

## CHAPTER FOUR

### A HISTORICO-COMPARATIVE STUDY OF AFFIRMATIVE ACTION POLICIES AND PROCEDURES IN SELECTED DEVELOPED AND DEVELOPING COUNTRIES

#### 4.1 INTRODUCTION

Affirmative Action is a phenomenon which has been and, in many cases, is still being implemented in many parts of the world. Some examples of such countries are USA, Australia, India, Canada, Malaysia, Pakistan, Germany, Northern Ireland, Yugoslavia, Peru, Nigeria, Sweden, Namibia (De Villiers, 1997 : 14-20). Affirmative Action principles are also applied in Zimbabwe and Sri Lanka (Jauch, 1998 : 3-6; 16-21). Usually, before Affirmative Action policies are introduced **“one or more of the three specific phenomena set the scene : a pluralistic population, ethnic diversity or colonization”** (De Villiers, 1997 : 14). This gradually unfolds in the discussion of Affirmative Action in the respective selected countries.

Weiner (1993 : 2) observes that there is no general theory that can deal with the difficult task of reducing disparities among ethnic communities and managing ethnic conflicts at the same time. The difficulty is further compounded by the fact that these are two conflicting goals. He maintains that there are no completely successful models or a successful set of examples from which one can derive a theory. He succinctly re-enforces this viewpoint thus :

**“I know of no country that has yet satisfactorily resolved the disparities among its racial or ethnic groups or among genders.”**

(Weiner, 1993 : 14)

The alternative, therefore, is to use the comparative study of policy interventions as a way of analysing societal problems. In this regard one needs to study the kinds of interventions (in this case Affirmative Action policies) that the respective governments have made to assess what has been successful and what has not and, on the basis of this, make other recommendations or choose other alternatives.

Such comparative analyses of interventions/programmes are, however, impeded by the great differences that exist across societies and political systems. This means that while some policies succeed in one country they do not necessarily have the same consequences in others. Nevertheless, the study of policy interventions in different countries could help one to clarify for one's own country the nature of the problems (which could sometimes be unique), the range of options that are available for dealing with them and some guidance as to what works and what does not.

It is for these reasons that the researcher reports on the experiences of other countries with Affirmative Action programmes. In this regard six countries will be reviewed namely : USA, Australia, Canada, Zimbabwe, Namibia and India. All of them have embarked on redressing inequalities among groups with some kind of Affirmative Action policy. In the United States of America the issue of racial inequality centres around the disadvantaged minority. In the case of Namibia and Zimbabwe it focuses on majority communities. In India the focus is on addressing inequalities in a rigidly hierarchical society. In Australia it deals with the inequalities against minority groups and women while in Canada it deals with inequalities levelled against aboriginal peoples, members of visible minorities, persons with disabilities and women. In all these countries Affirmative Action as a means of eliminating or stopping gender discrimination will also be reviewed.

Apart from discussing Affirmative Action programmes in general in the respective countries the main objective of the literature review in this chapter is to focus on the effect of Affirmative Action on academic staff (faculty) in their respective institutions of Higher Education. This is incorporated so that emerging South African policies and

programmes in Higher Education can be understood in the light of international experience and critique. This information could also serve to **“challenge frozen mental maps and stimulate alternative innovative thoughts and policies in South Africa”** (Adam and Moodley, 1993 : 202).

While there is a wealth of information regarding Affirmative Action in Higher Education in America and Australia, there appears to be a dearth of information in the other countries. It is for this reason that the USA and Australia are reviewed in greater detail.

#### **4.2 AFFIRMATIVE ACTION IN THE UNITED STATES OF AMERICA (USA)**

The term Affirmative Action **“but not the practice”** originated in the USA (Jauch, 1998: 1; Alkalimat, 1996 : 210). In the USA it was developed initially to eliminate discriminatory employment practices against minority groups like the African-Americans, Hispanic-Americans and others. It was later applied to women and other groups who had been disadvantaged. Today Affirmative Action programmes in the USA are directed at all disadvantaged groups, including women, veterans, ethnic minorities and disabled people (Sarakinsky, 1993 : 6). The dilemma of providing equal employment opportunities to racial and ethnic minorities and women through an Affirmative Action programme without promoting a system of new inequalities has become a critical issue in the United States of America.

By the 1970s Affirmative Action in the USA was viewed from two perspectives : some interpreted it to mean an active effort to recruit and promote minorities and women in an attempt to end discriminatory practices, e.g., institutions of Higher Education and other business institutions actively recruited minorities and women and created special programmes to improve their skills to compete in the labour market. To others, Affirmative Action meant achieving mandatory results through rigid quotas (Weiner, 1993: 10).

The controversy in the USA over quotas continues and while goals and timetables are generally accepted as a means of expanding opportunities for minorities and women they are carefully scrutinized to ensure that they are not in fact quotas in disguise. The unfortunate aspect of this entire saga is that the debate on quotas and the negativity associated with it obscured many positive features of the USA Affirmative Action policy.

For South Africans, the American experience is particularly noteworthy since there are some striking similarities and differences between their situation and ours. The similarities include an African component as well as a minority population, namely, African-Americans who have traditionally suffered racial discrimination and ethnic minorities like the Hispanic-Americans who were also subjected to unfair practices and prejudice. In fact, up until the late 1980s, racial segregation was deeply rooted in the political culture of the USA (Alkalimat, 1996 : 208).

The major difference is that the disadvantaged races are in the minority in the USA, while in South Africa they are in the majority. Qunta (1995 : 29) maintains that the largest minority group, the African-Americans, constitute approximately 12% of the population. In comparison the previously disadvantaged are in the majority in South Africa, 75% of whom are Africans, 7% Coloureds and 3% Indian giving a total of 85% (Central Statistics Service, 1998 : 15). Further, the educational level of the so-called minorities or disadvantaged in the USA is proportionally higher than that of the disadvantaged majority in South Africa. Despite these differences, there are some valuable lessons that South Africa could learn from the American experience. Hence, the need for a review of the implementation and evaluation of Affirmative Action in Higher Education in the USA.

Fleming *et al.* (1978 : 3) make the declaration that the public policy of Affirmative Action was a **“natural extension of the long struggle for equal rights”** by African-Americans, minority groups and women in the USA. Simon (1993 : 48) corroborates this viewpoint and emotionally describes Affirmative Action as being **“in large part a response of the long, cruel and shameful history of racial discrimination in the**

**United States and particularly to the plight of black Americans”.** The USA Commission on Civil Rights (1981 : 6) succinctly describes the plight of the respective disadvantaged groups by stating that **“while minorities were suffering from white supremacy, women were suffering from male supremacy”.** For women, as well as minorities, discrimination was originally governmentally and legally imposed as was the case in South Africa. The US Commission on Civil Rights (1981 : 6) summarizes the legal disabilities imposed on women as follows :

**“Throughout much of the 19<sup>th</sup> century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardian of their own children.”**

Hence, discrimination against women and minorities was imposed by both government and society. This operated not only in the legal, political and social arenas but also in education and other fields of employment.

During the first two centuries of Higher Education in the United States, women were excluded from Higher Education Institutions (Graham, 1970 : 1284). In fact, from the year 1636, when Harvard College was founded to the opening of Oberlin College in Ohio in the year 1837, women were not allowed to attend institutions of Higher Education in the USA, let alone being given opportunities of being employed in such institutions.

Historically, however, the exclusion of Black minorities was even more severe. Prior to the Civil War it was official policy, at all levels of government, **“to keep blacks illiterate and thus prisoners of a caste system where they would be consigned to the bottom of American Society”** (Fleming *et al.*, 1978 : 15). Alkalimat (1996 : 206) adds that **“Blacks were not only denied civil rights, they were denied human**

**rights**". This was very much the case in South Africa when in 1953 Prime Minister Verwoerd maintained, through the new Bantu Education Act, that education for Blacks should be such that they are trained to do only menial jobs (Kumbula, 1993 : 14).

Prior to the pre-Civil War period it was extremely rare for an American institution of Higher Education to admit a Black student or employ a Black professor. Virtually all institutions refused to hire Black faculty members (Fleming *et al.*, 1978 : 20). Hence, by the end of the Civil War, there were only twenty eight known Black college graduates in the United States and not all of them had been educated in the country. Prior to 1929 only 51 Blacks received PhDs, the first one being in 1876 (Fleming *et al.*, 1978 : 16, 24).

Fleming *et al.* (1978 : 3) rightfully describe the actions of the federal government and the American society then as **"offering Blacks justice with one hand while withdrawing it with the other"**. The process began with the birth of the USA Constitution and the addition of the 13<sup>th</sup> Amendment, which freed Blacks from slavery; the 14<sup>th</sup> Amendment granted them citizenship and the 15<sup>th</sup> Amendment, rights to vote. While the USA Congress recognized Black people's claims to basic rights through these Amendments, the nation was unwilling to enforce them. The USA Supreme Court, in 1896, sanctioned the doctrine of **"separate but equal as public policy"** (Rai and Critzer, 2000 : 2). The consequence of this was that severe legal, economic and social restrictions, which permeated the American society in the past, were now also sanctioned by the federal government. This hindered group advancement, full equality, educational attainment and employment opportunities for Blacks, women and other minorities. Hence, by limiting the education of women and minorities, their ability to compete successfully for employment in Higher Education was hindered. This denied a large group of the American population free and active participation in Higher Education.

Prior to the introduction of Affirmative Action policy in the USA, faculty and staff positions were often filled by the professional acquaintances of the Dean or

Department Chairman. Advertisements were rare and, that too, only if no known White male candidates were available. Mentoring was provided predominantly for White males. Rarely were women or members of minority groups given the encouragement and job opportunities available to their White male colleagues. In view of the fact that very few senior faculty were women or members of the minority groups, many promising female and minority students lacked both role models and the encouragement to continue their studies. A cycle was, therefore, perpetuated which ensured that the best jobs went to the protégés of departmental faculty who were usually White males. The old boy network reigned supreme (VanderWaerd, 1982 : 3).

This supposedly relaxed academic milieu was shattered by the introduction of the Civil Rights Act of 1964 (Fleming *et al.*, 1978 : 301-316), amended in 1972, to apply to educational institutions as well. If nothing else, the revised Executive Order (EO) No 4 (Fleming *et al.*, 1978 : 333-357) shook the academic community from its posture of indifference (Moore and Wagstaff, 1974 : 74; Pottinger, 1972(b) : 24). The following House Report succinctly summarized the Congressional view of the widespread and persistent discrimination in Higher Education employment in a telling manner :

**“There is nothing in the legislative background of Title VII, nor does any national policy suggest itself to support the exemption of these educational institution employees - primarily teachers - from Title VII coverage. Discrimination against minorities and women in the field of education is as pervasive as discrimination in any other field of employment ... The committee feels that discrimination in educational institutions is especially critical. The committee cannot imagine a more sensitive area than educational institutions where the nation’s youth are exposed to a multitude of ideas that will strongly influence their future development.”**

(VanderWaerd, 1982 : 3)

The aforementioned underscores the contention that the past history of American values and attitudes towards race, ethnicity and gender produced a climate in which equal opportunities for minorities and women have often been severely limited. Efforts since the 1960s to combat these obstacles have led to greater public awareness and public policies such as Affirmative Action to expand equal employment opportunities for minorities and women within the American society in both public and private sectors.

The federal government, in attempting to correct the underrepresentation of minorities and women in Higher Education, developed several strategies to resolve problems of discrimination and inequality that, unfortunately, institutions in the country originally helped create. Since 1961, legislators had passed several laws to encourage equal rights for women and minorities in the academic community. In Higher Education, the Equal Pay Act, Title IX of the 1972 Education Amendments which prohibited discrimination on the basis of gender in public educational institutions and Title VII of the Civil Rights Act of 1964 secured rights and strengthened successive efforts to fight racial and sexual discrimination in employment (Benokraitis and Feagin, 1978 : 130).

The government's main strategy, however, to remedy problems of discrimination and inequality was embodied in Executive Orders 11 246 and 11 375 (Fleming *et al.*, 1978: 333-342) and Revised Order No. 4 collectively and commonly referred to as Affirmative Action. It is, therefore, not surprising that Rai and Critzer (2000 : 134) describe the policy of Affirmative Action in the USA as **"a product of a tortuous set of executive orders, bureaucratic rules and often contradictory judicial decisions"**. Justifying the policy of Affirmative Action of the USA in 1965, President Lyndon Johnson quotes the following example :

**"Imagine a 100 yard dash in which one of the two runners has his legs shackled together. He has progressed 10 yards while the unshackled runner has gone 50 yards. How do they rectify the situation? Do they merely remove the shackles and allow the race to proceed? Then they could say that 'equal opportunity' now**



**prevailed. But one of the runners would still be 40 yards ahead of the other. Would it not be the better part of justice to allow the previously shackled runner to make up the 40 yard gap; or to start the race all over again? That would be affirmative action towards equality.”**

(Fullinwider, 1980 : 94)

Federal and state legislatures designated agencies, such as the US Department of Labor Office for Federal Contract Compliance Programs (OFCCP) and the Office for Civil Rights (OCR) in the US Department of Education (USDE), to enforce Affirmative Action compliance in Higher Education institutions. The US Commission on Civil Rights (USCCR), as its statutory duty, monitored progress and offered guidance.

Non-governmental efforts to address the problem of racial and sexual discrimination and underutilization of women and minorities were also made by organized political and social groups, such as the National Association for the Advancement of Colored People (NAACP) and the Women’s Equity Action League (WEAL). Affected groups (women and minorities), individuals and institutions of Higher Education also exerted their own efforts to end racial and sexual discrimination in employment in Higher Education.

In an attempt to eliminate some of the inequities in faculty (academic staff) hiring and promotion in Higher Education, colleges and universities, for example, attempted to increase opportunities for minorities and women to obtain higher and specialized education so that they may obtain a greater proportion of faculty and administrative positions. Many graduate departments offered increased access to training programmes, pre- and post-doctoral fellowship opportunities, teaching assistantships and financial aid to minorities in fields in which they were underrepresented.

Such combined approaches of government and non-government efforts constituted the means of achieving one of the objectives of Affirmative Action. This was basically to

increase the number of minorities and women in faculty and administrative positions in American institutions of Higher Education.

#### **4.2.1 Strategies Employed to Achieve Equal Employment Opportunity in Higher Education in the USA**

A number of statutes and orders, issued by the President and other federal officials (refer to Appendix 4), promoted equal opportunity. This furthered the process of Affirmative Action to prevent present-day discrimination and/or remedy the effects of past discrimination. In addition, governments of states and cities were also engaged, through federal regulations and through their own initiative, with Affirmative Action. The discussion below focuses on Affirmative Action as mandated by Executive Order 11 246 and 11 375 and revised Order No. 4.

##### **4.2.1.1 Executive Orders (EO)**

Following the enactment of the Civil Rights Acts of 1964 (Appendix 4), a series of Executive Orders were issued at the federal level by the President and other officials and at the state and local levels by appropriate government officials to aid in the efforts to end discrimination and ensure equal opportunity. Rai and Critzer (2000 : 6) claim that **“The changes that brought down the walls of apartheid and conveyed some equality to blacks as well as women essentially began with [this] Civil Rights Act of 1964”**. Executive Orders 11 246 and 11 375 were issued by President Lyndon Johnson in 1965 and 1967 respectively. Revised Order No. 4 issued by the Department of Labor in 1971 made them more enforceable. Together, the three Orders formed the basis for Affirmative Action.

Executive Order 11 246 prohibited recipients of federal contracts from

discriminating on the basis of race, colour, religion or national origin. Executive Order 11 375 prohibited holders of federal contracts or sub-contracts from discrimination on the basis of sex, marital status or child-bearing status. Through this Order, among other things, separate seniority rosters for men and women on the job and separate help-wanted advertisements for men and women were prohibited. The main provision of EO 11 375 required contractors **“develop written Affirmative Action plans to remedy the effects of past discrimination”** as well as to prevent ongoing present discrimination (Benokraitis and Feagin, 1978: 12).

Overall, EO 11 246 and EO 11 375 exceeded by far the requirements of the previous Executive Orders in that they went beyond passive non-discrimination. But they too had been criticized for a number of reasons. Initially, EO 11 246 prevented racial discrimination but did not prevent discrimination on the basis of sex and marital status. EO 11 375 remedied this oversight. Further, Executive Order 11 246 did not apply to government contractors in Higher Education until 1971, even though it had been in existence since 1965. Law-suits were among the first strategies taken to force the Department of Labor to apply equal employment opportunity laws and Affirmative Action regulations at colleges and universities. Such law-suits accused the US Department of Education (USDE) of doing little or nothing to end discrimination on the basis of race, sex and physical disability in Higher Education (Edward and Norton, 1979 : 542-543).

Another weakness of EO 11 246, as amended by EO 11 375, was its loopholes which allowed the Secretary of Labor (or enforcement designate) to exempt a contractor/institution of Higher Education from the provisions of non-discrimination if the Secretary of Labor deemed that special circumstances in the national interest were required. This

weakened the strategy, damaged the image of Executive Order and provided an avenue by which those who opposed the Affirmative Action mandate could legally escape its implementation. The third Order of Affirmative Action, revised Order No. 4, issued by the Department of Labor in 1971, strengthened EO 11 246, as amended by EO 11 375, in that it attempted to circumvent some of the weaknesses discussed above.

