



**NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM**

**PROGRAMME: B.A., LL.B. (HONS.)FYIC**

**DETAILS OF COURSE OFFERED**

**ODD SEMESTER (IX) – ACADEMIC YEAR:.....**

<b>SL. NO</b>	<b>COURSE CODE</b>	<b>COURSE TITLE</b>	<b>L</b>	<b>T/P</b>	<b>CR</b>	<b>CH</b>
<b>1.</b>	<b>905 CN SP VI</b>	<b>AFFIRMATIVE ACTION AND DISCRIMINATIVE JUSTICE</b>	<b>4 PER WEEK</b>	<b>1 PER WEEK</b>	<b>4</b>	

**A. CODE AND TITLE OF THE COURSE: 905 CN SP VI ,AFFIRMATIVE**

**ACTION AND DISCRIMINATIVE JUSTICE**

**B. COURSE CREDIT: 4 (TOTAL MARKS 200)**

**C. MEDIUM OF INSTRUCTION: ENGLISH**

**D. COURSE COMPILED BY: SAHEB CHOWDHURY**

**E. COURSE INSTRUCTOR: SAHEB CHOWDHURY**

## **1. COURSE OBJECTIVES**

Affirmative Action, as an idea of social justice and as a policy practiced, has its equal share of supporters and detractors both within India and elsewhere. If a vast amount of normative and first principle based philosophical arguments have been put forward to justify affirmative action as a matter of right for the politically marginalised, socio-economically exploited and backward sections of the society, there has also been equally voluminous empirical study done to show how effective such policies are in bringing the marginalized, the minority at par with the rest. In spite of this debate, what cannot be overlooked is that the debate about affirmative action has evoked equally passionate response and ingenious arguments from political scientists, jurists, policy makers and the common people from both the camps, beginning vigorously in the later half of the last century and equally relevant even in today's times. It is no wonder that the courts in India and outside adjudicating on affirmative actions matters have also been influenced by these diverse arguments and outlooks on the issue. This is reflected in rationale of the plethora of judgments of the courts. Keeping the same in mind, this course work has been designed to introduce various debates on affirmative action. This, further, goads the students to develop a critical approach in looking at the effectiveness of the affirmative action mechanism as it exists in India. The course shall deal with the various protections provided to weaker sections of the society under the constitution of India and the evolving debates on affirmative action within the constitution. The said course shall also further introduce cursorily similar affirmative measures taken in some leading political and legal systems around the world in order for the students to have a comparative understanding of the idea of affirmative action in itself and its success in providing socio-political and economic justice through constitutional guarantees and governmental policies.

## **2. TEACHING METHODOLOGY**

The National Law University, Assam, apart from class instructions, also encourages students for self-learning. Students are expected to study not only the substantive laws written in books, but also study the various decided cases to understand the law in action. They are also provided conceptual and philosophical tools to develop critical and independent thinking capabilities. Following method shall be adopted to facilitate learning of this paper:

- Lecture and Instructions by Faculty
- Group Discussion
- Case study
- Presentation by the Students

## **3. COURSE OUTCOMES**

- On completion of the course, the students would be able to understand the meaning, scope, and debates and arguments relating to affirmative action in India and other relevant legal and political systems of the world besides developing sound understanding of certain fundamental philosophical insight into the idea of social justice

- Further, they will learn about various affirmative action policies and laws in India
- They'll look into reservations in service, education and political representation on various lines including Caste, Class, Sex, Religion etc.

#### 4. COURSE EVALUATION METHOD

The course shall be evaluated for 200 marks. The Evaluation Scheme would be as follows:

Internal Assessment: 70% (140 Marks)

External Assessment: 30% (60 Marks)

Sl. No.	Internal Assessment	
1	2 Assignments	2 x 20 marks = 40 marks
2	Seminar/Group Discussion	20 marks
3	Class Test (Twice in a Semester)	2 x 35 marks = 70 marks
4	<b>Attendance in Class</b>	10 marks
5	Semester End Examination	60 marks

#### 5. DETAILED STRUCTURE OF THE COURSE (SPECIFYING COURSE MODULES AND SUB-MODULES)

##### MODULE I

- Introduction to Affirmative Action: Meaning, Nature and Scope
- Jurisprudential Debates on Affirmative Action: The Concept and the Controversy
- Debates on Distributive Justice, Compensatory Justice and Affirmative Action
- Affirmative Action and the three arguments of Equality, Diversity and Integration
- The Idea of Fairness and Affirmative Action

##### PRESCRIBED READINGS FOR THE MODULE:

1. J. Edward Kellough , Understanding Affirmative Action: Politics, Discrimination and the Search for Justice, Gerogetown University Press, 2007
2. Ashwini Deshpande, Affirmative Action in India, Oxford University Press, 1<sup>st</sup> Edition, 2013
3. Zoya Hasan, Politics of Inclusion: Caste, Minorities and Affirmative Action, Oxford University Press, 1<sup>st</sup> edition, 2009

