The Limits of Affirmative Action:
Appropriate Approach to Possible Market Reaction

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Abstract

For some time, the debate about the important doctrine of affirmative action has been somewhat dormant. In the first part of the paper I expand the theoretical debate on this doctrine, which is in complete contradiction with the prevalent liberal approach. I discuss the principle of compensatory justice as a temporary technique aimed at creating a change in outlook, the risk of its propagation, coping with a discriminatory awareness that can lead to market failure, and the approach followed by the doctrine in its broadest sense, which is different from the method of quotas. In the second part I focus on a topical issue that was raised in the margins of High Court of Justice ruling in **Orit Goren v. Home Centre (Do It Yourself) Ltd,** 1758/11, 17.5.2012. The case touched on the appropriate attitude toward a possible market reaction to a corrective process. The ruling, which concerns the debate surrounding the Equal Wage for Female and Male Employees Law, 1996, subscribes to the doctrine of affirmative action under its broad definition, and as such raises the need to debate the issue of market reaction in the context of the doctrine as a whole. I create a platform for the argument that it is precisely because the doctrine focuses on creating a change of awareness that it is appropriate to encourage corrective methods that enhance the dialog between the various entities in the market, including the employer and the sovereign. To illustrate the point, I present the Canadian Fairness in Employment Law, which adopted a legislative concept that emphasises the need for collaboration. I argue that the challenge facing those engaged in the sensitive issue of social disparities requires a more structured theoretical examination of the field of affirmative action, as a broad-based framework for a doctrine that incorporates individual corrective measures acting in a complementary and empowering fashion.