthcare through NHIF (National Health Insurance Fund). They have finally been given identity documents and made part of the new devolution structure in the 2010 Constitution.”⁵² This is different from the privilege that has been experienced by the Kenyan-Asians. They were accorded identification and given a nationality.

Kenya is known for its notoriety in participating in and not divulging from identity politics.⁵³ Questions about ethnicity, nationality and citizenship have had an important role to play when developing legislation for nomination of women to different political parties, as well as when appointing members of elective and legislative bodies.

2.3 African Feminism and the Kenyan-Asian

Kenya attained independence in 1963, and since then women have suffered through different types of discrimination. Structural obstacles such as: deeply embedded patriarchal socio-cultural values; undemocratic institutions, buttressed by equally undemocratic and gender blind legal and policy frameworks and low levels of civic and gender awareness have led to women being under-represented in public and elective offices.⁵⁴ Under this institutional and socio-cultural environment, it is hardly surprising that despite the active and effective role women played in the colonial liberation struggles, the first post-independence government under the late President

⁵¹ Drabu O, “The 44th tribe: How Kenya’s Asians are navigating the upcoming election” (2017).

⁵² Rajan Z, “Asians don’t seek to be 44th tribe”, *The Star Newspaper*, (2017).

⁵³ Lynch G, “Negotiating Ethnicity: Identity Politics in Contemporary Kenya,” *Review of African Political Economy*, 33-17 (2006).

⁵⁴ Nzomo M, “Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action,” 1.

Kenyatta did not have a single woman member of Parliament.⁵⁵ When leaders of the only national women's organization at the time sought to engage the State over this exclusion, the male political gatekeepers argued that there were no qualified women.⁵⁶

In most countries, women participate only marginally at the highest levels of decision-making.⁵⁷ The gendered and patriarchal nature of power relations between men and women have been best manifested in the persisting marginality of women in formal politics and key power centers in many countries around the world, including Kenya.⁵⁸

In reality, democracy in Kenya remained elusive in a context of undemocratic legal framework and political culture.⁵⁹ There was however adequate political space for political mobilization; articulation of demands, and some space for engaging the intransigent State. This inspired the emergence of a progressive feminist led women's movement that has since engaged in gender activism, gender sensitization, mobilization, capacity-building of women political leaders; socio-economic programs for poor women and lobbying for constitutional reform.⁶⁰ This feminist movement led by a cross-section of well educated women spearheaded the 1990's women's movement; dubbed: *the Second Liberation Struggle*.⁶¹ The attainment of a 30% numerical presence of women in parliament has since been a major part of this feminist struggle, based on the deep conviction that there was a direct positive relationship between gender equity, development and good governance.⁶² Furthermore these feminist activists argued that a critical mass of women in

⁵⁵ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 1.

⁵⁶ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 1.

⁵⁷ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, (2012), 2.

⁵⁸ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 2.

⁵⁹ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

⁶⁰ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

⁶¹ The first liberation was from colonial oppression. The second liberation was a struggle for substantive structural and transformative change for democratic governance, sustainable development, equity and social justice. Some of the political and socio-economic activities the Kenyan feminist activists engaged in especially in the 1990s are well documented in: Nzomo M and Kibwana K, "Women's Initiatives in Kenya's Democratization," (1993).

⁶² Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

parliament would not only advance the gender agenda, but could also positively transform the patriarchal political culture.⁶³

Affirmative action describes laws, policies, and programs that provide to take into account historic wrongs and seek to remedy practices that even if they do not intentionally discriminate, have a disparate or adverse impact on certain groups, such as women and minorities.⁶⁴ In politics, affirmative action seeks to enhance the representation of disadvantaged groups and persons of special interest.⁶⁵

However, there has been dismal performance in increasing women's numerical strength in all public decision-making bodies, but most notably in Parliament and local government. In 2011, the Kenyan parliament had only 9.8% women representation; trailing far behind the global average of 18.8% women representation in world parliaments.⁶⁶ Over the past decade, some African countries have attained and even surpassed the critical mass threshold of 30% women representation in decision-making.⁶⁷ All the countries in the East African region have overtaken Kenya on all measures of gender equality indices and as in the case of Rwanda, standing at 56% women parliamentary representation by January 2011, was ranked first globally, followed closely by South Africa at the third position, while Kenya stood at position 101,⁶⁸ in global the ranking of women's presence in parliament.⁶⁹

Kenya has the opportunity to learn from and adapt the best practices from the African countries that have already attained the minimum gender gap threshold.⁷⁰ This would ensure that the gender

⁶³ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

⁶⁴ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 2.

⁶⁵ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 2.

⁶⁶ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

⁶⁷ Akwei I, "Rwanda has been ranked highest country in the world with most women in Parliament, as of January 2017", www.africanews.com, accessed on 10 February 2018.

⁶⁸ These figures are derived from data compiled by the Inter-Parliamentary Union on the basis of information provided by National Parliaments by 31 January 2011, for 188 countries. See also, <http://www.ipu.org/wmne/classif.htm>, accessed on 10 February 2018.

⁶⁹ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

⁷⁰ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 2.

equitable representation goes beyond formal or descriptive representation, to substantive representation.⁷¹

The poor performance of Kenya with regards to women's representation in political leadership, despite having pioneered and provided leadership to the post-1990 multi-party women empowerment programs in the East African region, continues to raise concern both at the level of theory and praxis.⁷²

This struggle for affirmative action led by the combined force of feminist led activists, in collaboration with other gender responsive groups and individuals, intellectuals, and women parliamentarians, was finally rewarded in August 2010, when the 20 years of struggle for a new Constitution, yielded a very progressive legal and political instrument, that not only provides for affirmative action but guarantees both women and men, equality of rights and duties in equal measure; and removes all forms of discrimination in both legal and social practice. Top on the list of the key gains that women feel they have harvested from this new constitution, is the inclusion in the Bill of Rights, with a legally binding principle of affirmative action, backed by additional protocols that guarantee the implementation of affirmative action through quotas and reserved seats, in all appointive and electoral processes.