#### **4.2.1.2 Federal Agencies**

Federal agencies administered the Executive Orders, enforced regulation and helped the process to end employment discrimination and ensure equal opportunity. The Office of Federal Contract Compliance Programs (OFCCP) established by the Department of Labor in January, 1966 and the Equal Employment Opportunity Commission (EEOC) established in 1972 had the primary responsibility of administering the Executive Orders. The OFCCP and the EEOC were largely responsible for initiating the development of bureaucratic rules, procedures and forms concerning Affirmative Action some of which apply to this very day (Rai and Critzer, 2000 : 9).

The OFCCP further assigned responsibilities to other agencies. It assigned the responsibilities of monitoring contract compliance in Higher Education to the US Department of Education (USDE). The enforcement of Affirmative Action was assigned by OFCCP to the Higher Education Division of Office for Civil Rights (OCR) in the USDE. The OCR agency in turn delegated some of its responsibilities to its regional offices.

#### 4.2.1.3 The Higher Education Division of the Office For Civil Rights (OCR) in the US Department of Education

The Higher Education Division of the OCR was responsible for enforcing Affirmative Action in post-secondary institutions. The premise behind Affirmative Action, the OCR wrote, was to take **“positive action to overcome the effects of systematic institutional forms of exclusion and discrimination”** (USA Department of Health, Education and Welfare, 1972 : 3). The OCR’s responsibilities included contract compliance reviews, negotiating corrective actions, investigating individual complaints of discrimination and recommending and preparing legal sanctions when necessary to achieve equal opportunities (Benokraitis and Feagin, 1978: 158).

As a first strategy to secure equal employment opportunity for all groups the OCR attempted to identify all institutions which were subject to the provisions of the Executive Order, viz., those that received an amount of \$50 000 or more in federal contracts (Fleming *et al.*, 1978 : 109). It sent memoranda to college and university presidents informing them that they were expected to be in compliance with the Order and its implementation regulations. The OCR offered to provide technical assistance to make sure that universities understood the requirements in order to comply effectively.

A major factor, however, that hindered the identification and enforcement process was that the regional offices of OCR were unable to determine accurately the number of institutions within their jurisdiction that were subject to EO 11 246. Estimates of the number varied from year to year, depending on whether the institutions received \$50 000 or more in federal contracts and on whether institutions reported accurate data to OCR.

In 1972 the USDE issued Higher Education Guidelines (Carnegie Council of Policy Studies on Higher Education, 1975 : 232-235), incorporating Executive Order 11 246, to provide a degree of uniformity in compliance efforts among institutions and to establish a mechanism to aid in monitoring and enforcement. The guidelines centred around establishing **“specific procedures for conducting searches, hiring, promoting, and establishing qualifications that would presumably lead to bias-free results”** (Fleming *et al.*, 1978 : 11). It maintained also that if such positive procedures were not undertaken a **“benign neutrality ... will tend to perpetuate the *status quo ante* indefinitely”** (USA Department of Health, Education and Welfare, 1972 : 3).

In general, enforcement of anti-discrimination laws had not escaped scrutiny. Organized groups, other federal agencies, individuals and commissions studying equal opportunity in education constantly levelled severe criticism. In particular, the US Department of Education and OCR were plagued with criticisms for their ineffectiveness by the US Commission on Civil Rights, the General Accounting Office and Congressional Oversight Committee, as well as Office for Federal Contract Compliance Programs (OFCCP) (VanderWaerdt, 1982 : 59). The ORC has been criticized for contributing to some of the problems, failures and lack of rapid progress of Affirmative Action.

In its review of the state of civil rights in America, the US Commission on Civil Rights found that the Higher Education Division of OCR had failed to follow the prescribed procedures by which it was required to operate. During 1973, for instance, it conducted no pre-award reviews. In 1975 the OCR attempted to follow regulations but slow response from universities (which OCR unfortunately allowed) caused them to neglect completion of the reviews that were required by the end of that fiscal year. The OCR threatened to withhold funds from non-complying

colleges and universities. However, after threatening to withhold 65 million dollars in contracts, the OCR acquiesced and simply asked the institutions under review to agree to develop an acceptable plan or follow one of OCR's model plans. The result was that, persuasion, as an enforcement tool, was ineffective as contractors were awarded contracts (or allowed to keep contracts) prior to the development of acceptable plans originally required by the OCR (Fleming *et al.*, 1978: 122-123, 126).

The most severe criticisms of the OCR came from those whose rights the agency was primarily created to protect - women and minorities. Indeed, both groups, having studied the structure of the agencies and the personnel that formed the bulk of the investigative staff, viewed the OCR with suspicion. Consequently, they neither trusted the good-faith efforts of OCR nor the good-faith efforts of the institutions of Higher Education that OCR were required to coax or force into compliance. Women and Blacks subsequently sued the US Department of Education on several occasions and won, charging the Department with inefficiency and lack of enforcement and the investigators with ineptitude, gullibility and lack of training, although it must be noted that some of the investigators were skilled, intelligent and well-trained.

Abramson (1975 : 172) crystallizes the commonly-voiced complaints more eloquently:

**“The history of Higher Education complaints is marked by a number of botched investigations. Unskilled investigators were (and are) easily befuddled by the sensible-sounding rationalizations offered by university professors. And university officials, trained in the art of intellectual put-on, are adept at making investigative heads nod in profound, if**

**bewildered, agreement.”**

In summary, therefore, the weakness and ineffectiveness of the federal agencies and Affirmative Action strategies revolve around the following general themes :

- failure of the OCR to properly train staff to understand and deal with problems in academe;
- inadequate funding and understaffing of the OCR, making it difficult for the agency to handle the diversity of colleges and the needs in certain regions;
- the inability or negligence of the federal agencies to lead and guide institutions toward compliance;
- slowness in compliance review process causing a backlog in cases; and,
- reluctance or refusal by the OCR to issue sanctions or cut off funds where such actions were clearly warranted, thereby allowing themselves to be taken lightly.

There are, however, explanations other than inadequacies on the part of the OCR for the failure or inability of Affirmative Action to increase the number of women and minorities in faculty and administrative positions in American Higher Education. Much of the literature attests to the fact that White male backlash from university officials, departments and even individuals with decision-making powers can wreak havoc on the efforts of compliance agencies which are dependent upon the co-operation and commitment of White male academicians for success.

VanderWaerdt (1982 : 3) corroborates this contention with the statement that, prior to the enactment of Affirmative Action policies, institutions and educational leaders appeared to support the fight against discrimination



but voiced little opposition against it. Subsequently, however, many institutions and academicians resisted change in their procedures and practices that would permit more women and minorities to be considered for faculty and administrative positions. The assertion by Witt (1990 :14) that **“Americans support the idea of Affirmative Action in the abstract but may resist it when individual values are threatened”** supports VanderWaerd’s contention. The early seventies saw numerous articles and publications decrying Affirmative Action Policies as a threat to academic standards and predicting that vast numbers of unqualified women and minorities would have to be hired in order to comply with government regulations.

Factors other than backlash and political pressures exerted by White males and by universities tended to perpetuate the *status quo* and contributed to discrimination in the colleges’ and universities’ hiring practices and employment patterns. In recognition of this, federal, state and local governments created a number of agencies and authorized them to help others to understand how to deal with the processes and types of discrimination and the mechanisms that perpetuated it. The US Commission on Civil Rights was one such agency which did a credible job in that regard.

#### **4.2.1.4 The US Commission on Civil Rights (USCCR)**

The US Commission on Civil Rights was established by Congress in the Civil Rights Act of 1957 to be a temporary, independent and bipartisan agency with the following responsibilities (USCCR, 1981 : ii) :

- to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, colour, religion, sex, age, handicap or national origin or by reason of fraudulent

practices;

- to study and collect information concerning the legal developments constituting discrimination or denial of equal protection of the laws under the USA Constitution because of race, colour, religion, sex, age, handicap or national origin or in the administration of justice;
- to appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, colour, religion, sex, age, handicap or national origin or in the administration of justice;
- to serve as a national clearinghouse for information in respect of discrimination or denial of equal protection of the laws because of race, colour, sex, age, handicap, or national origin; and,
- to submit reports, findings and recommendations to the President and the Congress.

During the period 1970-80 the Commission was of the view that the **“remedy of Affirmative Action can be most productively discussed by reference to discrimination, the problem it was created to address”** (USCCR, 1981 : 15). They maintained that, whilst the legal system in the USA at that time differentiated between legal or illegal and intended or unintended discrimination, the effects of any discrimination whether legal or illegal, intended or unintended was the same (USCCR, 1981 : 15). In view of this, the Commission broadened its definition of discrimination to include both kinds. The Commission noted that, since the courts dealt predominantly with what was described as illegal discrimination, some discrimination continued owing to the difficulty in establishing a legal violation in terms of the existing laws.

Though not an enforcement agency the US Commission on Civil Rights, as part of its statutory responsibilities listed above, offered directions and

guidance to aid in answering difficult questions raised by critics and institutions concerned with understanding and implementing the policy of Affirmative Action. The experiences of the Commission revealed, however, that institutions of Higher Education may serve as both breeding grounds for some of the problems and also battlegrounds for their resolution. Hence, the need to review the institutions and their respective Affirmative Action Plans became critical considerations.

#### **4.2.2 Institutions and their Affirmative Action Plans**

The regulations of Executive Order 11 246 specified that any contractor/university that received more than \$50 000 in federal contracts and employed 50 or more persons had to develop a written Affirmative Action plan within 120 days of receipt of such contracts. When it was determined that a university had to develop an Affirmative Action plan, then the regulations and provisions of EO 11 375 and Revised Order No. 4 applied. To comply with Revised Order No. 4, Section (60-2.11) institutions were required to develop Affirmative Action plans.

A review of Revised Order No. 4 (Fleming *et al.*, 1978 : 333-351), Excerpts from Higher Education Guidelines of October 1972 (CCPSHE, 1975 : 232-235), VanderWaert's Affirmative Action Plan for Higher Education (VanderWaerd, 1982 : 7-49), The Affirmative Action Plan of the American Association of University Professors (AAUP) ([www.aaup.org/aa2plans.htm](http://www.aaup.org/aa2plans.htm)) and the Equal Employment Opportunity Action Plan (CASC, 1977 : 1-13) reveal the following provisions to be typical of an ideal Affirmative Action Plan for Higher Education in the USA :

- A mission statement must be developed indicating that the institution will adhere strictly to non-discriminatory policies in all aspects of employment of academic and non-academic personnel.

- A statement must be made that the President of the Higher Education Institution or Chief Campus Officer has overall responsibility for the Affirmative Action.
- A clear delegation must be issued by the President for responsibility for the development and implementation of Affirmative Action policies to a top campus official. This official, in addition to being required to report directly to the President, must be provided with a carefully developed list of his/her Affirmative Action responsibilities.
- Provision should be made, especially on large campuses, for a full-time Affirmative Action Officer. He/she should be granted a number of staff assistants appropriate to the size of the campus and should be required to report to the top campus official. On smaller campuses the functions of the Affirmative Action Officer may be delegated to an administrator or faculty member on a part-time basis. The function of the Affirmative Action Officer should be carefully developed and listed.
- Provision for an Affirmative Action Committee or committees with membership structures should be made in consultation with all affected and interested groups on campus. On larger campuses there may be need for separate committees for schools, colleges or groups of departments. Consideration should be given to the inclusion of students. The functions of the committee or committees should be carefully developed and listed.
- Provision should be made for the dissemination of Affirmative Action plans to all individuals associated with the institution, including students, and to appropriate media and organizations outside the campus.
- With regard to faculty appointments the following provisions should be made :
  - presentation of data on racial, selected ethnic and gender composition of faculty by department and rank for a specified period, preferably the last three to five years;

- presentation of data relating to the available pool of qualified individuals according to race, selected ethnic groups and sex for each of the academic fields in which instructions are offered. Analysis of relationships between utilization ratios and ratios of qualified persons for each department;
- determination of goals and timetables for appropriate campus units (usually groups of departments, schools, colleges or on smaller campuses or the entire campus) after careful consideration of the overall impact on the composition of the faculty;
- a statement of appropriate recruitment procedures to ensure non-discriminatory recruitment by each department, including provisions for maintaining full records on the recruitment process;
- a statement of requirements for non-discriminatory selection, including a provision for maintaining full records on the selection process;
- a provision for review of each appointment by appropriate administrators, including the top campus official to whom responsibility for Affirmative Action has been delegated. Departments should be required to provide data on screening procedures, as well as comparative data on candidates considered in the final selection process up to approximately six or seven candidates evaluated after the initial screening of all candidates;
- a provision for strictly non-discriminatory procedures in the promotion decisions for a search for outside candidates in appropriate cases (especially when there are few or no candidates from the disadvantaged groups in the rank from which promotion is to be made). There should also be careful administrative review of promotion decisions, including a review by the top campus official responsible for Affirmative Action. As in selection

procedures comparative data should be provided on the candidates considered for promotion; and,

- provision for salary analyses to determine whether there are inequities on a sexual or racial basis and whether there are equitable salary and fringe benefit provisions for such groups as lecturers, etc.
- Provision for development, in consultation with all affected groups on campus, of adequate grievance procedures should be made available to all employees.

The principal aspects of the regulations of EO 11 375 and Revised Order No 4 were concerned with the personnel practices of universities, its managerial structure related to the enforcing of Affirmative Action, procedures to implement Affirmative Action programme, as well as goals and timetables that could be used to gauge success or failure of good-faith efforts. As it concerns personnel practices colleges and universities were required to establish standards and procedures for hiring, retaining and promoting faculty/staff. This would help to reduce arbitrary and discretionary staff reductions which may work to the disadvantage of minority and women personnel. In establishing hiring and promotion standards Higher Education Institutions were required to eliminate officially-sanctioned quotas restricting women and minorities, anti-nepotism policies that operate to deny women equal opportunities and recruitment procedures that tend to favour White males exclusively.

Further, institutions were required to examine job category assignments, treatment of individuals with job classifications, compensation rates, applicant pools, termination data, etc. This was necessary to ensure that the system did not operate to the detriment of individuals based on racial and sexual criteria (Fleming *et al.*, 1978 : 111).

As it related to the managerial structure of an institution, the provisions of the

Executive Orders required the chief executive officer to present a clear statement of the institution's policy on equal opportunity and indicate the mechanisms for implementation of that policy statement. The chief executive officer was required to hire an Affirmative Action Officer, order an in-depth analysis of the work force and outline specific corrective strategies for any inequities that exist or existed. On the basis of self-analysis the institution was required to use goals and timetables as one of many strategies to set and meet reasonable expectations in hiring and promotion. The Office for Federal Contract Compliance Programmes required **“an explanation for any goal that is not met ....”** (VanderWaerdt, 1982 : 41).

In addition, as a managerial strategy, institutions of Higher Education were required to go a step further and police the practices of its personnel in order to guard against unfairness that might result when non-discriminatory policies are implemented in a discriminatory fashion. Institutions were required to monitor the employment process (referrals, placements, transfers, promotions and termination). They were required to make and review reports on a regular basis and take actions to improve unsatisfactory performance.

It was assumed that if they adhered to the instructions, these regulations would promote fairness, help eliminate the mechanisms that perpetuate discrimination and inequality and ensure that institutions of Higher Education actually implement Affirmative Action plans as designed. Although the basic structure of the regulations and provisions designed to guide these institutions appeared sound, there were several problems and omissions that weakened the implementation of the policy.

Firstly, regulations were vague in certain aspects. Universities were allowed considerable leeway in staffing the Affirmative Action office and defining their role. Many Affirmative Action officers served as the assistant to high-level line officers and had little autonomy. They often served at the pleasure of or, rather,

as 'yes men' to the high-level line officer. In such a situation the political scenario often determined both the Affirmative Action officer's ability or inability to perform his/her job effectively and also his/her freedom to monitor the progress of the institution of Higher Education in accomplishing the established goals.

Secondly, goals and timetables appeared to form the mainstay of an Affirmative Action plan for implementation. The regulations required that goals be based on a utilization analysis, which, in turn, depended on availability of qualified minorities and women. Further, the regulations failed to specify the data to be used to determine availability and the time limit to conduct the utilization analysis. As a result, the criteria for availability pools varied greatly among institutions of Higher Education.

Many were of the view that, in order to strengthen the strategy, goals and timetables ought to be used in areas other than hiring, such as promotions, pay, tenure and recruitment. At any one time, minorities and women could be grouped together when establishing goals. This was problematic. In the hiring process, **"White women may be considered the lesser of two evils when compared with Blacks of both sexes"** (Moore and Wagstaff, 1974 : 92). As mentioned earlier **"cycles of discrimination that White women encounter differ from those minorities encounter"** (USCCR, 1981 : 11-2). Also, even when separated from White women, there were still problems in setting goals and timetables for minorities. Aggregate figures of minority representation failed to point out which minorities were underutilized. To be of greater value regulations should require that analysis be made for separate minority groups. Efforts then should be designed to correct underutilization of the excluded group. For example, of the minority groups, Blacks were usually underrepresented in engineering faculties and Asian-Americans were usually more sparsely found in the administrative positions.



Apparently, part of the problem of underutilization of minorities and women in certain areas was due to their areas of specialization and, therefore, remedying the undersupply and underutilization of women and minorities must be a joint effort. In the USA not only did successful Affirmative Action require the efforts of enforcement agencies, colleges and universities but also the strategies and collective actions of groups and individuals as indicated below.

