AFFIRMATIVE ACTION: A COMPARATIVE STUDY

by

TAMESHNIE DEANE

submitted in accordance with the requirements
for the degree of

DOCTOR OF LAWS

at the

UNIVERSITY OF SOUTH AFRICA

PROMOTER: PROF AC BASSON

November 2005
Racial and gender inequality, as well as other forms of discrimination has been a part of the South African, American and Indian histories for a very long time. Even today racial disparity is still very evident in the South African and American societies whilst discrimination based on caste is still prevalent in the Indian society. This is illustrated by continued racial discrimination and the remaining signs of societal segregation. Due to continuing disparities amongst the people, it became necessary to implement affirmative action programmes. Focusing in particular on education and jobs, affirmative action policies require active measures to be taken to ensure that blacks and other minorities enjoy the same opportunities for career advancement and school admissions that had been the nearly exclusive province of whites in SA and the USA, or for the forward castes in India. Affirmative action has been both praised and denounced, as an answer to racial inequality. One of the key issues that arise when affirmative action is discussed is whether or not affirmative action in fact promotes equality and atones for past prejudices. Another concern is whether the current affirmative action policy is the right policy to use. The issues surrounding affirmative action seems to be universal as are the circumstances. Perhaps the most widespread similarity among the programmes in these very different countries has been that group preferences and quotas are almost always discussed. The debate on affirmative action exists because it is a very divisive issue and it affects different groups of people in different ways, and some groups or persons seemingly benefit more from affirmative action than other persons or groups. In addition, it causes people to be classified into groups, and at the same time, strives to break down group barriers. It is an issue that is difficult to resolve because people have varied ideas about how the problems of racial inequality and historical discrimination should be addressed.

KEY TERMS — anti-discrimination legislation; apartheid; affirmative action; affirmative action terminology; beneficiaries of affirmative action; backward classes; caste discrimination; equality; history of affirmative action; merit principle; backward classes; reservation system; scheduled castes; suitably qualified; unfair discrimination
I would like to send my thanks and appreciation to my promoter, Professor AC Basson, for her comments and support during these long years of study and also to Professor Johan Joubert for his editorial comments and encouragement. My appreciation and thanks is also extended to my colleagues at the Department of Criminal and Procedural Law, especially to Professors Estelle Hurter and Karin Alheit, for the interest that they have taken in my studies and also for their much needed words of encouragement throughout the years.

To my mother Santhayagie Thirumudu who has always inspired me to be my best; this thesis is an attestation of your love and belief in me. I thank you for all that u have done for me.

Finally, I am indebted to my family — To my son Ryan Gregory whose birth has brought new meaning to my life and has inspired in me the desire to be all that I can be.

Especially to my husband Gregory Deane, this thesis is dedicated to you because without your love and support I would not have had the heart to complete what would otherwise have been an impossible task. Thank you for being there for me.

OM NAMA SHIVAYA!