The affirmative action provisions, binds the State to ensure gender equity in access and measures to correct historic imbalances suffered by all minorities and disadvantaged groups.⁷³ This thereby includes the Kenyan-Asian tribe, as well as the representation of the Kenyan-Asian woman as a minority in Kenya.

⁷¹ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 2.

⁷² Some have argued that Patriarchal values that pervade all political institutions of governance: political parties, parliament, local councils and government bureaucracies, coupled with (until August 2010) an undemocratic legal framework, have been viewed as major obstacles to women's presence in political governance. Others have heaped blame on the women's movement and organizations for their alleged failure to provide concerted and sustained support to women in politics. Still others have blamed the women politicians themselves for poor political strategies and unwillingness to make politics a full time profession, with all the sacrifices it entails. See also Nzomo M, "Women in Politics: Challenges of Democratic Transition in Kenya," Heinrich Boll Foundation, (2003).

⁷³ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 3.

2.4 Triple Heritage Theory

Written by Prof. Ali Mazrui⁷⁴, the Triple Heritage Theory of Africa refers to the three main cultural influences in Africa and how they have had an impact in the development of states and Africa as a continent. This theory conceives that today's Africa is an amalgam of 3 major civilisations: indigenous Africanity, Islam and westernisation.⁷⁵

The triple heritage theory visualizes Africa as a cultural bazaar where a variety of ideas and values, drawn from different civilisations, compete for attention of potential African buyers. This marketing of cultures in Africa has been going on for centuries but a particularly important impact has come from the 'Semites' and the 'Caucasians'.⁷⁶

The triple heritage lenses are, therefore, useful in explaining Africa's past and present developments. It is essential in explaining the colonial period, during which indigenous African values had significant foreign input. Professor Mazrui's theory also helps explain Africa's post-colonial developments in the light of the latter day cultural paradigms. In the five decades of independence, African states have undergone a process of internal reflection with the result that they have reasserted, modified or annulled the values learned in the course of past cross-cultural interactions, including specifically, the colonial epoch.⁷⁷

The fifth program in Prof. Mazrui's series dealt with the confrontations which exemplified Africa's mix of indigenous, Arab, and western forces. In Kenya, white settlers reserved about 30% of Kenya's most fertile lands. The Mau-Mau's, also in Kenya, fused religion with patriotism.⁷⁸

This then led to a fusion of cultures from the east and west, thereby cementing the influence of the Kenyan-Asians in Kenyan history, as well as in the East African region. The Kenyan-Asians had, with considerable fortitude and perseverance, pioneered the establishment of *dukas*, of local training centers and bazaars in different districts; and by introducing the rupee currency, they

⁷⁴ Mazrui A, 'The African: A triple Heritage', YouTube series, <https://www.youtube.com/watch?v=8-pksToXSL4> accessed on 05 April 2018.

⁷⁵ Ambani J O, 'The second wave of criminalising homosexuality in Kenya, Nigeria and Uganda', *University of Pretoria*, (2016), 14.

⁷⁶ Ambani J O, 'The second wave of criminalising homosexuality in Kenya, Nigeria and Uganda', *University of Pretoria*, 15.

⁷⁷ Ambani J O, 'The second wave of criminalising homosexuality in Kenya, Nigeria and Uganda', *University of Pretoria*, 16.

⁷⁸ Mazrui A, "Summary of the Africans: A Triple Heritage", <https://www.facebook.com/notes/professor-ali-mazrui/summary-of-the-africans-a-triple-heritage/30550750145/> accessed on 12 March 2018.

provided an incentive to greater local production as well as the transition from barter to a money-based economy.⁷⁹ The Kenyan-Asian must be viewed as the pioneer businessman in the region, who helped to open up the interior of east Africa and facilitate further ease of access to the African continent.⁸⁰

Kenyan-Asian politics revolved around opportunity structures, but often an appeal was made to universal ideologies, such as “one man, one vote”, “Equal opportunity for the members of one Empire”, among others, were common and the typical rallying cries.⁸¹ The specific interests of the Kenyan-Asian were to rally on the issues surrounding Indian immigration and the abolition of discrimination in all walks of life, this was to afford the Kenyan-Asian equal opportunity in the public and private sphere.⁸²

For their part, the Africans were actually inspired by the measures that the Kenyan-Asians were putting in place to advance the independence agenda. While the rivalry between the entrenched Kenyan-Asian shop-keeper and emerging African traders created resentment between the two communities in rural reserves⁸³, which was ultimately never quite resolved, as is the case in point within this paper.

The Kenyan-Asian has had a massive influence on Kenyan culture and perceptions over the last two decades.⁸⁴ This, has, however, not impacted the way in which the Kenyan-Asian is viewed when it comes to matters of political representation and appointment of officials in government offices. There have been examples of clear discrimination and this has made it even more difficult for Kenyan-Asian women to enter the political sphere.