#### **4.2.3 Group Action and Individual Action as Strategies to end Employment Discrimination in Higher Education**

Benokraitis and Feagin (1978 : 204) maintain that one of the factors responsible for the ineffectiveness of Affirmative Action policies in increasing the number of women and minority faculty and administrators in the USA was related to the individuals themselves. It was felt that there was insufficient pressure from the victims themselves.

Statements were often made to provide legitimate reasons for the lack of progress of minority groups in Higher Education employment. Colleges and universities often cited lack of candidates in areas of specialization, undersupply of PhDs among certain groups, lack of mobility, family obligations given priority by women and even over-qualification for certain positions to deny employment opportunities to women and minorities. This blame-the-victim type rhetoric was used to demonstrate that existing inequities were the result of lack of initiative, lack of ability, poor character and insufficient qualifications on the part of women and minorities. An ever-present characteristic of victim-blaming was that the typical target of change was not the system but the individual. In Higher Education, victim-blaming tactics seldom focused on the system of discrimination which was typical of many American institutions (Ryan, 1971 : 24; Benokraitis and Feagin, 1978 : 207).

Despite charges of negligence there is, however, evidence that women and

minorities have taken action to bring about change in the Higher Education employment system. Strategies included those that were collective as well as individual. The avenues followed were also either political or legal (Abramson, 1975 : 220). For example, women's groups and Blacks have separately and jointly exacted political force to get agencies, colleges and universities as well as legislative bodies to make and enforce policies to change particular course of action.

Legal avenues were also adopted, e.g., by The Women's Equity Action League (WEAL) and the National Advancement of Colored People (NAACP). Other organizations and private citizens have filed lawsuits against enforcement agencies, state boards of regents and colleges and universities, charging them with inadequate enforcement of anti-discrimination laws and failure to act according to regulations of the Executive Orders. Adding to the action cited above, groups and individuals have pointed out sources of women and minority candidates who were available or who qualified for employment and promotions in an attempt to end discrimination and bring about equal employment opportunity.

Many qualified members of minorities and women did not enjoy the benefits of full, regular or tenure-track employment because they were placed and kept in lower level positions as graduate and research assistants, lecturers and instructors, administrative assistants or special assistants to higher-level administrators. Although often the tasks they performed provided the mainstay of many university departments and offices, these employees, who were often women and minorities, simply did not get the promotions and other rewards they deserved.

Some researchers are of the opinion that the bulk of Affirmative Action strategy should be individual. They maintain that those individuals who wanted to succeed (or have succeeded) have found it necessary to both qualify

themselves and then make others take note of them. Unfortunately, even these individual efforts did little for the women and minority groups who found that the system was already aware of the preparation and qualifications of so-called others often from the old boy network. Often they were not and would not be recognized and honoured unless forced to. The history of Higher Education in the USA attests to this fact. Many proponents of Affirmative Action believe that the main reason for discrimination was not that women and minorities were not (and have not been) well prepared, qualified and available but have been blatantly ignored or discriminated against.

In view of the above, some women and minorities resisted subordination by using the in-house grievance procedures open to college/university personnel in order to obtain a workable solution to unfair employment practices and/or delayed promotions. A workable solution to unfair and discriminatory practices that impeded the educational and employment progress of minorities and women required a combination of all the efforts mentioned above, a continued search for ways to strengthen them and stronger commitment to the principles of equal opportunity from those in decision-making positions. The USCCR (1981 : 49) claims that **“Good-faith efforts and Affirmative Action plans that lack the support of minorities, women and White male employees cannot take root”**.

In summary (Refer to Appendix 4), the development of Affirmative Action in the USA in the 1970s and 1980s was based on the progress during the Johnson administration, influenced markedly by the 1964 Civil Rights Act, the two Executive Orders and the guidelines formulated by the OFCCP. By this time a White backlash had already set in against the Affirmative Action measures. At the same time, Black frustration and anger, because of inadequate economic gains, had erupted into riots in some cities.

Up until the end of Nixon’s first term as President, administrative rules on

Affirmative Action, clearly stipulating preferential treatment of minorities and women in employment, were in place. Presidential support for Affirmative Action continued during the Ford and Carter administrations but slowed down for twelve years when Reagan became President in 1981. Despite the opposition to Affirmative Action by Reagan and his successor, George Bush, both opponents of Affirmative Action, the programme continued. During the Reagan/Bush period, among other things, the budgets and staffing of the compliance agencies related to the EEOC and OFCCP were cut back. More importantly, anti-Affirmative Action judges were appointed throughout the federal system, including the Supreme Court, in keeping with Reagan's and Bush's ultraconservative view (Alkalimat, 1996 : 213). In fact, in 1989, arising out of court judgements, more especially in two significant cases, the death knell for Affirmative Action was almost sounded.

Influential interest groups at the Federal level as well as state and local levels still strongly supported Affirmative Action while Civil Rights groups outside the government favoured its continuation. The federal government, however, had to keep revising its regulations on Affirmative Action as court decisions on this issue were made.

The congressional election in 1994, which resulted in Republican control of both the House and the Senate, worked as a catalyst in fuelling the Affirmative Action debate. Polls revealed that over 60 percent of White males had voted for Republican candidates. Politicians interpreted this as White male anger against federal government policies, among them being Affirmative Action. An anti-Affirmative Action movement began to emerge in California and Washington, D.C. In June 1995 California's Governor issued an Executive Order dismantling some of the Affirmative Action programmes in the state. This was followed by the University of California's Board of Regents who voted to do away with Affirmative Action hiring policies by introducing proposition 209. A year later, in November 1998, Washington State's voters also voted against Affirmative

Action with the introduction of Proposition 200.

President Clinton, on the other hand, during his initial term of office, came out strongly in support of Affirmative Action in July 1995, by announcing the administration's policy of **"Amend it don't end it"** ([www.inmotionmagazine.com/aahlst.html](http://www.inmotionmagazine.com/aahlst.html)). On being re-elected, Clinton ordered a review of the federal Affirmative Action programmes which concluded that **"most hiring and other preferences based on race or sex are justified in employment and education"** (New York Times, May 31, 1995). In an attempt to placate opponents of Affirmative Action, Clinton mentioned that Affirmative Action has not always been perfect and that it should not go on forever. He said **"it should be changed now to take care of those things that are wrong, and it should be retired when its job is done"** (New York Times, July 20, 1995). After Clinton's re-election he continued to **"follow a politically expedient policy of reducing Affirmative Action while defending it"** (Rai and Critzer, 2000 : 18).

Rai and Critzer (2000 : 18), having recently undertaken an intensive study entitled **"Affirmative Action and the University"**, are of the view that, whilst some major revisions to it are probable, Affirmative Action programmes are not likely to be abandoned altogether. They maintain that the interest groups in support of Affirmative Action are strong enough to prevent its demise and the country's mood is not entirely against it.

#### **4.2.4 The Impact of Affirmative Action on The Progress of Women and Minorities (Previously Disadvantaged) in Higher Education**

The more recent and notable nationwide research on the impact of Affirmative Action policies on the progress of women and minorities in Higher Education in the USA was undertaken by Rai and Critzer (2000 : 135-145). Their findings are as follows :

With the entry of minorities and women into Higher Education employment, initiated to a large extent by Affirmative Action policies, White male domination **“in these positions has eroded”** (Rai and Critzer, 2000 : 135). It steadily declined during the period 1979-1991 dropping to below 60 percent in all public and private institutions. Further, during the period 1983 - 1999, there was a 10 percent drop in the newly hired White male tenure-track faculty, reducing the figure to less than 50 percent. Also, White male occupancy of the highest academic ranks during the same period had dropped from over 80 percent to under 66 percent. It must be noted, however, that whilst there was a declining trend in their participation rates as reflected in their representative ratios, White males still remained overrepresented in faculty position. This obviously was the outcome of past practices and values in American society.

Statistics, up until 1991, revealed that White females benefitted the greatest from changes in employment of faculty. Whilst there was a drop in White male representation ratio, the increase in the White female ratio kept White faculty slightly more overrepresented at the beginning of the 1990s than was the case in the latter 1970s. This may not give a true reflection of the impact that Affirmative Action policies have had on faculty change in terms of race in Higher Education. The gains White women enjoyed with regard to obtaining full professor rank was even more impressive when compared to new faculty hires among them, in that, during the period 1983 -1991 White female full professors increased from 10 percent to over 24 percent in all institutions.

Such advancements among women becomes more impressive when viewed against the background of data collated by the National Centre for Educational statistics and published by the Scientific Manpower Commission (1984 : 27). Such data indicated that, in general, the appointment of women underwent relatively little change in either the higher ranks (professor and associate professor) or the lower ranks (teaching assistants in graduate departments)

during the period 1972 - 1980. This was inspite of the fact that the percentage of females obtaining PhDs in 1970 more than doubled that of 1950 (Scientific Manpower Commission, 1984 : 30). In fact, in the two lowest academic ranks, viz., lecturer and teaching assistant, women were represented in larger percentage. Hence, the propensity of many departments of institutions to hire and keep women in non-laddered, non-tenured and low status positions existed which was another form of discrimination against them. In summary, therefore, the data during the aforementioned period reveals that women professionals, as a percentage of the faculty, increased as the academic rank of the position decreased. One could possibly assume that this was due to the initial narrow perception of Affirmative Action, viz., that standards will deteriorate at institutions of Higher Education with the influx of unqualified women and minority Affirmative Action beneficiaries.

General Black progress in faculty positions was relatively miniscule. The 1991 figures reveal that they constituted 5 percent or less in all institutions and experienced only a small improvement in their representation ratios during the period 1979 - 1991 and 1983 - 1991. Fleming *et al.* (1978: 214-215) reported that by 1972 - 73 there were approximately 15 046 Black faculty in the USA out of a total of 518 849 in all post-secondary institutions of education. This total represented 2,9% of all faculty in Higher Education in 1972, a period during which Blacks constituted 11% of the overall United States workforce. According to Fleming *et al.* (1978 : 214-215), if Blacks were to reach their faculty potential based on their presence in the labour force at large, there should have been approximately 55 000 Black faculty in institutions of Higher Education during the period 1970-72. The number of Black faculty in 1972 was, however, approximately 40 000 below their faculty potential. Whilst this was the case in the 1970s Black male and female new hires in 1991 increased to 7 percent indicating approximately a 2 percent gain for both sexes which could be attributed to a large extent to the application of Affirmative Action policies.

Overall there was an increase in Black full professors from 2,2 percent in 1983 to 4,3 percent in 1991. However, three times more Black females than males attained full professor rank in 1991 compared to 1983, indicating their greater and more impressive advancement in this regard. Further, the data on new hires and full professors reveal that Blacks had caught up with the Asians (generally regarded as the most qualified group) in participation rates (Rai and Critzer, 2000 : 136). It is, therefore, evident from the above that, while the Black gains in faculty appointments was not that significant, the advancement regarding positions and promotions to the highest ranks was appreciable. Rai and Critzer (2000 : 136) describe this **“as a harbinger of an era of more black faculty in Higher Education in the future”**. The above indeed can be attributed to a considerable degree to the implementation of Affirmative Action policies.

Studies on women in administration posts prior to the 1980s revealed their low status and scarcity in Higher Education. Women averaged 15,8% of the top 52 administrative positions in each of 1 100 Institutions of Higher Education and, from a sample of 454 American colleges and universities, approximately 33 percent had no female department chairperson.

According to Finkelstein (1982 : 8) a survey conducted by the American Council on Education (ACE) in 1972 - 3 revealed that females were 10% less likely than their male counterparts to be appointed as department chairperson at universities and approximately 50% less likely to be awarded deanships or other major positions similar to that occupied by their male colleagues. Females were also found to be less likely to serve on university committees than their male colleagues. However, those who did serve were not in leadership positions and this neutralized their role in university governance. Only a handful of women served as chief administrators or college presidents in American colleges and universities. In fact, during the period 1975-80, there was a mere 2,1 percentage point increase in Higher Education institutions headed by women



(Scientific Manpower Commission, 1984 : 32).

This previous predominance of White males in administrative posts decreased at a more rapid rate than was the case with faculty posts. Beginning with the majority control (nearly seventy five percent in 1979) of administration positions, as mentioned above, they decreased to just over fifty percent of the total number of positions in 1991. This decrease was greater at public institutions than private ones, indicating that public institutions were more committed to implementing Affirmative Action than the private institutions. White men, still, however, remained overrepresented. What was significant though was that their representation rate did decline.

As with faculty appointments the greatest beneficiaries of the decrease of White men in administrative positions were White women. It is, therefore, apparent that the **“cycles of discrimination that White women encounter differ from those minorities encounter”** (USCCR, 1981 :11-12). During the period 1979 -1991 the percentage occupancy of women in such jobs increased from 25 percent to over 33⅓ percent. Black women also made substantial gains as a result of the reduction in the appointment of male administrators. In 1979 Black women occupied a negligible proportion of Higher Education administrative positions with a representation ratio of a mere 0,02 percent. By 1991 their participation rate rose to over 4,0 percent and their representation ratio increased to over 0,7 percent.

Black male administrators, on the other hand, remained at the same participation rate in 1991 as they were in 1979. They did, however, retain a respectable ratio of about 0,7 percent in all Higher Education institutions in 1991. As a result of the increase in the number of Black women administrators, **“overall black progress in the 1980s was remarkable”** (Rai and Critzer, 2000: 138). The total percentage of Black academics in administrative roles doubled from 4,3% to 8,7% and their representative ratio also increased by almost the

same margin, from 0,37% to 0,74%.

Data from the mid-1990s, according to Rai and Critzer (2000 : 139), was reflective of the mood of American public on the issue of Affirmative Action. Although White male control over faculty and administrative positions further decreased during this period, the gains by minorities and women in the respective ranks also slowed down. Nevertheless, they remained the dominant group in both areas. This was probably due in part to the practices of the past and, more importantly, to public opposition to Affirmative Action during this period. White women's progress continued in administrative positions but decelerated in faculty positions, especially full professorships. Black males and females, on the other hand, lost some ground in the top faculty ranks. Although to a small degree, Black women rather than Black men, continued to increase their share of tenure-track positions.

In summary, therefore, White males still dominate faculty and administrative roles in institutions of Higher Education. However **“their grip over these two top employment categories has certainly loosened - a trend .... that is likely to continue”** (Rai and Critzer, 2000 : 144). Women in general and White women in particular, made greater progress than minority males. The White women, however, were noticeably more successful at obtaining faculty and administrative posts. When considering women from the four minority groups the record of posts obtained by Blacks was the most impressive. When one considers combined male/female data for minorities Blacks are placed at the top of the hierarchy in terms of degree of success for faculty employment, with Native-Americans at the bottom and Asians and Hispanics midway. The progress of women and minorities in Higher Education employment **“though impressive for some categories, are still rather modest”** (Rai and Critzer, 2000 : 144). They assert that the increase in Higher Education faculty employment of women and minorities has been in part due to the enforcement of Affirmative Action.

#### **4.2.5 Reasons for the Differences in Higher Education Employment between the Previously Disadvantaged and Advantaged in the USA**

A review of the aforementioned statistics in Higher Education suggests that Affirmative Action has not worked rapidly enough to increase substantially the number of women and minorities in faculty and administrative positions at institutions of Higher Education. Studies show that minorities have made greater gains in occupations not usually associated with advantaged status, viz., law enforcement, fire fighting and skilled construction work.

The differential status of women and minorities in faculty and in administrative positions is often referred to as underutilization. Underutilization also takes into account the number of PhD degrees received by women and minorities in proportion to the representation of these two groups in the total population, their area of specialization for the PhD and the length of time they have been in a career path.

Explanations for the differential status or underutilization may differ on some points for women and minorities while explanations, of course are similar for others. Some explanations presented by researchers and policymakers, women and minorities and White males in the USA, according to Benokraitis and Feagin (1978 : 135-154) are :

- Discrimination, which refers to the actions, methods or means by which departments or universities prevent certain individuals or groups from advancing, based on criteria unrelated to ability, qualifications and merit. Discrimination can stem from any one or a combination of the explanations listed below :
  - ❑ Stereotyping, which refers to labelling an individual with criteria commonly associated with the group to which he or she belongs.

- ❑ Hiring practices which refer to the means and methods that a department or Higher Education Institution uses to obtain its employees.
- ❑ Rank, promotion and tenure policies and practices refer to the procedures by which a department, division or a Higher Education institution determines who advances and according to what criteria. It involves the way minorities, women and White male employees are dealt with after they are hired.
- ❑ Specialization, which refers to the discipline(s) in which an employee received his or her degrees, especially the terminal degrees and to the area of research.
- ❑ Marital status.
- ❑ Productivity, which refers to the professional output of faculty as measured by traditional indices in Higher Education such as publication rates, quality of research and teaching performance as judged by colleagues and students.
- ❑ Institutional prestige, which refers to the perceived quality, standing or rank that a college or university has among all post secondary institutions.
- ❑ Sponsorship, which refers to the formal and informal communications, networks and support mechanisms that a university, department or administrator provides to advance a faculty's career.
- ❑ Mobility, which refers to movement into positions in Higher Education employment through relocation or through professional advancement.

