

## **THE LAW AND POLICIES ON AFFIRMATIVE ACTION: RHETORIC AND REALITY**

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### **ABSTRACT**

*The concept of affirmative action refers to preferential treatment by the State for the disadvantaged sections in a country in order to address inequality and discrimination caused by the existence of historical pattern of injustice in a society. It aims at compensating not only past discrimination, but also addressing existing discrimination in a society. Affirmative action programmes are implemented in Bangladesh through a number of measures and strategies. However, the policies of affirmative action is generally intended to be temporary in nature and supposed to be ceased once the intended goal of such programmes is achieved. In Bangladesh, there is no time table and goals set out for the affirmative action. Although there is a significant impact of affirmative action programmes in reducing the discrimination in various sectors, given the prevailing inequality and discrimination, it is suggested the affirmative action should continue to achieve equality and eliminate discrimination. However, the existing policies and provisions on affirmative action should be reviewed constantly in order to examine its relevance and needs.*

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## INTRODUCTION

The concept of affirmative action has emerged in response to the pressing needs of redressing inequality and discrimination caused by the existence of historical pattern of injustice in a society.<sup>1</sup> The concept of affirmative action requires some positive intervention of the State to keep balance and equilibrium in the society by removing institutional and legal barrier that inhibits equal participation and equal opportunity of disadvantaged sections of the society. It aims at compensating not only past discrimination, but also addressing existing discrimination in a society. To remedy the prevailing inequality and injustice, some preferential treatment for the less privileged section of the society at the cost of individual merit and equality of all citizens before the law has become a norm in many societies. The real challenge for a democratic society is how to harmonise these two contradictory political concepts in order to keep balance and equilibrium in the society. In this regard, the most favoured way is to afford affirmative measures to disadvantaged and downtrodden segments of the people.

The term 'affirmative action' was first used in the United States. It first appeared in Executive Order 10925, which was signed by President John F. Kennedy on 6<sup>th</sup> March 1961 and it was used to refer to measures to achieve non-discrimination.<sup>2</sup> The concept of affirmative action is also referred to as 'compensatory discrimination', 'positive discrimination', 'protective discrimination', or 'reverse discrimination'. Generally, colonisation, male domination, social discrimination and geographical disparity are considered contributing factor in undertaking affirmative action. It posits the state to undertake positive and discriminatory social policies to ameliorate their fate. It may play the role of catalyst to facilitate integration in highly stratified society, to promote convergence in multi-racial and plural society and to elevate dignity and self-respect of the disadvantaged and depressed

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<sup>1</sup> See, generally, Arnold, N. Scott, "Affirmative Action and the Demands of Justice", 15 (1998) *Journal of Social Philosophy and Policy*, pp. 133-75; Beauchamp, Tom L., "In Defense of Affirmative Action", 2 (1998) *Journal of Ethics*, pp. 143-158; Rosenfeld, Michel, *Affirmative Action and Justice: A Philosophical and Constitutional Enquiry*, New Haven, Yale University Press, 1991.

<sup>2</sup> Affirmative Action, available at: [http://en.wikipedia.org/wiki/Affirmative\\_action](http://en.wikipedia.org/wiki/Affirmative_action) (Last Visited on August 19, 2013).

people in a given state.<sup>3</sup> Integration remains the compelling moral and political goal of affirmative action. The affirmative action also promotes diversity in educational institutions and workplaces and integrates them to the mainstream society.<sup>4</sup>

### RESEARCH QUESTIONS

One of the major issues in undertaking the affirmative policy is to identify people to whom it should be addressed. How far are the existing laws and policies on affirmative action in Bangladesh effective to achieve social justice? Who are the target group of affirmative action policy? How far is affirmative action implemented in Bangladesh? How long the preferential treatment should be continued?

### OBJECTIVES OF THE STUDY

The underlying rationale of the research is three fold: firstly-to examine theoretical aspects and underlying assumption of affirmative action policy; Secondly- to examine trends and issues revolving around the notion of equality and its relation with affirmative measure ; thirdly-to make critical assessment of the existing mechanism on affirmative action for ensuring social justice. The study will re-visit the relevance of the affirmative action policies in Bangladesh and make an evaluation of the impact of affirmative action measures.

### METHODOLOGY

The research will be based on both theoretical analysis and empirical data. For empirical analysis, national legislation, policies, judicial decisions have been studied as the primary source. Secondary sources like reference books, research journals and other relevant publications have been also explored. A comparative study on laws and policies of some other countries has been made to understand the nature and scope of affirmative action and historical perspective of its development.

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<sup>3</sup> See, Anderson, Elizabeth, "Integration, Affirmative Action and Strict Scrutiny" 77 (2002) *New York University Law Review*, pp. 1195-1271.

<sup>4</sup> Fullinwider, Robert K., "Diversity and Affirmative Action", in Verna V. Gehring and William A. Galston (eds), *Philosophical Dimensions of Public Policy*, New Brunswick, Transaction Publishers, 2004, pp. 115-124; LeFevre, Joseph, "The Value of Diversity: a Justification of Affirmative Action", 34 (2003) *Journal of Social Philosophy*, pp. 125-133.