Indeed, Prof. Mazrui demonstrated that the triple heritage theory can anchor a full discussion on African sexism. In *‘The black woman and the problem of gender: An African perspective’*⁸⁵, Mazrui identified three levels of African sexism, namely; benevolent, benign, and malignant. He

⁷⁹ Atieno-Odhiambo E S, “The Political Economy of the Asian Problem in Kenya”, 135-149.

⁸⁰ Mazrui A, “The African: A triple Heritage”, YouTube series, <https://www.youtube.com/watch?v=8-pksToXSL4> accessed on 05 April 2018.

⁸¹ Atieno-Odhiambo E S, “The Political Economy of the Asian Problem in Kenya”, 135-149.

⁸² Atieno-Odhiambo E S, “The Political Economy of the Asian Problem in Kenya”, 135-149.

⁸³ Aiyar S, “Anti-Colonial Homelands across the Indian Ocean: The Politics of the Indian Diaspora in Kenya, ca. 1930-1950”.

⁸⁴ Interview with Khan A on 10 October 2017.

⁸⁵ Mazrui A, *‘The black woman and the problem of gender: an African perspective’*, African Studies Association, 1992.

defined benevolent sexism as a form of discrimination which is protective or generous towards the otherwise underprivileged gender.⁸⁶ Benign sexism, he said, is sexism that acknowledges gender differences without bestowing sexual advantages or inflicting a gender cost.⁸⁷ Malignant sexism, on the other hand has been defined as sexism that subjects women to economic manipulation, sexual exploitation and political marginalisation.⁸⁸ All these sexismisms have been influenced by and have suffered the impacts of Africa's triple heritage.

2.5 Conclusion

The theory of identity politics is one that can help to ascertain whether or not the Kenyan-Asians constitute a tribe in Kenya or whether or not it is a collection of minority groups. Furthermore, since it was the Kenyan-Asian community that started to agitate for recognition, one may argue that the theory of identity politics is one of substantial value, mostly because of the previous experiences of the Kenyan-Asians with the British post-colonial government which exercised inherent discrimination towards the Kenyan-Asian by not giving them official status as citizens. This has obviously impacted the way in which the Kenyan-Asian behaves in the public space in Kenya. Moreover, the Kenyan-Asians were also rejected by the independence government of Kenya, thereby further ignited their plight or non-recognition.

African feminism on the other hand has been accused of being racially exclusive to those of African descent. The Kenyan-Asian woman is one of African descent, yet faces imminent discrimination because of race and economic footing. The Kenyan-Asian community rarely encourages women to participate in politics or in attaining any appointive offices, which is of course, to the detriment of women who are members of this minority group.

The triple heritage theory of Africa has been used in this context to explain the reasons for the identity politics and African feminism failures which have not accounted for the participation, sensitization and empowerment of Kenyan-Asian women.

⁸⁶ Mazrui A, 'The black woman and the problem of gender: an African perspective'.

⁸⁷ Mazrui A, 'The black woman and the problem of gender: an African perspective'.

⁸⁸ Mazrui A, 'The black woman and the problem of gender: an African perspective'.

3.0 Kenyan-Asians, representation of a minority

3.1 Introduction

Adopted by consensus in 1992, the United Nations Minorities Declaration in its Article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that states should protect their existence.⁸⁹

It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).⁹⁰

According to a definition offered in 1977 by Francesco Capotorti,⁹¹ a minority is “A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members- being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”⁹²

While the nationality criterion included in the above definition has often been challenged, the requirement to be in a non-dominant position remains important.⁹³ In most instances, a minority group will be a numerical minority, but in others a numerical majority may also find itself in a minority like or non-dominant position⁹⁴. A perfect example of this is in Kenya where women comprise of majority of the population⁹⁵ (50.2%), men still hold the majority of positions in public and elective offices. This has led to unequal representation and inequality between the genders. As

⁸⁹ The Office of the United Nations High Commission for Human Rights (OHCHR), “Who are Minorities under International Law”, www.ohchr.org/EN/Issue/Minorities/Pages/internationallaw.aspx accessed on 27 September 2017.

⁹⁰ OHCHR, “Who are Minorities under International Law”.

⁹¹ Capotorti F, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

⁹² Capotorti F, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

⁹³ OHCHR, “Who are Minorities under International Law”.

⁹⁴ Interview held with Aslam Khan on 10 October 2017.

⁹⁵ Trading Economics, Kenyan Demographics <https://tradingeconomics.com/kenya/population-female-percent-of-total-wb-data.html> accessed on 12 October 2017

a consequence of the realisation of this, the Kenyan Constitution stipulated in its Bill of Rights, under Article 21 (3) that “All state organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.”⁹⁶

3.2 Discrimination of minorities

Although a great variety of minority situations exist, common to all is the fact that, too often, minorities face multiple forms of discrimination, resulting in marginalisation and exclusion.⁹⁷ The United Nations Minorities Declaration is devoted to national, ethnic, religious and linguistic minorities, it is also important to combat multiple discrimination and to address a situation where a person belonging to a national or ethnic, religious and linguistic minority is also discriminated against on other grounds such as gender, disability or sexual orientation.⁹⁸

Achieving effective participation of minorities and ending their exclusion required that we embrace diversity through the promotion and implementation of human rights standards. The Constitution of Kenya stipulates, under Article 2(5) that the general rules of international law shall form part of the laws of Kenya and that (6) any treaty or convention ratified by Kenya shall form part of the law of Kenya.⁹⁹

All states have one or more minority groups within their national territories, characterized by their own national, ethnic, linguistic or religious identity, which differs from that of the majority population.¹⁰⁰

The fundamental pillars of human rights and minority rights protection are the principles of nondiscrimination and equality which constitute the basis of all core human rights treaties.¹⁰¹ The Constitution of Kenya, under Article 10 stipulates the national principles of governance and integrity and they apply to everyone in relation to all human rights and freedoms and prohibit

⁹⁶ Article 21 (3), Implementation of Rights and Fundamental Freedoms, Constitution of Kenya, 2010.