The most frequently cited explanation for underutilization of women and minorities in Higher Education is direct or indirect, overt or covert discrimination. Although the existence of discrimination is more easily recognized than proven,

the fact that discrimination does exist in Higher Education against women and minorities in the USA is hardly a topic of dispute. Indeed the proponents and most of the critics of anti-discriminatory employment policies and procedures in Higher Education agree that discrimination (or at least inequities) still exist.

Views on discrimination and its causes differ but it is generally acknowledged that discrimination is more than isolated actions and individual expressions of bias stemming from sporadic feelings of racial, ethnic or gender superiority. Discrimination is a process that is self-regenerating and capable of converting seemingly neutral acts into a denial of equal opportunity. Policymakers and others concerned with dismantling the process of discrimination see it as having many forms which can be conveniently classified into three broad categories as outlined by the US Commission on Civil Rights (1981 : 8-11) :

- Individual discrimination, which is often hidden and sometimes unintentional. This kind of discrimination surfaces in the actions taken by persons who may not believe themselves prejudiced or biased but whose decisions continue to be guided by deeply ingrained discriminatory practices. For example, Personnel Officers whose beliefs about women and minorities justify hiring them for low level and low paying jobs regardless of qualifications and hiring officials who rely on word-of-mouth recruiting among their friends and colleagues so that only their friends and protégés learn of openings. Another effect is that many applicants are black-balled or eliminated through undocumented or unsubstantiated claims.
- Organizational discrimination, which occurs through practices that are reinforced by well-established rules and policies of an organization. For example, standardized scores for admissions and other rewards, though not always discriminatory in intent, have a disparaging effect on minorities. Promotion based on seniority and sponsorship rather than merit regardless of age, gender, race or length of service tend to frustrate

Affirmative Action hiring goals and penalizes the talented young.

- Structural discrimination, which is a combination and interaction of social and societal forces that have a negative or discriminatory impact on certain groups.

A more productive and pragmatic approach to eliminating discrimination starts with an informed awareness of the forms, dynamics and subtleties of the process of discrimination (USCCR, 1981 : 14). In many cases the aspects of a discriminatory process may not be easily identified and the accompanying impact may not be easily measured, but the results may be visible through the tell-tale signs of racial, ethnic and sexual imbalance. A numerical imbalance does not always imply discrimination nor does it identify or explain qualitative behaviours, motivations and patterns that cause those results (USCCR, 1981: 3). Nevertheless, it requires a closer look to determine the nature of the problem, to determine whether discrimination is occurring and to establish strategies to remedy the problem. This problem-remedy approach typifies Affirmative Action.

Where the courts applied the standards of intent and effect they used statistical data to determine whether discrimination was occurring. In relying on statistical data the courts believed, as did the Commission and enforcement agencies, that **“discrimination is manifested most frequently and tellingly by the unequal outcomes it generates”** (USCCR, 1981 : 16). The USA Supreme Court has maintained that numerical evidence showing a marked exclusion or underrepresentation of minorities in jobs, classrooms and geographic areas :

**“... raises a strong inference that ..... discrimination and not chance has produced the result because elementary principles of probabilities make it extremely unlikely that the random selection process would so consistently reduce the number.”**

(USCCR, 1981 : 16)

Fleming *et al.* (1978 : 8), however, articulate the viewpoint that **“The focus on Affirmative Action in employment in no way implies that it is or should be the only strategy used to achieve equal opportunity.”** Other strategies are also necessary to overcome the legacy of past and present discrimination. In this regard the US Commission on Civil Rights (1981 : 13) submits that **“No single factor sufficiently explains discrimination, and no single means will suffice to eliminate it”**.

#### **4.2.6 Recommendations for more Effective Implementation of Affirmative Action Policies in the USA**

To make Affirmative Action more effective in the USA, the following changes in its operating procedures were suggested by various researchers (Steele *et al.*, 1976 : 413-35; VanderWaerd, 1982 : 19-65 and Fleming *et al.*, 1978 : 129) :

- A stronger Affirmative Action programme to link greater participation of minorities and women in graduate education, professional and training programmes to ensure success of equal employment opportunity in faculty and administrative positions.
- A more flexible set of sanctions for non-compliance with Affirmative Action requirements. For greater bargaining power graduated monetary penalties for non-compliance should be used first rather than the (empty) threat of termination of contracts for non-compliance. If graduated penalties fail to bring contractors/universities into compliance then proceedings leading to cancellation, termination, suspension and debarment from receiving future contracts should be used (Fleming *et al.*, 1978: 129).
- A more reliable data-gathering and record-keeping system. The OCR relies too heavily on the contractors'/universities' self-reported

information on the numbers and ranks of minorities and women. The USDE should take responsibility for the development of comprehensive availability data for minorities and women in academic professions and to be consistent with the idea of equal employment opportunity. The USDE should not exclude graduates or employees of schools with lesser reputations in determining national availability data (Steele *et al.*, 1976: 433-435).

- An operational definition of compliance that operates beyond the utilization index to include some measure of continued pursuit of Affirmative Action. The utilization index used in the past as a measure of compliance is insensitive to discrimination in hiring after a department has reached a stated goal (or quota) of minorities. Qualified minorities and women who apply after this goal is reached may not be hired. In addition to the utilization index a proportion of offers index may be used to show a breakdown of jobs offered each year by race, sex and qualifications (Steele *et al.*, 1976 : 434).
- A comprehensive training programme consisting of general Affirmative Action enforcement procedures along with training geared to the speciality that investigators are to deal with, i.e., business, industry, elementary education, secondary education and Higher Education. Perceptions that institutions have the sophistication of the OCR, the OFCCP and their investigators would be greatly enhanced if the Higher Education enforcement agencies and agents could demonstrate keener analytical skills and greater familiarity with academe (VanderWaerd, 1982 : 59-65).
- In addition to an Affirmative Action Office, a faculty committee comprising members from each department or unit within the institution should be established at each institution to aid in the accurate collection, dissemination and use of Affirmative Action data. The committee should participate in the monitoring and compliance review process conducted



by OCR (Steele *et al.*, 1976: 434).

- More empirical research, as opposed to pure rhetoric, should serve as the basis for hiring and promotion decisions. Empirical research is especially needed to show how sex and minority group status affect the academic status and standards of a department or university (Steele *et al.*, 1976 : 434). If hiring minorities and women erode academic standards or status of a department/ university, empirical evidence is needed to explain why and to identify ways in which these occur and ways to overcome the problem.
- Most of all, a commitment to the goals of equal opportunity and Affirmative Action and unswerving leadership on the part of high level government officials is needed for success of Affirmative Action for minorities and women in Higher Education.

#### **4.2.7 Some Reactions and Resistance to Affirmative Action in Higher Education Employment in the USA**

A major cause of the lack of vast improvement in the status of women and minorities in employment in Higher Education has been the reactions and resistance to Affirmative Action as a corrective strategy in employment in American colleges and universities. The most vociferous opposition came from critics such as George Roche, President of Hillsdale College of Michigan; John Bunzel, President of California State University at San Jose; Nathan Glazer, Professor of Education and Social Structure at Harvard; Sidney Hook, Professor Emeritus of Philosophy at New York University; Paul Seabury, Professor of Political Science at the University of California, Berkeley and Thomas Sowell, Professor of Economics, University of California, Los Angeles (UCLA) (Fleming *et al.*, 1978 : 79-80).

These critics and others have managed to keep alive a heated debate that has tended to obfuscate the real intent of Affirmative Action programmes. The

issues around which most of the controversy revolves are preferential treatment, merit, reverse discrimination, loss of institutional autonomy and quotas.

Major contentions of the critics are that :

- Affirmative Action is unnecessary in Higher Education;
- federal regulations affecting hiring and promotion rival the tenure system in operation in academe and cause the institution to lose some of its autonomy in policing and licensing its ranks and in governing itself;
- hiring by quotas violates the merit system and is thus discriminatory;
- Affirmative Action secures preferential treatment for minorities and women because of past inequities, disregarding their present qualifications and availability; and,
- the main vehicle to implement Affirmative Action - goals and timetables - is a juxtaposition for a quota system.

That Affirmative Action has caused reverse discrimination against Whites has proven to be a myth. In a recent editorial Zuckerman (1995 : 112), referring to Affirmative Action in general, pointedly remarks that **“a program to end discrimination in the name of justice became a program to visit injustice on a different set of people”**. An analysis of responses as indicated below revealed otherwise.

In 1995, a study by the USA Department of Labor found that Affirmative Action programmes did not lead to widespread reverse discrimination claims made by Whites and that a high proportion of claims that were filed were found to lack merit. These findings firmly refuted the charge that Affirmative Action has helped minorities at the expense of White males. It was also found that fewer than 100 out of 3 000 discrimination cases filed involved reverse discrimination, and in only six cases were such claims substantiated. The study advanced the proposition that **“The paucity of reported cases casts doubt on the**

**dimension of the reverse discrimination problem”** (Ross, 1995 : 31).

Stacey (1995 : 3), referring to a USA Today/CNN/Gallup Poll, claimed that an overwhelming majority of White Americans denied ever having been negatively impacted by Affirmative Action. When asked about their personal experiences, the overwhelming majority of White respondents said that they had not experienced exclusion in employment or college admissions due to Affirmative Action in favour of racial minorities. Ninety eight percent of respondents categorically declared that they had never been denied admission to a school as a result of any Affirmative Action programme based on race. Ninety two percent of the respondents maintained that they had rarely been passed over for a promotion that went to a member of a racial minority. Eighty eight percent of respondents said that they never had an experience where they were not offered a job that went to a member of a racial minority.

Respondents had even fewer experiences of being negatively affected by Affirmative Action programmes that favoured women. Ninety eight percent of male respondents claimed that they had never been denied admission to a school as a result of any Affirmative Action programme based on gender. Ninety three percent of male respondents said they had never been passed over for a promotion that went to a woman. Ninety two percent of male respondents said that they never had an experience where they were not offered a job that went to a woman.

On the criticism that Affirmative Action violates the merit system, the question that emerged is how merit itself is measured. Usually when people say merit, they mean scores on a test or an examination or some other standardized assessment. However, a spokesperson for the University of California Medical School said recently : **“Medical school is not a reward for high test scores or grades. Medical schools have to decide who is going to fulfill the most pressing needs of society, and that doesn’t correlate extremely well with**

**test results and grades”** (Bernstein, 1995 : 7). Cultural sensitivity toward persons from different backgrounds, interpersonal skills, strength of character, insight, experience, maturity, judgement, the ability to communicate effectively are meritorious qualifications that relate to an individual’s performance on the job. Bernstein (1995 : 7 ) maintains that merit involves much more than the ability to perform well on paper-and-pencil tests.

With regard to the myth of meritocracy Cose (*Newsweek* : 3 April 1995) argues that critics have not explained how abolishing Affirmative Action can lead to meritocracy as long as other forms of favouritism continue to flourish. Nor have they shown any real enthusiasm for attacking preferential treatment in all its guises, as opposed to their animosity towards Affirmative Action.

**“They are not, by and large, proposing anything that, by distributing society’s benefits and opportunities more broadly, might eventually move the nation closer to the meritocracy they profess to desire. Instead of solutions, they are merely offering a scapegoat : this awful thing called affirmative action.”**

Theoretically, Affirmative Action policies were designed in the 1970s to help the system help the victims. **“In practice, however, the victims still find that they have to fight a system that does not want to help”** (Benokraitis and Feagin, 1978 : 194). Moore and Wagstaff (1974 : 75) state further that rather than look for ways to make Affirmative Action work and provide leadership needed to bring about equity for minorities, White male academicians in the USA simply looked for reasons why such a plan would not work. They conjured up imaginary problems which they said would not permit an educational institution to accommodate such a plan.

For example, arising out of their misconception or their attempts to conjure up problems, they maintained that the Affirmative Action programme required hiring

unqualified people to meet a rigid quota. Although the USA Supreme court had, on a number of occasions, approved plans ordered by the courts which set numerical quotas in general, a goal and timetable approach was followed. Where quotas were condoned by the courts this was generally because such quotas were flexible and tailored such that it did not impose an intolerable burden on non-minority applicants (Faundez, 1994 : 60). In view of the flexibility of quotas, it could be argued that such quotas were not really quotas in the true sense of the word because their flexibility reduced them to goals and timetables or targets which are indispensable to any Affirmative Action programme (Faundez, 1994 : 60).

**Most of “the arguments presented matured into hefty controversies based on emotional rather than empirical grounds. The denouncements are often indirect, .... unvarnished” (Moore and Wagstaff, 1974 : 75). They consistently “expose a general fear that hordes of (less qualified) women (and minorities) are displacing White (more qualified) men” from academic precincts (Benokraitis and Feagin, 1978 : 153). The evidence, from statistics presented in the preceding paragraphs, reveals quite the contrary.**

Witt's (1990 : 14-15) report on a study of tenured and untenured White and Black male and female faculty members and gauged their attitudes to Affirmative Action in a number of ways. He found consistently that those who benefitted most (Black females) were positive in their attitude and those who had succeeded without it (White males) were most negative. Another study by Sisneros (1984) found that departmental chairpersons and programme directors who were not members of minority groups often felt that Affirmative Action resulted in excessive preferential treatment of minorities.

The Carnegie Foundation for the Advancement of Teaching surveyed 5 000 faculty members from 310 institutions. Approximately 75 percent of them

supported the continued commitment to increasing the number of women and minorities on the faculty and nearly 60 percent were satisfied with the results of Affirmative Action. Many respondents had other reservations of a particular type. Forty one percent of all those surveyed, including 51% of the males, felt that Affirmative Action was unfair to White males. Eighty eight percent opposed the relaxation of normal academic requirements in the appointment of minorities or women.

In addition to reactions from White males, Blacks and other minorities have reacted to both the implementation efforts and the success of Affirmative Action as well as the resistance demonstrated by White male academicians. The survey found some merit in Affirmative Action as a strategy, even though the gains have not been significant. If nothing else, Revised Order No. 4 **“shook the academic community from its posture of indifference”** (Moore and Wagstaff, 1974 : 74).

#### 4.2.7.1 The Academic Community Response to Affirmative Action

The controversy over Affirmative Action in Higher Education has produced acrimonious and often rhetorical debate within the academic community in the USA. Flemming *et al.* (1978 : 44) make the terse but telling comment that while the academic community was a leader during the 1960s in advocating the elimination of discrimination, outside the academic marketplace **“it has failed badly in setting its own house in order”**. Hence, the controversy over hiring the disadvantaged minorities and women continues.

In addition to the debate on quotas, lowering of academic standards, racist heritage and the meritocratic myth, fundamental issues are being raised concerning the purpose of the institutions of Higher Education, the relationship between meritocratic and egalitarian values and government

relations regarding Higher Education. The responses of the academic community to these issues reveal deep-seated differences in the meaning, purpose and desirability of Affirmative Action.

Considerable controversy revolves around whether Affirmative Action in Higher Education is necessary, legitimate and meets the high standards of academic excellence expected of institutions of Higher Education. Much of the debate focuses on the government's intervention to determine the underutilization of women and minorities who were previously disadvantaged in the academic and non-academic workforce and methods of overcoming such underutilization.

According to the Higher Education Guidelines for Affirmative Action issued by the government, colleges and universities receiving federal contracts were required **“to make additional efforts to recruit, employ and promote qualified members of groups formerly excluded, even if that exclusion could not be traced to particular discriminatory actions on the part of the employer”** (USA Department of Health, Education and Welfare, 1972 : 3). Institutions of Higher Education were also required to determine whether women and minorities were underutilized in their employee work force. Underutilization was defined in the regulations as **“having fewer women or minorities in a particular job than would reasonably be expected by their availability”** (USA Department of Health, Education and Welfare, 1972: 3). If that were the case they were required to develop as part of their Affirmative Action programme specific goals and timetables designed to overcome that underutilization.

It is evident from the furore within the academic community over Affirmative Action that the issue that was most in need of clarification was the meaning and intent of goals and timetables and whether it was

insinuated that women and minorities be hired by colleges and universities regardless of their qualifications. Holmes (1974 : 2, 4), the Director of the Office of Civil Rights in the USA, responded as follows :

**“Goals are ‘good-faith’ estimates of the expected numerical results which flow from specific Affirmative Actions taken by a college or university to estimate and/or counteract factors in the university’s employment process which have contributed to the underutilization of minorities and women. They are not rigid and inflexible quotas which must be met. Nor should a university strive to achieve goals as ends in themselves. Colleges and universities are entitled to select the most qualified candidate, without regard to race, sex, or ethnicity, for any position. The college or university, not the government, is to say what constitutes qualification for any particular position.”**

The most frequent criticism of Affirmative Action regulations in Higher Education in the USA is on the imposition of racial and sexual quotas on faculty hiring. The critics assert that the government, by equating statistical underrepresentation of previously disadvantaged Blacks and women with evidence of discrimination, compels institutions of Higher Education to hire and promote unqualified persons from these groups or face the consequences of losing thousands of dollars of federal contracts (Hook, 1971(b) : 43).

They maintain further that the quota system erodes standards of academic excellence by substituting race and sex over intellectual ability and performance as the criteria for faculty hiring. Also that Affirmative Action, by aiming to produce equality of results in income, status and power for all Americans, will result in proportional group representation



replacing the traditional American value of equality of opportunity and advancement based upon individual merit (Bunzel, 1972(a) : 8; 1972(b): 30-35; 1973 : 10-14; Hook, 1971(a) : 2-3; 1972 : 16-18; 1974 : 1-2, 4-6). Bunzel (1972(a) : 8) opposes the use of any form of quota system which makes a person's race or sex the exclusive criterion for faculty hiring. According to him giving preference in faculty hiring to certain groups on racial grounds undermines the fundamental precept of individual merit and performance. It also undermines the integrity of the university to control its own tenure, hiring and promotion functions. Such acts, according to him, unfortunately merely increases the importance of race in a **"race ridden society"**.