4. Tarunabh Khaitan, *A Theory of Discrimination Law*, Oxford University Press, 1<sup>st</sup> edition, 2015
5. Terry H. Anderson, *The Pursuit of Fairness: A history of Affirmative Action*, Oxford University Press, First Published in 2004
6. Michael J. Sandel, *Justice: What's the Right Thing to Do?*, Farrar, Straus and Giroux, 1<sup>st</sup> Edition 2010
7. Jed Rubenfeld, *Affirmative Action*, *The Yale Law Journal*, Vol. 107, No. 2 (Nov, 1997)
8. Ronald Dworkin, *Affirmative Action: Is it Fair*, *The Journal of Blacks in Higher Education* No. 28 (Summer, 2000)
9. Peter H. Schuck, *Defining and Certifying Diversity: Affirmative Action*, *Yale Law & Policy Review*, Vol. 20, No. 1, January 2002 (under the title, *Affirmative Action: Past, Present, and Future*)
10. Tarunabh Khaitan, *Beyond Reasonableness - A Rigorous Standard of Review for Article 15 Infringement*, *Journal of the Indian Law Institute*, Vol. 50, No. 2, pp. 177-208, April-June 2008
11. John Hasnas, *Equal Opportunity, Affirmative Action, and the Anti-Discrimination Principle: The Philosophical Basis for the Legal Prohibition of Discrimination*, *Fordham Law Review*, Vol. 71, November 2002

## **MODULE II**

- Affirmative Action in India: Origin, history and development of Affirmative Action
- Constitutional Foundation of Affirmative Action and Reservation: Reservation in Service, Education and Political Representation
- Definition of Scheduled Caste, Scheduled Tribes and Backward Classes
- Judicial Debate on Caste, Social Backwardness and OBC Reservations
- Implementation of Affirmative Action policies: Quotas

## **PRESCRIBED READINGS FOR THE MODULE:**

1. Zoya Hasan, *Politics of Inclusion: Caste, Minorities and Affirmative Action*, Oxford University Press, 1<sup>st</sup> edition, 2009
2. Ashwini Deshpande, *Affirmative Action in India*, Oxford University Press, 1<sup>st</sup> Edition, 2013
3. M.P. Jain, *Indian Constitutional Law*, LexisNexis, 2014
4. D.D. Basu, *Constitution of India*, LexisNexis, 22<sup>nd</sup> Edition, 2015
5. H.M. Seervai, *Constitutional Law of India*, Universal Law Publishing, 4<sup>th</sup> Edition, 2015
6. C. Basavaraju, *Reservation Under the Constitution of India: Issues and Perspectives*, *Journal of the Indian Law Institute*, Vol 51, No. 2, April 2009.
7. Manzoor Ali, *Post-Sachar Reservation Politics*, *Economic and Political Weekly*, September 28, 2013.

8. Vani K Borooah, Social Exclusion and Jobs Reservation in India, *Economic and Political Weekly*, December 25-31, 2010.
9. Devarshi Mukhopadhyay, Transgressing Caste Indignities through Reservation in Education: Debunking Myths on Systemic Equity and Fairness in India, *Asian Journal of Legal Education*, 2015.
10. Ashwini Deshpande, *Social Justice through Affirmative Action in India: An Assessment*, Edward Elgar Publishing Inc., 2012.

### **MODULE III**

- Race and Affirmative Action.
- Affirmative Action for the Religious Minorities.
- Gender, Sexual Orientation and Affirmative Action.
- The Future of Affirmative Action in India.
- Affirmative Actions Around the World

### **PRESCRIBED READINGS FOR THE MODULE:**

1. Thomas Sowell, *Affirmative Action Around the World*, Yale University Press, 2005.
2. J. Edward Kellough , *Understanding Affirmative Action: Politics, Discrimination and the Search for Justice*, Gerogetown University Press, 2007
3. Barbara Bergmann, *In Defense of Affirmative Action*, Basic Books, 1997
4. Dawn Michelle Baunach, Progress, Opportunity, And Backlash: Explaining Attitudes Toward Gender-Based Affirmative Action, *Sociological Focus* Vol. 35, No. 4 (November 2002)
5. Thomas. E Weisskopf, Globalisation and Affirmative Action, *Economic and Political Weekly* Vol. 38, No. 27 (Jul. 5-11, 2003)
6. Christine Reyna, Amanda Tucker, William Korfmacher and P. J. Henry, Searching for Common Ground between Supporters and Opponents of Affirmative Action, *Political Psychology* Vol. 26, No. 5, Symposium: Race and Politics (Oct., 2005)
7. F. Michael Higginbotham, Affirmative Action in the United States and South Africa: Lessons from the Other Side, *Temple International & Comparative Law Journal*, Vol. 13, No. 2, 2000
8. Kevin, Outterson, Affirmative Action as Reparations for Slavery and Legal Discrimination: Amicus Brief in Support of Respondents
9. Jeffrey S. Byrne, *Affirmative Action for Lesbians and Gay Men: A Proposal for True Equality of Opportunity and Workforce Diversity*, 1992.