⁹⁷ Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3).

⁹⁸ OHCHR, “Who are Minorities under International Law

⁹⁹ Article 2 (5) and (6), Constitution of Kenya, 2010.

¹⁰⁰ Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3).

¹⁰¹ Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3).

discrimination on the basis of non-exhaustive categories such as race, colour, religion, language, nationality and ethnicity.¹⁰² Through respect for these principles, the enjoyment of many human rights can be secured, including the right to effective participation in decision-making by minorities, and in particular women in these minority groups.

3.3 Historical (economic and cultural) influence of Kenyan-Asians in Kenya

South-Asian migration to Kenya began in the early 1800s¹⁰³. Many South-Asians living in the, white dominated urban centers in what is present-day India, wanted to cross the seas to look for greener pastures. The migration was most noticeable from 1896-1901¹⁰⁴, due to the establishment of the Imperial British East Africa Company, which was engaged by the British government to construct the Kenya-Uganda railway.¹⁰⁵

In 1896 the British Government began to build the Uganda railway with a view to opening up the interior of east Africa, and for this purpose they imported large numbers of South-Asians, at first mainly unskilled labourers, then, as the railway progressed, clerks, since the enormous cost put European labour out of court (that is, it was too expensive) and the African was thought to be too primitive to undertake the work.¹⁰⁶

Soon after this, and because of the growing influence that the South-Asians had begun having on the Africans, there were strict measures put in place by the British government barring South-Asians from the upland, that is, highland areas within the Protectorate.¹⁰⁷ These highland areas were reserved for the White-European Settlers only, and the Asians were confined to lowland areas, from which they were to continue trading. This declaration was made by the then Colonial Secretary, Lord Elgin, in 1908.¹⁰⁸ This was only the beginning of the discrimination that the Kenyan-Asian community has since faced. One of the reasons for the sudden need for restrictions against the Kenyan-Asians was because of the revolt and democratic movement that was on-going

¹⁰² Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3).

¹⁰³ UNESCO General History of Africa, Volume VIII.

¹⁰⁴ "A Kenyan Indian is treated like an outsider yet some have deeper roots in our indigenous cultures" https://www.youtube.com/watch?v=RV5eAE3_c6Q&t=69 accessed on 26 September 2017.

¹⁰⁵ Nayak P, "Kenya Asians: Apportioning the Blame", 6-18, Economic and Political Weekly (1971) 923-926

¹⁰⁶ Rice S, "The Indian Question in Kenya", 2-2, Foreign Affairs, Council on Foreign Relations (1923), 258-269.

¹⁰⁷ Nayak P, "Kenya Asians: Apportioning the Blame", 6-18, Economic and Political Weekly (1971) 923-926

¹⁰⁸ Rice S, "The Indian Question in Kenya", 2-2, Foreign Affairs, Council on Foreign Relations (1923), 258-269.

in present-day India at the time, as the Indians made a play for independence from Colonial Britain.¹⁰⁹

On the very first page of the very first “nationalist” history of Kenya, published in 1966, Carl Rosberg and John Nottingham¹¹⁰ proclaimed that the “largely middle class oriented and religiously fragmented Indian population played only a marginal role in the expanding conflict between the white power elite and dominated African population.”¹¹¹ As has been previously discussed, there was a strong connection between the political climate of the Asian subcontinent and the diaspora in and around the Indian Ocean during this time. There was the development of the conceptualization of Diasporas emerging as the embodiment of transnational history. Interestingly, this has been mulled over the years, and the historiographies of both nations, Kenya and India, have only brushed over the immense influence that the Indians of the diaspora had on the independence of both states. It is in this purview that Sana Aiyar states that they (historians) argue that idealization of the homeland left behind by the immigrants’ leads to the reproduction of religious, regional, and cultural identifiers in the new hostland.

3.4 Presence of the Kenyan-Asian

In a country where politics is polarized by tribes, the Kenyan-Asians, as they are referred to, are less than one percent of the population, but their presence is conspicuous.¹¹² Onaiza Drabu looks at how the concept of having more privilege and leverage has resulted in the Kenyan Asian, during every important political moment in Kenya’s history, feeling targeted and marginalized. However, Zarina Patel has also discussed this particular concept and states that she does not believe that the Kenyan-Asians were targeted racially, rather their shops and homes have money, jewelry and

¹⁰⁹ Aiyar S, “Empire, Race and the Indians in Colonial Kenya’s contested public political sphere 1919-1923”, 81-1, Cambridge University Press (2011), 132-154.

¹¹⁰ Rosberg CG and Nottingham J, “The Myth of “Mau Mau” Nationalism in Kenya”, New York, 1966.

¹¹¹ Aiyar S, “Anti-Colonial Homelands across the Indian Ocean: The Politics of the Indian Diaspora in Kenya, ca. 1930-1950”, *The American Historical Review*, Vol 116, No. 4, October 2011, pp 987-1013.