Critics further claim that the quota system stigmatizes the disadvantaged women and minorities by making it appear that group membership rather than individual ability of persons within these groups accounts for their being hired as faculty or admitted as students. They also allude to the fact that preferential treatment contributes to racial and ethnic polarization and reinforces racial stereotypes.

Much wrath is aimed at the government's assumption that underutilization of women and minorities means discrimination and that, by comparing these group's actual number employed by the universities with the number of PhDs available, underutilization is proven. Critics claim that such an argument is naive because it ignores the important differences in quality among individuals and that the university wants to hire the best qualified rather than the qualified or qualifiable. They claim that the best qualified involves more than the possession of a PhD. Institutions look for specialities within academic fields and a particular level of scholarship, not necessarily found in a general PhD pool. They also hold the view that underutilization may not be the result of institutional discrimination but it may be caused by individual choices such as female

academics opting for home and family responsibilities rather than continuous employment.

Given the above, the proponents of Affirmative Action, on the other hand, argue that plans are necessary in academe to provide equal opportunities for the previously disadvantaged to compete fairly for faculty positions. They regarded Affirmative Action as an attempt to overcome past discrimination where White males were the preferred group in Higher Education. In this regard, Pottinger (1972(a) : 29) alludes that Affirmative Action means that **“men will simply be asked by their universities to compete fairly on the basis of merit, not on fraternity; on demonstrated capability, not assumed superiority”**.

A representative sample of the kinds of concerns raised by supporters of Affirmative Action in Higher Education is found in the American Association of University Professors' Council Commission on Discrimination Report, Affirmative Action in Higher Education (1973: 178-183). The idea of Affirmative Action the report explains :

**“... is essentially the revision of standards and practices to assure that institutions are in fact drawing from the largest market place of human resources in staffing their faculties, and a critical review of the appointment and advancement criteria to ensure that they do not inadvertently foreclose consideration of the best qualified persons by untested presuppositions which operate to exclude women and minorities.”**

Throughout the literature on Affirmative Action its defenders consistently deny that such programmes lower academic standards and compel institutions of Higher Education to hire less qualified women and

minorities, who are the previously disadvantaged when better qualified White males are available. What women and minorities are asking for, supporters insist, is that the traditional recruiting practices in faculty hiring be re-examined to broaden and to include qualified people previously underrepresented.

The traditional recruitment pattern attacked is the so called **“old boy network”** (Ezorsky, 1974 : 32-39; Coser, 1975 : 366-369). This is a pattern of recruitment whereby members of one faculty make personal inquiries and referral to their colleagues in other institutions regarding potential candidates for faculty appointment. Critics maintain that this informal referral system is rarely accessible to the previously disadvantaged women and minorities. What Affirmative Action is asking for, supporters assert, is that institutions of Higher Education open up their recruitment process to a larger pool of qualified applicants and to relate criteria for hiring, promotion and salary increases on the job itself and be able to justify their personnel decisions on the basis of individual merit and not on discriminatory practices.

In exposing the myth of reverse discrimination Affirmative Action proponents point out that, inspite of laws prohibiting sex and race bias in Higher Education, discrimination continues in faculty hiring, promotion and salary with White males being favoured. Several studies on sex discrimination in the USA (Barasch, 1973 : 333-339; Bayer and Astin, 1975 : 796-801; Harris, 1970 : 283-395; Hoffman, 1977 : 79-88; Lewis, 1975 : 238; Van Alstyne *et al.*, 1977 : 39-41) provide evidence that women occupied the lower academic ranks, part-time and non-tenured positions and were paid less than male academics of comparable rank and work.

Supporters also claim that institutions of Higher Education did not

actively recruit Black students or foster increased Black participation in graduate school, a source of future Black scholars, until societal pressures and federal funds encouraged positive action. They maintain that :

**“.... out of callousness, indifference, or incumbent self-interest they failed to provide the needed leadership in increasing employment opportunities for Blacks and in rooting out discrimination in the academic community until compelled to do so by the federal government or student body.”**

(Fleming *et al.*, 1978 : 46)

#### **4.2.8 The Need for Continuing Affirmative Action in the USA**

As indicated earlier, efforts to increase the participation of underrepresented groups in Higher Education and to diversify college and university student bodies and faculties have been under way for more than 25 years in the USA. About two decades ago the Carnegie Commission on Higher Education made the following statement, which shows how overly optimistic educators were about the possibility of rapid change in Higher Education :

**“We hope that race and other minority status will be much less of a distinguishing feature of American society in the future as we overcome the consequence of past discrimination in education and elsewhere. Race or other minority status would thus become less germane to achieving diversity in student bodies and to ensuring prospective service to the public ..... Significant progress has already been made within Higher Education, but there is still a**

**substantial way to go.”**

(Carnegie Commission on Higher Education: ([www.ace-webtest.nche.edu/bookstore/descriptions/making\\_the\\_case/critics/counter.html](http://www.ace-webtest.nche.edu/bookstore/descriptions/making_the_case/critics/counter.html)))

An analysis of enrollment, degree awards and employment trends revealed by data drawn from American Council on Education's (ACE) "Status Report on Minorities in Higher Education" during 1997-98 reveals otherwise : firstly, much has been achieved and, secondly, persons of colour are far from reaching parity in Higher Education. In fact, the report reveals that it is only during the past ten years that steady progress has been made among all four ethnic minority groups. There is also the fear that **“these (much needed) gains are evaporating in states where Affirmative Action has been rolled back”**.

Whilst the trends in Higher Education in the USA reveal some progress the need for Affirmative Action still remains because of the lack of parity and the resistance to change by many quarters as indicated by the following cases/statistics/examples :

- A study of faculty hiring practices found that once a minority hiring goal was met, departments stopped seeking minority applicants and, indeed, removed their advertisements from minority publications, regardless of the number of vacancies that arose subsequently.
- It was found that an increasing number of Blacks were awarded PhDs in the natural sciences in 1992 and 1993. However, these graduates were not recruited to the faculties of America's highest-ranking universities.
- Further in 1996, 14 percent of all doctorates awarded to USA citizens went to minorities compared with 9 percent in 1985. Although this growth marks clear progress persons of colour still remain underrepresented at the doctoral level.
- Minorities, particularly minority females, are typically clustered at the lower levels of the professorate as assistant professors and non-tenure-track

lecturers. The possibility of their developing a critical mass and thereby becoming a permanent presence can be ensured only with the continuation of some form of Affirmative Action.

(American Council on Education :[ace-webtest.nche.edu/bookstore/descriptions/making\\_the\\_case/works/research.html](http://ace-webtest.nche.edu/bookstore/descriptions/making_the_case/works/research.html))

The examples above illustrate how institutions slip into old practices even when those practices are strictly forbidden by law, hence, the need for Affirmative Action. In spite of the need for Affirmative Action, employers often tend to favour Whites, particularly White males, over equally qualified African-American or Hispanic applicants. Clayton and Crosby (1990 : 61) draw attention to the fact that :

**“Much White male resistance to affirmative action may spring from an unwillingness on the part of any given White man to recognize the true extent to which his gender and his ethnicity, and not simply his own individual merit, have won him rungs on the ladder of success.”**

Despite the continued underrepresentation of minorities and women in many sectors, Affirmative Action has had dramatic and measurable results in moving minorities and women into meaningful employment and participation in Higher Education as students, faculty and administrators. Individual Affirmative Action and diversity programmes have been implemented at myriad campuses and have proven to be successful. This apothegm is extended by that of Rai and Critzer (2000 : 145) who recently conducted an intensive study on Affirmative Action and the University, dealing specifically with race, ethnicity and gender in Higher Education employment. They claim that, despite the criticisms levelled against the practices of Affirmative Action, its underlying concepts of equality in employment for minorities and women continue to be supported. **“That would assure the continuation of Affirmative Action, albeit in a substantially**

**altered form or even under a different name”** (Rai and Critzer, 2000 : 145).

#### **4.2.9 Summation**

Prior to the 1960s, the history of the USA produced a climate in which equal opportunities for women and minorities were severely limited. Affirmative Action (AA) policies, which were initially introduced in the USA in 1961 and, more heartily, endorsed during the 1970s, contributed to the improvement of the plight of the previously disadvantaged.

While such policies were viewed by many Americans in the early 70s as the provision of expanding opportunities for the previously disadvantaged, others who tended to obfuscate the real intent of AA interpreted it as achieving mandatory results through quotas, a concept that was frowned upon in many quarters. In the USA projected goals and timetables replaced rigid quotas as a means of evaluating the progress of AA programmes. Unfortunately, the constant debate over quotas and whether they were flexible or not, by opponents of AA, has obscured the many positive features of AA programmes in the USA.

Several strategies were adopted and laws passed in Higher Education (HE) to address the question of underrepresentation of previously disadvantaged faculty. Overall the pre-1964 era produced only modest judicial and other victories in eradicating both minority and sex inequality in education, industry and government.

The development of AA in the 1970s was based on its progress during the administration of President Johnson. This was influenced largely by the introduction of a major legislative initiative, the 1964 Civil Rights Act and Executive Orders 11 246 and 11 375 which set up the machinery and the guidelines for its implementation.

Affirmative Action received Presidential support from the Johnson era through to that of Nixon, Ford and Carter. The high tide of Affirmative Action was in the 1970s. Unfortunately, it slowed down for twelve years during the reign of Reagan and Bush, both not strong supporters of Affirmative Action. The programmes, however, still continued although various constraints were placed on its progress during their reign.

By the end of the 1960s an entire network of Federal, state, regional and local government agencies was established as compliance agencies to enforce Affirmative Action compliance in all areas including Higher Education. Of particular importance were the Higher Education division of the Office of Civil Rights, the EEOC and the OFCCP. Other efforts were made by individuals, affected groups, Higher Education institutions and Non-Governmental Organizations (NGOs). Affirmative Action was appearing everywhere as a pervasive policy of the government.

The regulations of Executive Order 11 246 made it compulsory that each contractor / Higher Education institution to prepare and submit Affirmative Action Plans if they received more than \$50 000 in Federal contracts and employed 50 or more persons. Such plans had to incorporate a mission statement, ensure commitment to Affirmative Action from the top management, make provision for the appointment of an Affirmative Action Officer, Affirmative Action Committees and the dissemination of the Affirmative Action Plan.

The main objective of the plans was to ensure fairness by regulatory personnel practices (hiring, promotion and retaining staff) conducted by the respective institutions. This also included its management structure related to the enforcing of Affirmative Action and the procedures used to implement Affirmative Action. It also required assurance that reasonable goals and timetables were established to evaluate the success or failure of good faith efforts.



The progress of women and minorities in Higher Education employment, though impressive for some categories, are still rather modest. Although White males still dominate faculty and administrative roles, Affirmative Action has caused them to loosen their grip over such posts : a trend, that the literature reveals, is likely to continue in the future. The research categorically declares that the progress, no matter how varied and how modest, must be attributed to the implementation of Affirmative Action policies.

The alleged causes for the modest and varied progress in Affirmative Action implementation was attributed to the White male backlash in general, the political pressure exerted by them and from university officials in particular. Other causes were the inefficiencies of federal agencies in regulating Affirmative Action. This was attributed to poorly trained staff, inadequate funding, poor compliance review processes and the reluctance to cut off funds for non-compliance. Other factors include overt, covert, organizational, individual and structural discrimination in the hiring, promotion and tenure policies.

The main criticism of Affirmative Action among those Americans who oppose it revolves around the issues of preferential treatment, merit, reverse discrimination, loss of institutional autonomy and quotas. Literature of the late 1990s refute most of the arguments and assert that much of the controversies or criticisms are based on emotional rather than empirical grounds. Such denouncements are often regarded as unvarnished or conjured up.

The fear among the previously disadvantaged in particular is that in the absence of Affirmative Action legislation, institutions can slip back into old practices, much to their detriment. Although much has been achieved, they call for Affirmative Action policies to be retained in the USA, more so, because there is still a great deal of disparity in faculty and educational administrative employment. Another reason for the call for retention is that the gains from Affirmative Action are evaporating in states where it has been rolled back.

In spite of anti-Affirmative Action movements of 1994 in the States of California and Washington D.C., the Clinton regime, during that period, sought to amend Affirmative Action rather than end it. The fact that the underlying concepts of equality in employment for the previously disadvantaged continue to be supported in the USA assures the continuation of Affirmative Action in the USA (Rai and Critzer, 2000 : 18). Whilst some major revisions to it are probable, the programme is unlikely to be abandoned altogether. Rai and Critzer (2000 : 18) extend this perception in the belief that the support for Affirmative Action in the USA is strong enough to prevent its demise and that the country's mood is not entirely against it.

#### **4.2.10 Implications of Affirmative Action in the USA for South Africa**

The implications or lessons to be learnt from the international experience will be approached in two ways : firstly, its relevance for South Africa in general and secondly, its relevance to Higher Education in particular, wherever the literature is available.

Although the term Affirmative Action originated in the USA, its relevance to the South African situation, in general, is limited compared to that of other Asian and African countries. **“Far from being a tool of transformation, Affirmative Action in the USA was essentially designed to integrate minority groups, and later women into the mainstream of American life”** (Jauch, 1998 : 2). Maphai (1993 : 24) corroborates this viewpoint as follows :

**“It was essentially a conservative notion designed and driven by the ruling class for Blacks who largely shared the same set of socio-economic values with Whites. It was never intended to be a tool of egalitarianism, let alone transformation.”**

Weiner (1993 : 24), who is regarded as a strong proponent of Affirmative Action,

submits that Affirmative Action in the USA failed to consider the broader issues such as poverty. It also failed to criticize the prevailing social and economic system which disadvantaged the poor. The Black middle class appeared to be the main beneficiaries, as the policy was designed to assist those in the minority groups who satisfied the minimal job qualifications (Days, 1993 : 63). Kennedy (1993 : 75) concurs with this and expresses the view that while Affirmative Action contributed to increase in the size of the middle class it was meaningless to the poorest sections of Black Americans.

Whilst on the one hand Affirmative Action was responsible for narrowing the gap between groups in the American society, it also contributed towards increasing the gap within groups. Greater equality was achieved mainly within the privileged classes only in that within this class the racial mix had improved. This meant that Affirmative Action shifted the focus from racial inequality to class inequalities. Thus, it appeared to be concerned merely with making institutions more representative in their ethnic composition but failed to challenge institutional cultures. It also failed to a certain degree as an instrument of redistribution, something that is required in South Africa, given the injustices of the colonial and apartheid regimes. Further, in South Africa we need to target the deep rooted socio-economic disadvantages of the majority which was not attended to adequately in the USA. Given the above, Affirmative Action, the American way, would not totally meet South Africa's expectations in general.

However, when it comes to the specific situation of Higher Education, the American experience would definitely provide many lessons for South Africa arising from its long involvement with Affirmative Action in this field. Also because, given the aforementioned criticism, most of the academics at institutions of Higher Education who are already classified as the middle class, would benefit.

The following are lessons for South Africa regarding the introduction of

Affirmative Action specifically in institutions of Higher Education :

- Affirmative Action is not an end in itself. It is a means to an end. It should, therefore, be a temporary measure that should be terminated when its goals are achieved.
- A high degree of commitment to principles of equal opportunity and Affirmative Action by upper management of the Higher Education institution is necessary if the programme is to be successful.
- Personnel at institutions of Higher Education must be made aware of the dynamics and subtleties of discrimination that prevail often in a covert manner and be trained to guard against them.
- Discrimination manifests itself most tellingly in the unequal outcome it generates. Hence, cognisance must be taken of such outcome.
- Affirmative Action must never be regarded as a means of achieving mandatory results through set quotas . This can court disaster or lead to major backlashes.
- Flexible goals and timetables need to be used in order to set targets and in order to have some measure to assess its progress against.
- Institutions should be required to provide explanations if no progress towards achieving a certain goal is revealed.
- Legislation is necessary if Affirmative Action programmes are to attain success. Good-faith or voluntary efforts have often been found to be unreliable or impeded by covert discrimination.
- The state must have an operational definition of Affirmative Action Compliance.
- State-designated Affirmative Action compliance agencies must be established. They should monitor progress through contract compliance reviews. The agencies must :
  - cover compliance at local, regional and state level;
  - be adequately staffed;

- ❑ monitor appointments, referrals, placements, transfers, promotion and termination of faculty; and,
  - ❑ have a reliable recording and data gathering system. This should not be left totally to the institutions. The American experience has shown that this could lead to abuse.
- 
- The personnel at contract compliance agencies must be well trained and *au fait* with the routine of Higher Education to avoid botched investigations and criticisms that emanate from them.
  - The compliance agencies must be cautious about granting concessions to specific institutions. This often sets precedence, weakens strategies of compliance agencies and damages their image.
  - Institutions must design and implement Affirmative Action plans. In this regard comprehensive nationwide guidelines and technical assistance should be provided for all Higher Education institutions. This will ensure speedy compliance and uniformity in compliance.
  - Affirmative Action plans that are drawn without the consensus and/or support of both the previously disadvantaged and the previously advantaged take longer to be established and to meet with success.
  - A set of sanctions for non-compliance with Affirmative Action procedures should be established by the state. Graduated monetary or other penalties for non-compliance would prove effective rather than vain threats which are not carried out.