¹¹² Drabu O, “The 44th Tribe: How Kenya’s Asians are Navigating the Upcoming Election”, published in the Huffington Post, www.huffingtonpost.in/2017/08/03/the-44th-tribe-how-kenyas-asians-are-navigating-the-upcoming-e-a_23062488, accessed on 22 November 2017.

things worth targeting.¹¹³ Patel talks about how it is a diaspora of no return and of no connections to the so called homeland. Kenya, she believes, for them is home.¹¹⁴

When looking at the concept of how Kenyan-Asians have influenced the development of Kenyan politics and culture, it is important to note that the first attempt at political organization in Kenya was the formation of the East African Indian National Congress in 1914¹¹⁵. Political aspirants from the Kenyan-Asian community were usually members of the upper echelons of society and descended from the upper castes. In 1924, the East African Indian National Congress representing all Kenyan-Asians in Kenya, was launched in Mombasa, with T.M. Jeevanjee, the brother of the erstwhile politician, A.M. Jeevanjee, as president.¹¹⁶ It is important to note that the years between 1919 and 1922 were extremely active ones for the Kenyan-Asian politicians. Throughout the period 1932-1939, the Kenya National Congress received its major inspiration from the Indian National Congress, as there was a rise of power in India and this was a matter of growing concern for the British colonialists. An interesting thing to note, is that, in both, Kenya and India, the white settlers were members of the minority population with majority rule. During this time, there also ensued various practices of sending delegates from the India National Congress to the annual meetings of the East African Indian National Congress.¹¹⁷

The first Kenyan trade unionist, Makhan Singh,¹¹⁸ was born in Punjab and moved to Kenya in his teenage.¹¹⁹ During the same period, Kenya's first martyr, Pio Gama Pinto, was of Goan descent. Furthermore, Aleya Kassam¹²⁰ wrote about how the removal of Indians from Kenyan politics was

¹¹³ Drabu O, "The 44th Tribe: How Kenya's Asians are Navigating the Upcoming Election", published in the Huffington Post, www.huffingtonpost.in/2017/08/03/the-44th-tribe-how-kenyas-asians-are-navigating-the-upcoming-e-a-23062488, accessed on 22 November 2017.

¹¹⁴ Drabu O, "The 44th Tribe: How Kenya's Asians are Navigating the Upcoming Election", published in the Huffington Post, www.huffingtonpost.in/2017/08/03/the-44th-tribe-how-kenyas-asians-are-navigating-the-upcoming-e-a-23062488, accessed on 22 November 2017.

¹¹⁵ Drabu O, "The 44th Tribe: How Kenya's Asians are Navigating the Upcoming Election", published in the Huffington Post, www.huffingtonpost.in/2017/08/03/the-44th-tribe-how-kenyas-asians-are-navigating-the-upcoming-e-a-23062488, accessed on 22 November 2017.

¹¹⁶ Atieno-Odhiambo E S, "The Political Economy of the Asian Problem in Kenya", 135-149.

¹¹⁷ Atieno-Odhiambo E S, "The Political Economy of the Asian Problem in Kenya", 135-149.

¹¹⁸ Makhan Singh was arrested and detained on the grounds of being an "undesirable person" in May 1950 and was released from detention in October 1961.

¹¹⁹ Aiyar S, "Anti-Colonial Homelands across the Indian Ocean: The Politics of the Indian Diaspora in Kenya, ca. 1930-1950", *The American Historical Review*, 987-1013.

¹²⁰ Drabu O, "The 44th Tribe: How Kenya's Asians are Navigating the Upcoming Election", published in the Huffington Post, www.huffingtonpost.in/2017/08/03/the-44th-tribe-how-kenyas-asians-are-navigating-the-upcoming-e-a-23062488 <<accessed on 22.11.2017>>

One way to address this issue has been through the use of affirmative action policies which have now been incorporated into the Kenyan Constitution and provides for the protection of minorities, including women, and their subsequent representation.

The case for affirmative action in India and the USA can be made on the grounds of historical deprivation as well as on account of persistent disparity and continuing discrimination. Affirmative action can be, and is viewed as a program of compensation for historical injustices and very few would argue with the contention that historically, *Dalits* and blacks suffered deep injustices, disparity, deprivation and discrimination. The continued presence of social and economic discrimination aggravates these disparities.¹⁵⁷

Learning from the example set by these states, Kenya can implement policies that look towards empowering minority groups, as well as disadvantaged women who are members of these groups.

As part of my recommendations, I think the state should take a more active role in encouraging the representation and participation of Kenyan-Asian women by protracting programs that sensitize women on their economic, social, cultural, civil and political rights. This would create an environment that is more receptive and thus would allow more women to feel more comfortable in the public space.

¹⁵⁷ Deshpande A, 'Affirmative action in India and the United States', *Equity and Development, World Development Report*, 2006.

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systemic and that the Kenyan-Asians were told not to participate through intimidation and threats of imprisonment. In support of this, writer Shiraz Durrani¹²¹ explains that there are a number of things that make Indians in Kenya not politically active. The Kenyan-Asians were intimidated, first by the British, and then by local administration. They were ostracized and therefore afraid of appearing in local politics and thus stuck to their professions and businesses, thereby returning inward to their social structures and culture, rather than making a mark in post-colonial Kenyan politics.

3.5 Representation of women

Feminist scholars have concurred that a lot of women's status and capacity for meaningful political representation largely depends on

1. The kind of access women have to political structures, for example, parliaments, political parties;
2. The specific socio-cultural contexts that mitigate women leaders capacity to influence policy and in turn fulfill a transformative gender and remain accountable to the constituent group(s) they represent;
3. The size of the numerical presence/ physical numbers of women in political office and;
4. The nature of the institutional norms and practices pertaining in governance institutions.¹²²

As there are many forms of feminism, the feminist perspective employed in this paper is the eclectic one that coalesces around the common denominator among feminisms; namely the perspective that recognizes and values women's multiple identities and their diverse and unique experiences and hence takes seriously their interests in and their capacities for bringing about social and political change.¹²³

¹²¹ Shiraz Durrani is a British-Kenyan library science professional noted for his extensive writings on the social and political dimensions of information and librarianship.