We now turn our attention to Australia as another study of Affirmative Action in a developed country. The Commonwealth Office for the Status of Women (OSW) in Australia believes that Affirmative Action, according to the Australian Act, not only differs from that of the USA definition, but is also often confused with it. It would, therefore, be interesting to study Affirmative Action in Australia to assess, among other things, whether it corroborates this viewpoint. The review of Affirmative Action in Australia follows.

## **4.3 AFFIRMATIVE ACTION IN AUSTRALIA**

### **4.3.1 Introduction**

Australia has a range of legislative stipulations which prohibit various forms of discrimination based predominantly on the protection of the rights of minority groups and equality of opportunity. The legislation was the result of pressure from women's liberation movements of the 1960s and 70s that forced the government to outlaw blatant discrimination and the ever consistent reporting on such discrimination by other organizations.

In an attempt to bring about anti-discrimination at the local level, such as universities and other local workplaces, at state level and countrywide, a host of laws and policies were introduced. The more important ones are listed below. Almost all of them were fundamentally aligned to The United Nations Universal Declaration of Human Rights of 1948, in which Australia actively participated. Only those relevant to the topic under question will be discussed.

### **4.3.2 Anti-discrimination Legislation in Australia**

Anti-discrimination legislation in Australia is based on the principle of providing legal rights and remedies for a specified group by making certain actions and behaviour unlawful. It is based on the explicit recognition that there are individual and group actions which continue previous patterns of discrimination and which need to be changed for the benefit of the individuals involved and society as a whole.

Not all forms of discrimination are regarded as unlawful and there is no legal principle in Australia which provides a general right of freedom from discrimination or for access to equality. Anti-discrimination legislation provides

an enforceable framework for substantial and real equality.

All that Australian anti-discrimination legislation requires is an individual or group of individuals, who are of the opinion that they have been subjected to unlawful discrimination, to lodge a written complaint. The complainant has to set out the facts which allegedly constitute unlawful discrimination, for example, a denial of a promotion or refusal to recruit a woman for a particular job.

The complaint is confidentially investigated and conciliated by the complaint-handling agency. Sometimes, the agency calls a compulsory conference to assist in the conciliation process. In a few cases where conciliation is not successful, the complaint is adjudicated through a public inquiry by a quasi-judicial body.

#### **4.3.2.1 Commonwealth and State Anti-discrimination Legislation**

There are four Commonwealth Acts and approximately five State Acts which fall under the heading of anti-discrimination legislation. The Commonwealth Acts apply throughout Australia and are as follows :

- The Racial Discrimination Act, 1975. This Act makes it unlawful to discriminate against a person on the grounds of a person's race, colour, national or ethnic origin.
- The Sex Discrimination Act, 1984. This Act covers discrimination on the grounds of gender, marital status, pregnancy and also covers sexual harassment. It is designed to promote equality between the sexes, eliminate discrimination in specific areas such as employment and eliminate sexual harassment in the work place which includes educational institutions as well. Additionally, it has been designed to fulfill obligations under the United Nations Convention on the Elimination of All Forms of Discrimination

Against Women which Australia ratified in 1983.

- The Affirmative Action (Equal Employment Opportunity for Women) Act, 1986. Briefly, this Act requires employers to promote equal opportunity for women in employment by means of Affirmative Action programmes. (This will be discussed in greater detail later in the Chapter).
- The Disability Discrimination Act, 1992.

[webdev.uow.edu.au/admin/eeo/commitmenttoeeoaa.htm](http://webdev.uow.edu.au/admin/eeo/commitmenttoeeoaa.htm)

Some of the State Legislations include :

- The Prohibition of Discrimination Act, 1975 (South Australia).
- Anti-Discrimination Act, 1977 (New South Wales).
- The Western Australian Equal Opportunity Act, 1984. (Western Australia).
- The South Australian Equal Opportunity Act, 1984 (South Australia).
- The Racial Vilification Act, 1989 (New South Wales).

Further, a series of other equal opportunity and anti-discrimination policies were also introduced by several universities for their own purpose such as Anti-Racism policy, Equal Opportunity Policy, Equal Opportunity Discrimination and Harassment Procedures, Women on Committees Policy, Sexual Harassment Policy and Grievance Procedure.

(University of South Australia, 2000 : 10)



### **4.3.3 Background to the Affirmative Action (Equal Employment Opportunity for Women) Act of 1986**

Prior to the introduction of the Affirmative Action (Equal Employment Opportunity for Women) Act, the Commonwealth Tertiary Education Commission of Australia reported, in 1983, its concern that women represented only 17 per cent of full-time teaching and research staff at universities and, of these, 43 per cent were below lecturer level. In colleges of advanced education the corresponding figures were 26 per cent and 46 per cent respectively. There were no female Vice-chancellors or college principals. This is in contrast to the position in 1997, after the implementation of Affirmative Action, when one sixth of Vice-chancellors were women. The following year the Commonwealth Tertiary Education Committee introduced a list of measures to improve opportunities for appointment and promotion for female academics. Among these were :

- more flexible staffing arrangements, especially to assist those with family responsibilities;
- the creation of a substantial number of academic positions, resulting from a desired expansion of the system; and,
- the appointment of equal opportunity officers.

(Anderson *et al.*, 1997 : 5)

Owing to the slow progress in creating Equal Employment Opportunities for Women, in 1986 the Commonwealth Tertiary Education Commission revisited the problem of underrepresentation of women in academe. Through their constant lobbying, as well as that of other organizations, the Affirmative Action (Equal Employment Opportunity for Women) Act was passed in 1986.

#### 4.3.4 The Definition of Affirmative Action in the Australian Context

Under Australian legislation, Equal Employment Opportunity and Affirmative Action mean the same thing (Burton, 1997 : 10). The Affirmative Action Agency (a government agency set up by the Affirmative Action Act of 1986) defines Affirmative Action to include the following :

- Affirmative Action is the term including a range of measures for eliminating direct and indirect discrimination and for implementing positive steps to overcome the current and historical causes of lack of equal employment opportunity for women.
- Affirmative Action for women is compatible with appointment and promotion on the basis of merit.
- An Affirmative Action programme is a strategic programme designed to achieve equal employment opportunity for women.
- Affirmative Action is not about quotas. It is not about discrimination to favour women.
- Affirmative Action is about merit.

([www.eco.gov.au/students/what is/index.html](http://www.eco.gov.au/students/what%20is/index.html))

In summary, therefore, Affirmative Action in the Australian context **“is about eliminating direct and indirect discrimination and taking positive steps to overcome the current and historical causes of lack of equal opportunity for women”** (Royal Melbourne Institute of Technology (RMIT), 1998 : 2).

Evident in the definition is the fact that Affirmative Action in Australia focused mainly on women and so differed from other countries such as the USA, Namibia and Canada among others. The Act is specifically called **The Affirmative Action (Equal Employment Opportunity for Women) Act** indicating clearly its focus. Also, many other reports categorically state that the concept Affirmative Action

in Australia differs from that of the USA as it is “**not about filling quotas**” ([www.usyd.edu.au/wisenet/ISSUE4I/myth.htm](http://www.usyd.edu.au/wisenet/ISSUE4I/myth.htm)). In fact, the Commonwealth Office for the Status of Women (OSW) believes that the term has led to confusion between the Australian Act, with its merit-based approach and the United States legislation apparently promulgated in terms of non-merit-based quotas and preferential treatment in employment and education for minority groups (OSW, 1998 : 5).

#### **4.3.5 The Affirmative Action (Equal Employment Opportunity for Women) Act, 1986 (The AA/EEO Act)**

The AA/EEO Act requires private sector companies, community organizations, non-government schools, unions, group training companies and Higher Education institutions with 100 or more people to establish Affirmative Action programmes. Such programmes are meant to be designed to remove discriminatory employment barriers and to take action to promote equal opportunity for women in the workplace. (Office of Legislative Drafting, Attorney-General’s Department, 1986 : 1-29)

Given the aforementioned it is evident that the legislation was enacted with the express aim of achieving positive outcomes for women and improving the position of women in the workforce. This required, in some cases, the creation of patterns of employment which suited their needs, especially with regard to family responsibility, rather than simply equality with the working condition of male employees.

In support of the introduction of the Affirmative Action legislation the Prime Minister, in 1986, lent his authority to the debate, when he said :

**“The Government is determined that women should be able to enter and compete in the labour market on equal footing with men and**

**that outdated prejudices or conventions should not prevent them from fully participating. Neither individual employers nor the nation can afford to waste the valuable contributions which women can, and do, make to our economy.”**

(Australian Parliamentary Debates, 1986 : 862)

Also supporting the need for legislation regarding Affirmative Action, the Karpin Taskforce (Karpin, 1995 : 244) concluded that :

**“If evolutionary change is relied on as a sole lever, it will take too long to improve the lot of Australian women in management, and to the same degree inhibit the improvement of management skills and enterprise performance.”**

The Independent Educational Union of Australia (IEU) believes that the Affirmative Action Act, as well as complementary EEO and Anti-Discrimination legislation, have ethical, moral and symbolic significance for the Australian and international communities. According to them, it represents the nation’s stated community standard as to what Australia’s legislators believe should represent fair and socially just employment practices and outcomes for all citizens regardless of gender, race, ethnicity, religion, disability, etc. They also believe that if the government is strongly committed to increased competitiveness, principles of choice, improved productivity, as well as making a strong and unambivalent statement about what is fair and just for women in the workforce, then the Affirmative Action Act must be seen as part of achieving this. It should be seen as a tool to make the Australian economy more productive and efficient and its society more equitable and just (IEU, 1992 : 1).

The Commonwealth Office of the Status of Women (OSW) 1998, part of the Department of the Prime Minister and Cabinet, which advises the Prime Minister

and the Minister on issues affecting Australian women states that :

**“Equal opportunity legislation provides an important tool to address market distortions, including attitudinal and institutional barriers which prevent the full recognition and utilisation of women in the workforce.”**

(OSW, 1998 : 1)

The University of South Australia (2000 : 9), categorizes the benefits of implementing an equal opportunity for women in the workplace programme into those benefitting women, which include those benefitting the organization and work area and those benefitting the community. The benefits for women are that it makes the work environment more female-friendly; it values the work that women do; it provides women with support and encouragement; it expands the knowledge and experience of women and it gives women skills to enable them to move upwards. It also provides women with strategies to enable them to use the university culture and environment to their advantage and, in this way, prepares women for management/leadership positions.

The benefits of implementing equal opportunity for women in the workplace for the organization and work area are that it creates a diverse workforce, a wider pool of talent and expertise, a workplace that is secure and has zero-tolerance of harassment and discrimination, improved management and an impetus for change in management practice which benefits all workers. It also enables greater transparency of personnel policies and practices, cost savings made through having an effective equal employment opportunity programme, an increase in the capacity to serve a diverse client base, improved morale, team work and a sense of fair play in organizations.

To the community it would mean that the ability and talent of more than 50 per

cent of the population are recognized and this avoids the incalculable cost of a situation where the community is denied access to these talents and skills. It results also in a diverse workforce and better customer service.

#### **4.3.6 The Affirmative Action Agency**

The Affirmative Action Agency (The Agency) is a government appointed agency with its own Director of Affirmative Action. He/she is appointed by the Minister to whom he/she is accountable and must report. The functions of the Agency are :

- to advise and assist relevant employers in the development and implementation of Affirmative Action programmes;
- to issue guidelines to assist relevant employers to achieve the purposes of this Act;
- to monitor the lodging of reports by relevant employers as required by this Act and to review those reports and deal with them in accordance with this Act;
- to monitor and evaluate the effectiveness of Affirmative Action programmes in achieving the purposes of this Act;
- to undertake research, educational programmes and other programmes for the purpose of promoting Affirmative Action to achieve equal employment opportunity for women;
- to promote understanding and acceptance and public discussion of Affirmative Action to achieve equal employment opportunity for women;
- to review the effectiveness of this Act in achieving its purposes; and,
- to report to the Minister on such matters related to Affirmative Action in order to achieve equal employment opportunity for women as the Agency deems fit. (Office of Legislative Drafting, Attorney-General's Department, 1986 : 8A,10).

The Act requires institutions of Higher Education to submit reports to this Agency annually and that such reports are to include **“the further development and implementation of ... affirmative action programmes each year”** (RMIT, 1998 : 2). Through the Act the agency has the power to waive certain reporting requirements; grant extension of time for submitting reports; request for further information; name the relevant employer in Parliament who fails to provide the reports or further information in terms of what is required or does not comply with the requirements of the AA/EEO Act and grant awards for exceptional implementation of Affirmative Action programmes. For example, in 1996, The University of Western Australia received an Affirmative Action Agency Award for progress towards the integration of equal employment opportunity. Its strategy included the embedding of equal employment opportunity in the University’s strategic planning process (Burton, 1997 : 144).

#### **4.3.7 The (Eight Step) Affirmative Action Programme**

According to the Act, an Affirmative Action programme must consist of a strategic plan that addresses specific issues relevant to the workplace and must include the following eight steps :

- issuing by management of a policy statement notifying employees of the commencement of an Affirmative Action programme;
- conferring responsibility for the programme on a person with sufficient authority and status within the management to enable proper development and implementation of the programme;
- consulting with trade unions which have members in that workplace;
- consulting with employees, especially women;
- collecting and recording statistical and other relevant information on the programme;
- reviewing policies and practices of the employer to identify any discriminatory policy or practice or to identify any patterns of lack of

opportunity relating to women;

- setting objectives and making forward estimates; and,
- monitoring and evaluating the implementation of the programme to assess the achievement of the objectives and forward estimates (Office of Legislative Drafting, Attorney-General's Department, 1986 : 80).

#### **4.3.7.1 The Impact of the Affirmative Action Act (The Eight Step Programme) on Higher Education**

Higher Education institutions were the first employers to be covered under the Affirmative Action legislation passed by the Commonwealth Government in 1986. All institutions of Higher Education were required to implement and evaluate Affirmative Action programmes by acceding to the following requirements :

##### **4.3.7.1.1 Issuing of Policy Statement Regarding Commencement of Affirmative Action Programme**

The Act requires universities to make a policy statement which will serve to inform employees of the nature of the AAVEEO programme as well as the university's commitment to achieving its objectives. In other words, universities should make every effort to implement the AAVEEO policy and to ensure a general understanding of its rationale and the university's expectations of it. Multiple avenues are used by the universities to disseminate such information to staff, among them being inclusion of policy statements on the first page of official publications, regular articles about AAVEEO policies and activities in staff newsletters, briefing on AAVEEO issues such as induction and orientation programmes for new staff, publishing university policies and programmes on the internet, circulation of review reports and departmental talks by knowledgeable staff to committees.



Other activities undertaken to educate the university about Affirmative Action include the introduction of Women and Leadership Web sites, introduction of Recruitment and Selection Training manuals and the introduction of the Affirmative Action Liaison Officers' e-mail group. The publishing of university newspapers also constitutes a key activity which provides avenues for discussing Affirmative Action issues (RMIT, 1998: 16).

#### **4.3.7.1.2 Consulting with Trade Unions and with Employees, especially Women**

The university is required to establish meaningful and effective consultation mechanisms with the appropriate trade unions and with their workforce, particularly with women employees. This input is important for the content of the programme to properly reflect the real needs and concerns of employees, especially women employees, in the methods and mechanisms of eliminating existing disadvantage and discrimination. Further, consultation with women staff should play an important role in the universities' assessment of their progress and could possibly help them monitor women's experiences of the remaining impediments to equal opportunity.

The avenues through which consultation could take place include well-resourced EEO units, women's groups such as Women in Science, Women in Management, the Association of Women in the University (New South Wales), The Colloquium of Senior Women Executives in Australian Higher Education, The Network of Equal Opportunity Practitioners in Higher Education in Australia, University Women's Consultative Committee (University of South Australia), Affirmative Action Consultative Committees, Women and Leadership Implementation Committees and Women's Issues Networks (Royal Melbourne Institute

of Technology). Burton (1997 : 146), however, cautions that where the university equal employment opportunity committee constitutes the main consultative mechanism for female staff, formal channels have not always been established for members to report back to their constituent groups.

#### **4.3.7.1.3 Setting Objectives and Making Forward Estimates**

In compliance with the above AA/EEO plans included specific objectives and forward estimates, targets and time-frames, action plans, a body or officer responsible for implementing them and performance indicators against which progress could be measured. Short-term goals were to be set and programmes instituted to remedy whatever shortcomings and discrimination were identified. Longer-term action was to be taken to ensure that there was no structural basis for inequality.

#### **4.3.7.1.4 Conferring Responsibility for Programme on a Person with Sufficient Authority and Status**

The expectation of the AA/EEO legislation is that a senior executive will have carriage of the programme, overseeing its content and ensuring its integration into university strategic planning. Day-to-day responsibility is expected to be assigned to an EEO officer. The person appointed to perform the overseeing role was to be active in senior decision-making arenas and have the capacity to bring the Equity agenda into broader deliberations about university policy framework and implementation plans. Arising out of the above requirements, **“nearly half of Australian universities have EEO responsibilities built into their supervisor’s and manager’s position descriptions”** (Burton, 1997: 153).

This requires that the review of personnel policies and practice be built into the EEO Officer’s role. The EEO manager would, therefore, be in a

strong enough position, either in status or in actual reporting relationship, to ensure that EEO principles conform to university policy developments.

Irrespective of which position carries the overall responsibility for the programme, the commitment of the Vice-chancellor was essential for AA/EEO programmes to be pursued effectively. This was regarded as the single most helpful factor in creating an environment conducive to the effective management of a diverse workforce.

#### **4.3.7.1.5 Monitoring and Analysis of Gender Patterning**

Rigorous implementation, monitoring and evaluation processes were expected to be executed if much progress was to be made with respect to women's distribution and representation at institutions of Higher Education. For the university to be able to monitor and correct inequitable practices, it was required that data be routinely collected on some or other critical dimension of gender equity, for example, the patterning of men's and women's length of contracts, the number of years offered to men and women at the point of contract renewal, the retention rates for male and female academic staff on fixed-term contracts and the proportion of men and women who succeeded in obtaining positions. In this regard Burton (1997 : 157) categorically declares that the Equity Reviews conducted within universities, through the monitoring and analysis of gender patterning as requested by the AA/EEO policies, perform significantly important monitoring and evaluative functions.

#### **4.3.7.1.6 The Collection of Data**

The universities were also under obligation to collect and record statistical data and other relevant information related to the Affirmative Action programme. Such data may include the number of employees of either sex and the types of jobs undertaken by them or job classification of employees of either sex, etc. Such data must be analysed in order to

identify any patterns (whether ascertained statistically or otherwise) of lack of equality of opportunity in respect of women (Burton, 1997 : 9-13).

#### **4.3.7.1.7 Monitoring and Evaluation of Programme**

A further obligation of the universities, as stipulated by the Act, included the monitoring and evaluation of the implementation of the Affirmative Action programme and the assessment of the achievement of the set objectives and forward estimates. This was necessary to ascertain whether the programme was progressing or there were any shortfalls. It also provided opportunities for remediation.

#### **4.3.8 Examples of National Affirmative Action Provisions for the Advancement of Women**

##### **4.3.8.1 Register of Senior University Women**

The Australian Vice-Chancellors Committee (AVCC) has introduced a Register of Senior University Women. Established in 1995, the register is intended to improve the representation of women in policy and decision-making positions by publicising their experience and expertise within the Higher Education, government and business sectors (RMIT, 1998 : 16).

For example, the 1998 edition contains current contact information and classification, position, areas of special expertise/interest and senior appointments of over 2 500 senior university women. The register is a resource for identifying senior university women who could be called upon for appointment or nomination to senior positions and other responsibilities or for expert advice on a wide range of topics and issues.

#### **4.3.8.2 The Colloquium of Senior Women Executives in Australian Higher Education**

This was a network established in 1995 when the presidents of all Australian universities agreed to a proposal that the most senior women in Higher Education should meet nationally in order to exchange information and support. It was established with the following objectives in mind :

- to improve the representation of women in policy and decision-making positions in Higher Education;
- to provide an opportunity at the national level for networking and information exchange amongst women in Higher Education at senior levels;
- to identify and monitor the responsibilities, expertise and representation of women working at senior levels in Australian universities; and,
- to provide leadership and co-ordinated advice at the national level on significant issues as was appropriate.

(Lorenzo, 2000 : 1)

#### **4.3.8.3 Network of Equal Opportunity Practitioners in Higher Education in Australasia (EOPHEA)**

The aim of this programme is to strengthen existing equal opportunity and Affirmative Action programmes in Higher Education in Australia and New Zealand by sharing professional knowledge. In addition, the programme was concerned with the organizing of conferences, initiating and contributing to discussions of equal opportunity and Affirmative Action issues in national forums and making recommendations on policy matters

to decision-making bodies including government authorities and the Higher Education sector.

#### **4.3.8.4 The Australian Technology Network (ATN) Women's Programme**

The national ATN Women's Programme focuses on inter-institutional links and collaboration, mutually serving the interests and enhancing the entrepreneurial skills of Higher Education and other public and private corporations. The ATN Women's Programme is specifically tailored to service the interests and goals of targeted groups, namely, executive women (Women's Executive Development programme - WexDev), indigenous women (Women's Indigenous Network) and women working in non-traditional areas or professional isolation (Women in Professional Isolation).

[www.unisa.edu.au/eqp/aa/wal/index.htm](http://www.unisa.edu.au/eqp/aa/wal/index.htm)

Each of these national programmes offers a range of activities requiring differing levels of commitment. Each aspect of these flexible programmes is designed to enrich the wider university community through promoting women's voices and insights and facilitating their achievement in their personal and professional goals. Offered in a variety of modes, the programmes could adapt to meet the expressed interests and individual goals of women.

### **4.3.9 Examples of Affirmative Action Provisions for the Advancement of Women within Institutions of Higher Education**

#### **4.3.9.1 University Women's Consultative Committee (University of South Australia)**

The terms of reference of this committee are as follows :

- to provide structures for consultation between women of the University community, the Equity and Diversity Unit, the Pro-Vice-Chancellor (Equity and Development) and the Vice-Chancellor;
- to encourage the participation of all women throughout the university in the decision-making processes of the university;
- to ensure that the decision-making process takes account of issues primarily related to women;
- to contribute to the development, monitoring and evaluation of Affirmative Action planning within the University via the annual planning cycle; and,
- to examine and advise on the impact on women of internal policies, decision-making and specific initiatives.

(Lorenzo, 2000 : 2-3)

Ultimately, the University Women's Consultative Committee aims to develop an environment in which women's contribution is enhanced, recognized, valued and rewarded. Also, it seeks to promote a culture which values and rewards exemplary Affirmative Action outcomes at the local level.

#### 4.3.9.2 Affirmative Action Consultative Committee (AACC)

The terms of reference of this committee are :

- to consult with the university community on all facets of the RMIT Affirmative Action Management Plan via committee members who are representatives of their constituent bodies;
- to provide advice to the university decision-making bodies about equal employment opportunity issues via the chair and senior members of the committee with access to these decision-making bodies; and,
- to act as a reference point on the implementation of strategies outlined in the RMIT Affirmative Action Plan, such as RMIT Women and Leadership Implementation Committee, Women's Issues Network, (WIN), etc.

(RMIT, 1998 : 10)

Likewise there are a series of other programmes at other universities. A discussion of this is beyond the scope of this study.

#### 4.3.9.3 Gender Representation Initiatives on University Governance/ Decision-Making Committees

Many institutions of Higher Education in Australia, as part of their commitment to Affirmative Action for Women, regard the participation of women in decision-making committees as **“fundamental to the achievement of equal opportunity, excellence and integrity of the University as it contributes to the richness of diversity in decision making”** (University of Western Sydney (UWS), 1997 : 1). In this area the efforts universities are making vary : some rely on 'general objective



setting' which has tended to achieve little while others with stronger AAVEO programmes have developed specific goals and mechanisms which have led to gender balance in key decision-making committees.

Among them, UWS (1997 : 1) affirmed the need to increase the number of women in senior decision-making bodies and in activities relating to university governance by way of introducing a university policy to this effect. According to the university policy this will be achieved by university projections, for example, ensuring that women comprise 40% of membership in a certain year and 45% in the following year and so on. It will also review the respective committee membership and identify those committees which have an underrepresentation of women. Where gender imbalance exists, the Vice-Chancellor, Deputy Vice-Chancellor or university nominee will discuss with the person responsible for the establishment of the committee the appropriateness of appointing additional members to redress the imbalance by highlighting the following strategies :

- co-option of additional women members;
- seeking women committee members who have relevant expertise from elsewhere within the university;
- appointment of female deputy chairpersons;
- appointment of alternating women and men;
- requesting bodies and individuals with nominating rights to consider nominating women to be members;
- inviting women staff members to attend and contribute to meetings;
- broadening eligibility to include more junior female members of staff; and,
- where election applies, encouraging and supporting women.

The UWS AA/EO Advisory Committee monitors the implementation of the policy. Each convener of university and member committees is required to report annually to the UWS AA/EO Advisory Committee where, for example, women do not comprise the required percentage of membership on the committee, as set out for the respective years. Conveners are required to provide to the UWS AA/EO Advisory Committee an outline of strategies to be implemented to increase the representation of women on committees where there is evidence of non-compliance with this policy.

Like UWS, a number of other institutions of Higher Education have percentage rules for gender balance on decision-making committees, e.g., The University of Technology (20%), The University of Queensland (25%) and Macquarie University (25%) (Pratt, 1996: 13-14).

Other Higher Education institutions have also developed policy responses to deal with the issue but these varied widely among them. Such institutions can be categorized as institutions with general objectives relating to female participation, institutions where gender representation rules exist, with or without identified targets and institutions with targets and related strategies which appear to be the ultimate requirement.

#### **4.3.9.4 Affirmative Action and Mentoring Initiatives**

A number of institutions of Higher Education, as part of their commitment to Affirmative Action for Women, have introduced mentoring programmes for women on their campuses. For example, at the University of South Australia ([www.unisa.edu.au/eqo/aa/wal/index.htm](http://www.unisa.edu.au/eqo/aa/wal/index.htm)) those who are interested in mentoring are encouraged to inform the Manager of the Equity and Diversity Unit. Further, if for example, a woman (mentee)

has a person in mind that she would like as a mentor but feels that she is unable to ask him/her herself, or if she does not know of anyone who can help her achieve her particular goals, she is encouraged by the university to contact the Manager of the Equity and Diversity Unit. The Manager would act as a broker in attempting to find the most suitable mentor. Those who wish to be mentored are also encouraged to do the same by informing the Manager of the Equity and Diversity Unit.

At RMIT, for example, the Staff Mentoring Programme began in 1994 as an initiative for women staff by the Equal Employment Opportunity Branch. The University Mentor Programme provides on-the-job, individual professional support and development, which can assist with both immediate issues and long-term career development. Staff are paired across the university according to skills offered and skills sought. A survey conducted among fifty respondents revealed a high level of reward for the programme (RMIT, 1998 : 14). A number of mentees attributed specific career achievements to their mentor in gaining promotion or gaining continuing employment.

#### **4.3.9.5 Affirmative Action, Women and Research Initiatives**

According to Burton (1997 : 150), as a commitment to Affirmative Action, twenty two universities developed special initiatives to facilitate women's research activity in Australia in 1995. The typical strategy directed at academic women is making provision for time and resources in order to facilitate progress in their research.

The types of activity universities introduced include, to a large extent, the Commonwealth Department of Employment, Education, Training and Youth Affairs (DEETYA) programmes for new researchers, among whom women are well represented, particularly in those disciplinary areas still

developing a research culture and profile. The programmes made provision for the release from teaching (for varying periods of time) of new researchers, especially women, in order to give them time to complete degrees or make progress in research publications as was the case at the University of Charles Sturt (Deane *et al.*, 1996 : 43). The University of Woolongong **“provided replacement teaching costs for twenty five women staff, and a thesis and research network to provide mentoring and workshops for academic women pursuing postgraduate study”** (Murphy, 1995 : 225).

The University of Charles Sturt also uses Women’s Networks to mentor research by women as a means of fostering research by women academics. Some universities even take account of family circumstances when assessing research performance. Others went to the extent of accepting the fact that the research productivity of women with little children will be less than others so that the research output requirement does not become an impediment in their progress towards promotion, etc.

#### **4.3.9.6 Women and the Merit Principle Initiatives**

In Australia **“the anti-discrimination and Affirmative Action legislation together require employment policies and practices to provide ‘equitable’ rather than ‘identical’ treatment”** (Burton, 1997 : 9). The provisions of anti-discrimination law, as well as Affirmative Action/EEO laws, require the application of the merit principle. In addition, Affirmative Action places a further positive obligation on employers to ensure certain groups receive equitable employment opportunity.

While legislation allows for taking positive steps to overcome the effects of past discrimination (redress measures), selection and promotion decisions are expected to be based on the best person for the job.

Preferential treatment in filling positions as a redress measure is not supported by legislation.

Under the Commonwealth Sex Discrimination Act 1984, Article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women allows temporary exemptions and special measures to promote women's equality of opportunity. Such special measures were not considered discrimination as defined in the present convention, provided that they are discontinued when the objectives of equality of opportunity and treatment have been achieved.

Taking advantage of this provision in the sex discrimination legislation some universities specifically invited women to apply for senior tenurable positions while others have incorporated an Affirmative Action provision within its promotion policy allowing for a minimum proportion of promotions to be offered to women. Still, other universities have funded positions for women in male-dominated academic areas. The University of Western Australia, for example, funded positions in economics, architecture, engineering and geography (Burton, 1997 : 3). These initiatives were developed where it was believed that past practices operated unreasonably against women's appointment or progression.

Some examples of Affirmative Action/EEO initiatives which aimed at making women more competitive for jobs and promotions without undermining the merit principle include :

- management-development programmes;
- career-development workshops;
- women's participation in decision-making;
- correction for possible gender bias in staffing matters;
- active encouragement of women to apply for senior positions and for positions in areas where women are not well-represented; and,

- provision of increased opportunities for women to act in higher positions, particularly those including supervision and management.

(Burton, 1997 : 9)

#### **4.3.10 The Impact of AA/EEO Policies on the Progress of Women in Higher Education**

Owing to the fact that earlier staff lists of universities and colleges did not specifically identify whether their staff was made up of men or women, data on women were difficult to obtain. Nevertheless, Anderson *et al.* (1997 : 4), using a number of additional sources were able to present some information from 1978 in their 1997 report entitled **“Qualifications of Australian Academics, Sources and Levels 1978-1996”**.

Earlier surveys analysed in ‘The 1992 Study’ revealed that in 1978, 11% of university academics and 21% of college academics were women. By the beginning of the 1990s the proportion of university staff who were women had risen to 31%. By 1996, 39% (2 552) of all women academics (6 578) were in the university sector and 61% (4 026) were in the college sector while 56,5% (9 071) of all male academics (16 053) were employed by the university and 43,5% (6 982) by the college (Anderson *et al.*, 1997 : 2). They describe the male distribution at universities as disproportionately high, the difference in the number of males being 6 519. This is due to a large extent on the historical appointments of White males.

Women as a percentage of the academic staff in general increased from 31,9% in 1992 to 32,8% in 1994 (Burton, 1997 : 14) and to 41% in 1996 (Anderson *et al.*, 1997 : 2). This indicated an increase of 9,1% over a five year period. With regard to tenure, women in 1996 constituted 42,3% of all limited term staff and 27,8% of all tenured staff which was an increase from 26% in 1994. The

percentage of tenured males was 61,4% in 1996, having decreased from 64,3% in 1994 compared to 45,6% of females, which was an increase from 40,75% in 1994.

In order to improve the plight of women regarding limited tenure, some universities, as a commitment to Affirmative Action, have implemented under-award restructuring agreements, a procedure whereby conversion to tenurable status was granted to lower-level contract women staff who have been with the university for a considerable period and met the tenure criteria. The reason for this was to retain more women who were, thereafter, placed in a position to compete for promotion (Burton, 1997 : 139).

Over *et al.* (1994 : 343), having analysed the Australian Bureau of Statistics data, reported that even though the sex ratio had changed over time, there still remained substantial differences in status/rank. They found that in 1991, women numbered 51 per cent of tutors, 39 per cent of lecturers and 18 per cent of senior lecturers, but only 10 per cent of academics above the level of senior lecturer. Further, the representation of women among academics, particularly in tenure-level positions, has consistently been well below the participation rate of women as students. What concerned them deeply was that, although women constituted 52 per cent of undergraduate students and 38 per cent of higher degree research candidates in Australian universities in 1991, they held only 21 per cent of all positions at lecturer level or above.

According to Burton (1997 : 140), in positions below lecturer level (referred to as tutors above), there was a slight increase in 1992 from 51,3% rising to 51,6% in 1996. The percentage of females at lecturer level increased to 39,9% in 1992, 40,3% in 1994 and 41,6% in 1996. At the top of the ladder 12% (1 915) of men (16 043) were professors but only 3% (183) of women (6 578). Women in positions of senior lecturer positions increased from 19,1% in 1992 to 24,3% in 1996. With positions above Senior lecturer women held 10,1% in 1992, 11,6% in 1994 and 13% in 1996.

It is clear from the above statistics that although there was generally an increase in the number of women employed in the respective ranks, not only were they still underrepresented among university staff generally, but those who were in academe tended to be concentrated mainly in the lower levels of the academic career structure. **“Women with or without doctorates tend to be clustered in the lower half of the academic hierarchy”** (Anderson *et al.*, 1997 : 5).

The 1987 survey revealed that women had increased their share of doctorates by the year 1996 and that put pressure on universities to pay explicit attention to recruitment practices for women. This, along with the improvement in numbers of women being appointed, could be attributed to the positive response from universities to the Commonwealth Tertiary Education Commission exhortations for more flexible staffing arrangements and the Commonwealth Government’s legislation for Affirmative Action programmes.

More encouraging results were reported by Dunkin (1992 : 191-202) on promotions in one of Australia’s oldest and largest universities which, after controlling for age, qualifications and gender, concluded that the university’s equity programme was taking effect. Earlier studies had shown that age and sex had strong impact on speed of promotion to the detriment of female lecturers who were generally younger. There was also a general shift towards greater acknowledgment of teaching as criteria for promotion. This contributed to an increase in women’s promotion rates at some universities.