¹²² Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 6.

¹²³ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 6.

From a feminist standpoint, democratic governance must also be gender responsive and inclusive by actively seeking to promote equitable representation of both genders, by correcting social, economic and cultural gender imbalances; as well as promoting justice and well-being for all.¹²⁴ Representation is the instrument through which the majority of both men and women who do not participate directly in day to day management of public affairs and attend governance activities find voice and an effective vehicle for addressing their welfare; channeling their grievances and other matters of concern to them.¹²⁵

Pitkin identifies four different types of representation; namely: formalistic representation, descriptive representation, symbolic representation and substantive representation.¹²⁶ Formalistic representation is the formal authorization to represent, obtained for example, through elections and expectations of accountability but with no defined standards of evaluating performance or mechanism for constituents to punish their representatives for failing to act in accordance with their wishes. Descriptive representation is whereby a representative resembles those being represented and is assumed to have common interest with the represented. Symbolic representation on the other hand, she defines to be, the ways that a representative stands for the represented and the meaning (symbolic) that a representative has for those being represented, regardless of what he/she has done or not done for them.¹²⁷ Lastly, substantive representation is that which entails the actions taken on behalf of and in the interests of, and as a substitute for the represented.¹²⁸

3.6 Conclusion

From the above analysis it is clear that the Kenyan-Asian is a minority group in Kenya. However, the Kenyan-Asian tribe, as it is now referred to, comprises of several other denominations and sub-communities, all of which do not have substantive representation in the country. Moreover, Kenya is still facing challenges with enabling the representation of women in parliament in elective and

¹²⁴ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 7.

¹²⁵ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 7.

¹²⁶ Pitkin H, 'The concept of representation', 14-1, available on <http://www.jstor.org/stable/2214898>, accessed on 05 April 2018.

¹²⁷ Pitkin H, 'The concept of representation', 14-1, available on <http://www.jstor.org/stable/2214898>, accessed on 05 April 2018.

¹²⁸ Nzomo M, 'Representational politics in Kenya: the gender quota and beyond.' *Institute of Diplomacy and International Studies*, 10.

public offices. One way to address this issue has been through the use of affirmative action policies which have now been incorporated into the Kenyan Constitution and provides for the protection of minorities, including women, and their subsequent representation.

4.0 Comparative Analysis of Kenyan women participation and representation

4.1 Introduction

Kenyan women have performed better in the 2017 elections, compared with 2013, but the numbers still fall short of the constitutional two-thirds gender requirement.¹²⁹

At least 23 women have been elected to the National Assembly, up from the 16 elected in the last elections. This, added to the 47 women-only seats and half of the 12 nominees by political parties, will bring the women in the National Assembly to 76, still short by 41 seats to make 117 or one-third of the 349 MPs — 290 elected, 47 woman representatives and 12 nominated members.¹³⁰

4.2 Efforts made by Kenyans

The Kenyan National Gender Equality Commission Act, 2011¹³¹, which established the National Gender and Equality Commission¹³², was mandated to promote national values as per Article 10 of the Constitution, and Article 27 which sets out the principle of equality and freedom from discrimination by stating that every person is equal before the law and has a right to equal protection and benefit of the law. This includes especially the freedom from discrimination of minorities, particularly women.¹³³

Kenya is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹³⁴ In November 2017, the Committee on the Elimination of Discrimination against Women stated that it welcomed the progress achieved since the consideration in 2011 of the State party's seventh periodic report¹³⁵ in undertaking legislative reforms, in particular the adoption and the establishment of the following; National Gender Equality Commission Act, 2011, National Action Plan on Women, Peace and Security, 2016, State Department of Gender Affairs (established in 2015), and the National Gender Policy, to name a few.¹³⁶

¹²⁹ Oluoch F, 'More women elected in Kenya, but the numbers still fall short', *The East African*, 12 August 2017.

¹³⁰ Oluoch F, 'More women elected in Kenya, but the numbers still fall short', *The East African*, 12 August 2017.

¹³¹ National Gender and Equality Commission Act, 2011.

¹³² Section 3, National Gender and Equality Commission Act, 2011.

¹³³ Article 27, Constitution of Kenya, 2010.

¹³⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

¹³⁵ Committee on the Elimination of Discrimination Against Women, Seventh Periodic Report, Published on 22 November 2017.

¹³⁶ Committee on the Elimination of Discrimination Against Women, Seventh Periodic Report, Published on 22 November 2017.

Although Kenya is yet to achieve the two-thirds gender rule constitutional requirement that ensures not more than two-thirds of the members of elective public bodies are of the same gender, deliberate efforts by civil society, political parties as well as development partners geared towards an egalitarian society are slowly beginning to bear fruit.¹³⁷

All evidence over the last two decades, points to concerted and consistent efforts by Kenyan women to gain access to centers of power. Furthermore, women groups in civil society have continued to engage in gender sensitization, mobilization and lobbying for a gender responsive constitution that would restore women's rights and provide for affirmative action; while a few leading women politicians have diversified their political strategies in party politics by seeking and obtaining the position of chairperson or 'owner/ founder' of some of the smaller political parties, in a bid to expand their negotiating power base within the male dominated political party framework.¹³⁸

4.3 Affirmative action in Kenya

The struggle for affirmative action in Kenya can be traced to the early 1990s, but became politically visible in 1996, when Hon. Charity Ngilu moved the motion for implementation by Parliament, of the Beijing Platform for Action (which provided for affirmative action), but the motion did not pass. In 1997, Hon. Phoebe Asiyo tabled the first Kenya specific affirmative action bill in parliament but it also flopped due again, to lack of support from a male dominated parliament.¹³⁹

Three years later, on 20 April 2000, MP Beth Mugo sponsored through her Social Democratic Party, an affirmative action draft Bill that sought to increase representation of not just women, but other marginalized groups in decision-making organs, but primarily in political institutions.¹⁴⁰

¹³⁷ Ali N, 'Women strongly emerge as political leaders in Kenya', *UNDP Kenya*, 14 September 2017, accessed on <http://www.ke.undp.org/content/kenya/en/home/blog/2017/9/14/Kenyan-women-emerge-in-political-leadership-and-governance.html>, 05 April 2018.

¹³⁸ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 2.

¹³⁹ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 4.

¹⁴⁰ Nzomo M, "Impacts of women in political leadership in Kenya: Struggle for participation in governance through Affirmative Action," 4.

This then brings us to the discussion of whether or not the inclusion of women in Kenyan politics has been based purely on gender, or if there are other considerations that come into play, namely one's tribe, ethnicity or nationality. Historically, women such as Charity Ngilu, Phoebe Asiyo and Wangari Maathai have had a considerable impact on the way the policies and legal framework have been developed.

As part of the cope of minority rights protections, the Kenyan-Asians have been in the country since before independence, therefore, their treatment is to be rooted in the customary international principle of nondiscrimination, which is fundamental in international law and is reflected in all human rights instruments and documents.¹⁴¹ The scope of minority rights protection which warrants for the use of affirmative action policies is as follows;

- i. survival and existence of the minority;
- ii. promotion and protection of the identity of minorities;
- iii. equality and non-discrimination; and
- iv. effective and meaningful participation.¹⁴²

Positive action is required to respect cultural, religious and linguistic diversity, and acknowledge that minorities enrich society through this diversity. Affirmative action is a form of positive action that may be taken to protect the rights of a minority.¹⁴³

4.4 Representation of Kenyan-Asian men

When analysing the representation of minority groups and the use of affirmative action policies in order to promote their participation in local politics, it is important to look at whether or not men have received the same treatment in the political sphere in Kenya.

Abdul Rahim Dawood made history on 4 March 2013 when he became the first non-indigenous person to be elected to Parliament in the Meru region as the Member of Parliament for North

¹⁴¹ Minority rights, Geneva 2010, 'International standards and guidance for implementation', *UN Publication*, HR/PUB/10/3.

¹⁴² Minority rights, Geneva 2010, 'International standards and guidance for implementation', *UN Publication*, HR/PUB/10/3.

¹⁴³ Minority rights, Geneva 2010, 'International standards and guidance for implementation', *UN Publication*, HR/PUB/10/3.

ment. ¹⁴⁴ Another candidate who ran on an independent ticket, Shakeel Shabir Ahmed, who was also the former mayor of Kisumu municipality won the Member of Parliament seat for Kisumu East. His campaign circled issues concerning education, economic and social empowerment, infrastructure development and security. ¹⁴⁵ Dr. Swarup (Kiprop) Mishra was also elected as the Member of Parliament for Kesses constituency, Eldoret on a Jubilee Party ticket. ¹⁴⁶

Also, Jayendra P Malde, who is the Member of County Assembly for Parklands in Nairobi vied for the position on a Jubilee Party ticket and his campaign addressed issues of employment, infrastructure development and economic growth in the area. Part of his slogan was unity and he used this to create a niche for himself in local politics.

As much as this is encouraging, on the flip side, there were women who lost, namely; Sonia Birdi, who was running on a United Republican Party ¹⁴⁷ nominated Member of Parliament in the last Parliament who was not nominated in 2017, and Sheela Maisuria (*Mama Popular*) who was an aspirant in 2017 for the Member of County Assembly.

From the above it is important to note that the representation of the Kenyan-Asian has improved in the twelfth parliament, however, the representation of Kenyan-Asian women as a minority group is still lacking and very little has been done to encourage their substantive participation.

4.5 Affirmative action in India and the USA

India's 1950 Constitution enshrined the idea of discrimination as a means to help both "scheduled" groups, namely the *Adivasi* and the *Dalits* (previously the untouchables). It proposed there be limited quotas for jobs and education for the members of these disadvantaged groups. It stipulated a time period of ten years, but without spelling out how to measure the progress of the policy and quotas. It has been renewed without fuss every decade since. ¹⁴⁸ In India, women have had a hand up in the political realm, whereby a third of all seats in local elected bodies are reserved for women, and this was after a 1993 constitutional amendment which applied the same rules to the Indian

¹⁴⁴ Awaaz Magazine, Cover story, 'South Asian aspirants', Vol 14, Issue 2.

¹⁴⁵ Awaaz Magazine, Cover story, 'South Asian aspirants', Vol 14, Issue 2.

¹⁴⁶ Awaaz Magazine, Cover story, 'South Asian aspirants', Vol 14, Issue 2.

¹⁴⁷ United Republican Party.

¹⁴⁸ Delhi A R, 'Indian reservations', www.economist.com/blogs/banyan/2013/06/affirmative-action, Published on 29 June 2013, accessed on 18 March 2016.