A review of the literature on the subject indicates that, as part of their commitment to the Affirmative Action Act, virtually all universities in general aimed at increasing the overall numbers of academic women as well as the representation of women at higher academic, administrative, technical and professional ranks. In order to achieve this, universities also monitored and documented the relative progress of men and women through the academic promotions process. Often it was found that women’s overall success rate was



as high as or higher than their male counterparts but fewer women than men, in comparison to their numbers at different academic ranks, applied for higher positions. Some universities, in an attempt to be transparent and to monitor progress at a micro-level, analysed the data to show what happened at each level of promotion. Such implementation, however, varied across institutions of Higher Education.

Some of the more common Affirmative Action initiatives in Australia include :

- women and leadership programmes;
- various kinds of support for women's research;
- increasing women's participation on decision-making and staffing committees;
- reviewing and altering promotion policies and practices; and,
- moves towards more open and accountable staffing decision-making.

(Burton, 1997 : 139)

However, the pace and enthusiasm for establishing strategies and goals and their implementation varied among institutions of Higher Education.

#### **4.3.11 Cultural Barriers to Progress among Women in Higher Education**

Recent Equity reviews conducted among Australian universities reveal the extent to which dominant values and priorities had become embedded in the structural management. These values also tend to influence policies, interpretation, decision-making and everyday practices which serve as further covert impediments to equal employment opportunities for women. Such findings highlight the need for stronger AA/EEO programmes at institutions of Higher Education aimed at redressing not only the obvious or intentional discrimination as is commonly the case, but also at the cultural/systemic impediments to women's progress which was often covert.

#### 4.3.11.1 The Masculine Culture at Institutions of Higher Education

Women's experiences of organizational reality at universities in Australia suggest that **"the fundamental issue which needs to be addressed is the pervasiveness of the masculinity of organisational cultures"** (Burton, 1997 : XI). In this regard the draft Equity review report of the University of Western Australia states that : **"... the single most important change required is to [eliminate] the culture of masculinity and its implicit values"** (Burton, 1997 :10). Holton (1988 : 116) supports this view by describing systemic sex discrimination at universities as :

**"... the gender bias which is built into institutional cultures and practices, reflecting the dominance of masculine outlooks and experience in the day-to-day organisation and management of such institutions."**

Sandler and Hall (1986 : 4) describe such interpersonal and institutional barriers facing academic women as creating **"the chilly climate"** within which women are required to work and progress. Their study reveals that this **"chilly climate"** is experienced by women, as one imbued with masculine qualities, entailing *inter alia*, less support for women's scholarship, devaluation of their scholarly contributions and generally demoralizing and harassing interaction with colleagues. Women also argue that the prevailing interpretation of merit, the processes by which women staff are appointed and promoted and the relative value placed on their contributions to the attainment of universities' mission goals, is not gender neutral and this contributes to creating a disadvantaged environment for them.

It is argued, by women, that associated with the prevailing masculine norms is the relative power men are allowed to exercise. In their greater capacity to influence decision-making, men apply male value stances in staffing matters, thus constantly reinforcing masculine norms. The unfortunate aspect of such men is that they often do not regard their differential treatment of women as being the outcome of their own hostility or antagonism to women's presence. They believe that their actions are normal and acceptable in terms of the tradition and culture of the institution. This conforms to the view that the work environment is a gender - neutral one, a view held by people who are accustomed to it and who take it for granted and for whom it is 'the way things generally are and should be'.

In terms of the traditional academic culture women are also expected to adapt to, and be satisfied with, 'the way things are'. Often the way things are is characteristic of a homogenous male dominated population rather than the current diversity of men and women at universities. Women argue that the present shift in demographic composition, with more women academics entering universities in Australia, calls for organizational changes. Such changes ought to ensure the validity and appropriateness of staffing and other policies and practices in the context of greater diversity in background experiences, expectations, priorities and values of the present-day university staff. This makes imperative the need for stronger AA/EEO policies that would contribute to the removal of such impediments (Burton, 1997: xii).

#### **4.3.11.2 Workloads**

Another factor which is often, in part, a function of the traditional allocation practices of universities, to which AA/EEO policies should give greater priority, is the higher loads given to women (Burton, 1997: 66). These higher loads are often at the expense of their career progress. Data suggest that women have a lower research productivity

and a heavy teaching load.

A great deal of the overload comes from the tendency of women to succumb more readily than men to institutional pressure to assume them (McAuley, 1987 : 170). Generally, the more mundane administrative tasks as well as large first year courses are given to the more junior academic staff to perform. This has a negative impact on women, given their disproportionate representation at these levels (Deane *et al.*, 1996: 4). Also additional pastoral administrative roles by women along with large classes are perceived to have a negative effect on their time for research output and consequently their promotional rates.

#### **4.3.11.3 The Research Culture**

Many women feel that their commitment to quality teaching is often in direct conflict with institutional expectations for research activity. While quality of teaching is a promotion criteria at most, if not all institutions, many women feel that those researchers who have more to show by way of publications, etc., are often promoted ahead of excellent women teachers.

They claim that there is an undue emphasis on the numerical aspects of research when measuring performance and productivity. In this regard, Baldwin's research (1985 : 161-62) indicates that women are not necessarily appreciative of the values such as the emphasis on numerical research output since there are many who believe that:

**“It is not women who should change, it is the system. We need much more emphasis on cooperative work and on the nurturing of our students, rather than the pursuit of individual reputations.”**

The available evidence, as noted earlier, suggests that women experience a greater conflict between high teaching loads and research productivity than men, which relates in part to their structural location as lower level academics and, in part, to the nature of their teaching. Academics tend to value postgraduate teaching for their own research interests as has been noted. Postgraduate supervision is regarded as very important in relation to publications and long-term career. It supports research and publications and is a means of gaining access to new research (Fry *et al.*, 1996 : 92). At lower academic levels women are more likely to be found teaching large undergraduate classes and are not given opportunities to do research. Further, females are less likely to be found in the more senior positions which afford the highest degree of research activity (Waller and Grieve, 1998 : 11).

#### **4.3.11.4 Participation in Decision-Making**

The lack of an adequate number of women in key decision-making bodies has been the subject of criticism of a number of reports investigating the position of women in universities. This is regarded as a major impediment to their progress. In view of the increasing number of women at Australian institutions of Higher Education they currently constitute a significant stakeholder group. It is, therefore, felt that, as a commitment to Affirmative Action, more of them should take up positions alongside the more powerful male position holders in decision-making forums at universities than is the case at present.

Wilson and Byrne (1987 : 17) have identified areas of decision-making in Australian universities where the appointment of women is generally neglected. These areas include executive management, overall academic planning, resource allocation, control and development of degrees and courses and recruitment, selection and promotion. They found that women were more commonly represented in peripheral committees with no real power such as, for example, a university's

Anniversary-Celebration Committee.

Evidence from Equity reviews suggest that equity-related issues and the equity implications of broader decisions are more likely to be raised in committee deliberations where membership includes women as well. It is felt that such issues may not be known to exist by members of more narrowly constituted male dominated committees. This underscores the contention that there is obviously a dire need for women on these committees.

Women claim that, too often, the major impediment to their greater representation on important decision-making bodies can be attributed to the fact that committee membership is heavily skewed in favour of hierarchical position and to senior academics and administrators. Since women are not well represented at these levels they obviously do not qualify with regards to positions-based membership criteria.

In view of the aforementioned, Burton (1997 : 20) asserts that an AA/EEO programme aimed at improving representation and distribution of women should not be confined only to the elimination of direct, overt and intentional discrimination but should also aim at the elimination of cultural/systemic impediments to women's progress within academic institutions which is often covert. This will depend on the relative strength of the AA/EEO programmes as a significant contributory factor to women's employment profile within universities. It, therefore, calls for more aggressive AA/EEO policies.

#### **4.3.12 Reactions to Affirmative Action**

Under Australian Legislation Equal Employment Opportunities and Affirmative Action mean the same thing (Burton, 1997 : 10). Faculty at institutions of Higher Education feel differently. Some view Equal Employment opportunity to involve

non-discriminatory treatment and Affirmative Action to mean positive discrimination towards women. Equal opportunity is regarded as being consistent with the application of the merit principle and Affirmative Action is understood to undermine the merit principle.

In some universities, many staff believe that Affirmative Action includes preferential treatment in appointment and promotion decisions. Male staff, in particular, tend to be of the view that whilst EEO is fine, Affirmative Action is tantamount to 'tilting the playing fields'. Generally, feelings are mixed among men about the provision of initiatives designed specifically to further the employment prospects of women academics. Many are of the view that **"it depends on how far you tilt the playing field"** (Burton, 1997 : 12). There is also the perception, among faculty, that preference is given to women for promotion in particular.

Some universities, as a commitment to Affirmative Action, use the 'if all things are equal' principle. Staff at many universities believe that a policy such as, 'if all things are equal', a woman should be appointed, is in a way the intent of the Affirmative Action Legislation. Many are comfortable with the Affirmative Action principle, which encourages the appointment of women when it is difficult to decide whether a position should be given to the male or female candidate or when the committee cannot reach agreement (Burton, 1997 : 1). They, therefore, see the 'all things being equal' principle as being consistent with merit. Other staff do not support this principle of giving preference only to women in an 'all other things being equal' context as an Affirmative Action measure. Rather, it is seen as a reasonable policy to use for increasing female or male representation where there is an imbalance in the sexes.

The view that the preferential treatment given to women will enable a greater range of students to experience appropriate role models and a broader range of research interests to draw upon in their studies, is accepted by some staff at

universities. Academic areas at universities, where women's numbers are low, are more in favour of appointing women when male and female applicants are of equivalent merit.

Where a strong distinction between merit on the one hand and Affirmative Action on the other is made, any activity directed at women (active search strategies, staff development courses) is regarded by many staff as non-merit-based practices. In the minds of many staff, if a practice is not merit-based, it must be positive discrimination. They are of the view that, as equal employment opportunity is already in existence, any extra activity directed at increasing women's competitiveness must be regarded as preferential treatment (and therefore discriminatory). This attitude often leads women feeling anxious about taking up some opportunities which are offered to them for fear of negative reactions from male peers.

Some men argue that AA/EEO has gone too far and that enough is already done for the advancement of women. Others are comfortable with the preference given to women in the provision of support for their research endeavours particularly when outside funding, rather than departmental resources, is utilized. Some resentment is, however, often apparent.

A study by Mayer and Bacchi (1996 : 4) revealed that in 1990 a large majority of men did not believe that women faced discrimination, be it overt, covert or systemic. Therefore, they saw no need for introducing Affirmative Action programmes. Everett and Entekin's 1990 survey (1994: 222) on work related attitudes of academic staff found that men tended to believe that equal opportunity for women had been attained, while women held the opposite view. Burton (1997: 4) in her study of 'Gender Equity and Australian University Staffing' found that: **"Some men struggled to identify areas where they felt women might properly be supported by an EEO / Affirmative Action Programme"**. The implication of this was that they saw no contentious



Employment Equity issues and as such saw no need for AAVEEO Programmes.

#### **4.3.13 Summation**

Prior to the introduction of Affirmative Action (AA) in Australia, women were poorly represented as full-time teaching and research staff at institutions of Higher Education. Through the constant lobbying by the Commonwealth Tertiary Education Commission and other women's organizations the Affirmative Action (Equal Employment for Women) Act was passed in 1986.

Affirmative Action in the Australian context was about eliminating discrimination and taking positive steps to overcome the current and historical causes of inequality particularly of women. The Affirmative Action Act required that all institutions, including Higher Education with more than 100 employees, establish Affirmative Action programmes. Higher Education institutions were, in fact, the first to be required to implement the Affirmative Action legislation.

Following on the Affirmative Action Act of 1986, the government established The Affirmative Action Agency. The director of the agency was accountable to and had to report to the Minister of Education. Basically, the purpose of the Agency was to offer guidelines with regard to the implementation of the Affirmative Action Act and to monitor and evaluate the effectiveness of Affirmative Action programmes in achieving the purpose of the Act.

Through the Act, the government insisted that any Affirmative Action programme must consist of a strategic plan which should include the following :

- a management policy;
- a person responsible for the programme;
- consultation with unions;
- consultation with employees;
- collection and analysis of data;

- objectives and forward estimates;
- monitoring and evaluation of programme; and,
- a review of policies and practices.

Related to the above and, of significance, were the Equity Reviews that institutions of Higher Education were required to conduct. Such reviews served to monitor and analyse gender patterning, thereby performing a very important monitoring and evaluative function.

Several national and local women's networks were established by Higher Education institutions, the government and other women's groups in Australia. This initiative was regarded as part of a commitment to Affirmative Action and also to highlight the plight of women as well as to make them more visible in the academic world.

Some of the more common strategies and goals adopted by institutions of Higher Education in Australia, emanating from pressures exerted by Affirmative Action legislation included :

- the establishment of women leadership programmes;
- various kinds of support for increasing research among women;
- increasing women's participation in decision-making and staffing committees;
- reviewing and altering promotion policies and practices so that it did not overtly or covertly disadvantage women;
- moves towards a more open and accountable staffing decision-making;
- consideration of cultural barriers to women's progress at institutions of Higher Education;
- active encouragement of women to apply for senior positions and for positions in areas where they are not well represented; and,
- monitoring initiatives for women.

With regard to progress of women at institutions of Higher Education, statistics revealed that, while the number of women as a percentage of the academic staff had increased, there still remained substantial differences in status/rank between male and female as one moved up the academic ladder. They still tend to be concentrated in the lower levels of the academic career structure. Whilst there has been some increase in the number of women at the more senior levels of employment in Higher Education, it is regarded by women as being not rapid enough. Their progress, although not that significant, was, nevertheless, attributed to Affirmative Action policies and procedures

Finally, Australian women call for a stronger promulgation of AA/EEO policies. They feel that this would contribute to greater elimination of covert discrimination as well as other cultural impediments and contribute to their greater progress in institutions of Higher Education.

#### **4.3.14 Implications of Affirmative Action in Australia for South Africa**

The abundance of literature on Affirmative Action and Higher Education experiences in Australia provide important implications, specifically for Higher Education in South Africa. Although much of the emphasis is on gender issues, women in Australia were regarded as previously disadvantaged and, accordingly, many of the principles emanating from the review would be applicable to the previously disadvantaged in South Africa.

In addition to Affirmative Action being legislated it is supported by a special agency called The Affirmative Action Agency (AAA) which, apart from providing guidelines, monitors and evaluates programmes. Of importance is the fact that a Director of The Affirmative Action Agency for the country is appointed by the Minister of Education to whom he/she is accountable and must report. This AAA has tremendous power. Institutions of Higher Education, as part of their obligation to the AAA, are compelled to submit reports to them annually. By virtue of the Affirmative Action Act the AAA even has the power to name in

Parliament the respective institution that fails to provide reports or does not comply with the requirements of the AA/EEO Act. It also publicises and grants awards for the exceptional implementation of Affirmative Action programmes. The above has tremendous implications for South Africa, given the fact that many senior administrators of Historically White Institutions (HWIs) traditionally administered in accordance with the philosophy of the previous apartheid regime. Perhaps it would “**challenge [their] frozen mental maps and stimulate alternative innovative thoughts and policies [for their institutions]**” (Adam and Moodley, 1993 : 202).

Following the trends in the USA and Canada, Australia emphasises the necessity for an Affirmative Action Plan. This has implications for South Africa in that the conception of such plans call specifically for :

- a management policy on Affirmative Action;
- a person responsible for implementation;
- consultation with unions and employees;
- collection and analysis of data;
- objectives and forward estimates;
- monitoring and evaluation of programmes; and,
- a review of policies and practices. The Australian experience points to the fact that these Equity Reviews perform significantly important monitoring and evaluating functions .

In order to highlight the plight of women as well as to make them more visible in the academic world, several national and local women’s networks were established by institutions of Higher Education, the government and other women’s groups. Such a trend would not only be beneficial to women in South Africa but also to other previously disadvantaged groups.

South African Higher Education institutions could also benefit from the following

strategies and goals adopted by institutions in Australia as a commitment to Affirmative Action. Similar strategies could be employed for the advancement of the previously disadvantaged :

- the establishment of women's leadership programmes;
- support for increasing research among women;
- increasing women's participation in decision-making and staffing programmes;
- ensuring that promotion policies did not disadvantage women;
- remedying cultural barriers that inhibit women's progress; and,
- the provision of mentoring initiatives for women.

Objectives and forward estimates rather than rigidly fixed quotas were required in Australian Affirmative Action plans. Experience at institutions of Higher Education have, however, proved that general objective setting tended to achieve little whereas the development of specific goals met with greater success. Hence, a further lesson for South Africa.

Like the USA and Canada, Affirmative Action was regarded in the Australian context as temporary exemptions and special measures to promote equality of opportunity. Such special measures were not considered as discriminatory, provided that they were discontinued when the objectives of equality of opportunity and treatment were achieved. These precautions for the success of Affirmative Action should also have bearing on the South African Higher Education scenario.

The implementation of Affirmative Action in Canada, the last of the First World countries to be examined in this thesis, will be reviewed next. Like Australia's watchdog, 'The Affirmative Action Agency', Canada has the 'Federal Contract Program Requirements'. It would be prudent to note, *inter alia*, the similarities and differences between these two facilities that promoted Affirmative Action and Employment Equity in the respective countries.