Parliament as well¹⁴⁹. This is a case in point because of the way in which the discrimination was structured. Not only were women victims of non-political representation, but there was also discrimination based on castes and this hinges on the previously discussed concept of identity politics.

The policy, however, only applies to public jobs, let alone government ones. Thus the jobs policy only matters to around two percent of the Indian workforce, and is essentially ineffective for a population of over one billion people. This was pointed out by Harsh Shrivastava of the World Development Forum in 2013. The policy has probably helped to make India's existing bureaucracy increasingly rotten. It has led to an obsession with making the ranks of public servants/representatives and this has made the Parliament dysfunctional on more than one occasion.¹⁵⁰

Affirmative action policies have helped propel more *Dalits* and other minority groups to study, as shown in steadily improving rates of literacy and higher qualifications achieved by the groups.¹⁵¹

Caste in India and race in the USA are often compared for their institutional similarities and also because these categories form the social basis on which the affirmative action program in the two countries is based. It needs to be emphasized that race is a social construct, in that, the presumed phenotypical similarities that unite members of a given 'race' are more imaginary than real.¹⁵²

Native Americans were subjected to violent dispossession of their land as the settlers moved in and gained control over the natural resources of the marginalized groups. The sentiment "all men are created equal" is contained in the Declaration of Independence but not in the United States Constitution. The first stirrings of equality came only with the civil rights movement in the late 1800s, which then extended citizenship rights to all persons in the United States of America.¹⁵³ The Civil Rights Act of 1866 made it a criminal offence to deprive any citizen of these rights under

¹⁴⁹ Delhi A R, 'Indian reservations', www.economist.com/blogs/banyan/2013/06/affirmative-action, Published on 29 June 2013, accessed on 18 March 2016.

¹⁵⁰ Delhi A R, 'Indian reservations', www.economist.com/blogs/banyan/2013/06/affirmative-action, Published on 29 June 2013, accessed on 18 March 2016.

¹⁵¹ Delhi A R, 'Indian reservations', www.economist.com/blogs/banyan/2013/06/affirmative-action, Published on 29 June 2013, accessed on 18 March 2016.

¹⁵² Deshpande A, 'Affirmative action in India and the United States', *Equity and Development, World Development Report*, 2006.

¹⁵³ Deshpande A, 'Affirmative action in India and the United States', *Equity and Development, World Development Report*, 2006.

the cover of any law.¹⁵⁴ Under slavery, the blacks had no rights whatsoever, but the system that replaced slavery was only marginally better and also had several features similar to the Indian caste system, for instance, segregation, denial of education, restrictions to low paid jobs, social and economic discrimination, negative stereotyping and violence.¹⁵⁵

4.6 Conclusion

The case for affirmative action in India and the USA can be made on the grounds of historical deprivation as well as on account of persistent disparity and continuing discrimination. Affirmative action can be, and is viewed as a program of compensation for historical injustices and very few would argue with the contention that historically, *Dalits* and blacks suffered deep injustices, disparity, deprivation and discrimination. The continued presence of social and economic discrimination aggravates these disparities.¹⁵⁶

Learning from the example set by these states, Kenya can implement policies that look towards empowering minority groups, as well as disadvantaged women who are members of these groups.

¹⁵⁴ Deshpande A, 'Affirmative action in India and the United States', *Equity and Development, World Development Report*, 2006.

¹⁵⁵ Deshpande A, 'Affirmative action in India and the United States', *Equity and Development, World Development Report*, 2006.

¹⁵⁶ Deshpande A, 'Affirmative action in India and the United States', *Equity and Development, World Development Report*, 2006.

5.0 Conclusion and recommendations.

The presidential proclamation stated that the Kenyan-Asian communities should constitute a community that is one of the tribes of Kenya. However, this statement is in fact inaccurate because of the various discrepancies in the definition of what is a tribe and ethnicity in Kenya. It raises questions about the identity of minority groups from the Asian subcontinent and requires an in depth understanding of the culture and heritage of the Kenyan-Asians, which was one of the aims of this paper. We have come to see that the Kenyan-Asian woman has been marginalized with little or no political presence.

The theory of identity politics is one that can help to ascertain whether or not the Kenyan-Asians constitute a tribe in Kenya or whether or not it is a collection of minority groups. Furthermore, since it was the Kenyan-Asian community that started to agitate for recognition, one may argue that the theory of identity politics is one of substantial value, mostly because of the previous experiences of the Kenyan-Asians with the British post-colonial government which exercised inherent discrimination against the Kenyan-Asian by not giving them any official status. This has obviously impacted the way in which the Kenyan-Asian behaves in the public space in Kenya. Moreover, the Kenyan-Asians were also rejected by the independence government of Kenya, thereby further ignited their plight or non-recognition.

African feminism on the other hand has been accused of being racially exclusive to those of African descent. The Kenyan-Asian woman is one of African descent, yet faces imminent discrimination because of race and economic footing. The Kenyan-Asian community rarely encourages women to participate in politics or in attaining any appointive offices, which is of course, to the detriment of women who are members of this minority group.

The triple heritage theory of Africa has been used in this context to explain the reasons for the identity politics and African feminism failures which have not accounted for the participation, sensitization and empowerment of Kenyan-Asian women.

It is clear that the Kenyan-Asian is a minority group in Kenya. However, the Kenyan-Asian tribe, as it is now referred to, comprises of several other denominations and sub-communities, all of which do not have substantive representation in the country. Moreover, Kenya is still facing challenges with enabling the representation of women in parliament in elective and public offices.