



Discrimination in the Israeli Law

Despite Israel's ratification of the ICCPR and its guarantee to protect all of its citizens against discrimination, Palestinian Arab citizens in Israel are discriminated against in a variety of forms and denied equal individual rights because of their national belonging. Though the discrimination is politically motivated, the Israeli legal system is part of this context. As well as offering limited provisions for equality or political participation to members of the Palestinian Arab minority, the law in Israel subjects them to discrimination: direct discrimination against non-Jews within the law itself, discrimination through "neutral" laws and criteria which apply principally to Jews and institutional discrimination through a legal framework that facilitates a pattern of privileges(1)

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- The Unrecognised Villages
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The "Jewish and Democratic State"

The Declaration of Independence in 1948 defined Israel as both a Jewish and democratic state, committed to the "ingathering of the exiles," and to guaranteeing equality to all its citizens. Yet insofar as Israel defines itself as Jewish, it overrides and compromises the extent to which it can be democratic.

Israel as a Jewish state has been legally defined as resting on three minimum conditions: where Jews form the majority, where Jews are entitled to special treatment and preferential laws, and where a reciprocal relationship exists between Israel and the Jewish people in the diaspora. Yet in all these conditions, the Palestinian Arab minority is both excluded and discriminated against: by privileging Jews, the state treats others as second-class citizens.

"All Persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect shall prohibit any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." International Covenant on Civil and Political Rights (ICCPR)

Constitutional Equality

Israel does not have a formal constitution, but has drawn up a series of Basic Laws which form a constitution in evolution. Prior to 1992, none of these Basic Laws guaranteed basic rights. However, in 1992 the Basic Law: Human Dignity and Freedom (2) which subsequently authorised courts to overturn Knesset laws that were inconsistent with the right to dignity, life, freedom, privacy, property and the right to leave and return to the country.

Specifically, however, it did not include the right to

"The Zionist dream is to construct a state which

equality. Further, section 1A of the law states that it aims to anchor "the values of the State of Israel as a Jewish and democratic state." Given the lack of an explicit law that constitutionally protects equality for all citizens, this emphasis on the Jewishness of the State again compromised the equal right for the Palestinian Arab minority.

as England is English and France is French. At the time, this state is to be a democracy on the West. Evidently, these goals are incompatible. Citizens are French, but citizens of the Jewish state may be Jews, either by ethnic or religious origin or simply by birth. To the extent that Israel is a Jewish State it cannot be a democratic state."

Noam Chomsky (3)

Political Participation

Palestinian Arabs rights to run for elections to the Israeli parliament, the Knesset, are also limited by their acceptance of the notion of the Jewish state. These limitations are expressed in the Law of Political Parties (1992) and, in particular, the amendment to section 7A(1) of the Basic Law: The Knesset which prevents candidates from participating in the elections if their platform suggests the "denial of the existence of the State of Israel as the state of the Jewish people." Under this section a party that challenges the Jewish character of the state, that for example calls for complete equality between Jews and Arabs in a state for all its citizens, can be disqualified, as lists have been in the past.(4) The law demands that Palestinian citizens may not challenge the state's Zionist identity.

Direct Discrimination

There are two main examples of laws that discriminate against Palestinian Arabs by directly distinguishing between Jews and non-Jews:

- **Citizenship Rights & the Law of Return:** National identity is the main factor in deciding the acquisition of citizenship in Israel. The Law of Return grants every Jew the right to immigrate to Israel. The Nationality Law automatically grants citizenship to all Jews who have done so, and also to their spouses, children, grandchildren, and all their spouses. This special privilege is for Jews only. Palestinian Arabs can only get citizenship by residence (after meeting a cumulative list of conditions) or naturalisation.
- **Special Status of Jewish Organisations:** As a result of the World Zionist Organisation- Jewish Agency Law, the Jewish National Fund, Jewish Agency for Israel and the World Zionist Organisation have special constitutional status in Israel and are known as quasi-governmental bodies. They are Jewish organisations which explicitly aim to benefit Jews only, but have authority for certain government functions, including developing the land and housing projects and settling new immigrants. Their activities are co-ordinated with the government and are given tax breaks and they have a lot of influence on decision-making boards (particularly in agriculture and land use). The Palestinian Arab minority is excluded entirely from these functions as neither beneficiaries or participants. Further no government organisations per-

"It implies that on a decided fundamental level there is equality between Arab and Jew in Israel. The state is the state of the Jews, both those presently in the country as well as those abroad. Even if the Arabs have equal rights on all other levels there: Israel is not their state." David Kretzmer, UN Human Rights Committee Member (5)

same functions for non-Jews. Consequently, Palestinian Arab needs are systematically disregarded.

Indirect Discrimination

More widespread is the use of "non-discriminatory" criteria in statutes that lead to differences in the treatment of Jews and the Palestinian Arab minority:

*Demonstrating council workers unpa
Photo: Al-Sinnara Newspaper.*

- Military Service:** Many government preferences and benefits in Israel are conditioned on performing military service. Whilst military service is compulsory for all citizens, by discretion the vast majority (90%) of Palestinian Arabs are not required to serve; whereas the majority of Jews do. As a consequence, they do not receive the wide range of benefits, including mortgages, partial exemptions from course fees, and preferences for public employment and housing. The discriminatory factor is that in many cases the difference between the benefit offered and the requirement for military service is not as often as in employment opportunities, and that government offices provide benefits beyond what is legislated. The most celebrated example of this is the level of state child benefits, which until 1997 were conditioned on military service rather than more obvious socio-economic factors. The impression that this is a mechanism for privileging Jews is borne out by the fact that Jewish Yeshiva students, who like Arab citizens do not serve, receive the benefits anyway, a policy which has been upheld by the courts.⁽⁶⁾
- Place of Living:** The government categorises the country into different zones and awards different statuses and benefits to different towns. For instance, certain areas are designated as national development areas, which then makes them eligible to receive benefits including special tax incentives for industry, education programmes, and housing incentives. These areas are supposed to be drawn according to socio-economic criteria. Yet the zones are drawn to include a disproportionate number of Jewish localities rather than Palestinian Arab ones. For example, in the 1998 classification, out of the 429 localities accorded Development Area A status, only 4 were Arab, despite the fact that Arab towns and villages are consistently at the bottom of the socio-economic scale. This policy was used to exclude the vast majority of the Palestinian Arab minority from the benefits.

Institutional Discrimination

The Palestinian Arab minority in Israel is discriminated against by the legal system which allows the government to adopt discriminatory policies, or discretionary power that can be used by officials to maintain a systematic preference for Jewish citizens.

	Categories	Arabs	Jews	Budgets & Resource Allocation:
1	Per capita local government budget Shefa Amr (A) & Migdal Ha'Emeq (J), NIS, 1997	1,495	2,587	Law, which governs state funds specify what proportion should be earmarked for minorities; the decision is left with officials' discretion. Due to the lack of representation in government councils, Palestinian Arabs receive substantial less funding for e.g. local government services.
2	Proportion population living in overcrowded conditions, 1997	31.6%	5.7%	
3	Proportion of total welfare budget received, 1998	12.5%	87.5%	

4	Proportion families under poverty line, 1996	28.3%	16.0%	(usually 50% less), and have less allocated for welfare budgets, services facilities or other education projects. Often this discrepancy is justified by government running projects in Arab areas with the Jewish Agency, thus not only Jewish beneficiaries. (7)
5	No. patients per doctor (Kupat Hoalim), 1998	1,900	1,400	
6	Infant mortality rate per 1,000 live births, 1995	9.1	5.5	
7	Average no. pupils per classroom, 1996	31.0	27.0	
8	Proportion of schools with psychological services, 1996	33%	95%	Uneven Implementation of the law are three ways in which the impact of the law adversely affects the

Arab minority:

1) Positive statutes that the State is expected to enforce or services that the required to provide can simply not be implemented in Palestinian Arab communities such as the Compulsory Education Law, and the provision of truant officers and counsellors, despite the fact that Arab students form 75% of those who drop out of school throughout the whole country.

2) Laws that apply to both Jews and Arabs can be selectively or predominantly implemented on Palestinian Arabs, such as land confiscation laws or house demolitions.

3) Laws can be implemented with different criteria for Jews and Arabs, such as family assistance in education programmes or production quotas for agricultural production. Often differences in quotas are maintained due to a lack of Arab representation in decision-making authorities.

The judicial review of this institutional discrimination is limited. To date, there is no court case where the Supreme Court has accepted a case of discrimination against the Palestinian Arab minority and ruled to protect its rights. It usually accepts that the State that its policies serve national priorities and thus are not discriminatory. Different treatment between Jews and Arabs is legitimate, as they are different groups. (8) Even when historical discrimination is admitted, the court will not rule to close the gaps, arguing that responsibility lies with the decision-making of the executive.

Recommendations for Action:

Israel should undertake a review of all its legislation, beginning with the laws detailed in this fact sheet, to ensure that they are consistent with its obligations under Article 26 of the ICCPR, and offer effective protection from discrimination to all citizens.

In particular, Israel should draft a basic law that explicitly entrenches the right to equality.

Beyond legislation, Israel ought to conduct a thorough reappraisal of the policies of its ministries to eradicate a pattern of institutional discrimination against the Palestinian Arab minority, and provide equality in terms of budgetary allocations.

Most importantly, Israel must find the political will to achieve change and work towards full equality for all its citizens.

Further Information:

- D. Kretzmer, *The Legal Status of the Arabs in Israel* (Westview Press, 1990)
- Adalah, *Legal Violations of Arab Minority Rights in Israel* (Adalah, 1998)
- HRA & F. McKay, *The Social, Economic & Cultural Rights of Minorities: The Palestinian Arab Citizens of Israel* (HRA, 1998)

Notes:

1. For a similar schematic analysis see Kretzmer, *The Legal Status of the Arabs in Israel* (Westview Press, 1990) p.
2. In 1992 the Basic Law: Freedom of Occupation was similarly passed.
3. Forward to *The Arabs in Israel*, cited in *Adalah, Legal Violations of Arab Minority Rights in Israel* (Adalah, 1998) p
4. For example, *El-Ard v. District Commissioner*, 18 PD II 340 & *Sabri Jiryis v. District Commissioner*, 18 PD IV 673, *Elections Committee*, 19 PD III 365, *Neiman v. Chairman of the Central Elections Committee*, 39 PD II 233. It is true ammendment came into effect no lists have been disqualified under section 7A(1), however the legal power still rem
5. Kretzmer pp. 42-43
6. For example, *Wattad v. Minister of Finance*, 38 PD III 113
7. For example, the Shahar education programmes offered to weak and disadvantaged students, in which a third of have participated, were not until 1998 offered in any Arab communities.
8. For example, *Wattad*, or *Bourkan v. Minister of Finance* 32 PD II 800, *Agbariah v. Minister of Education* 45 PD 22
9. For example, *The Local Council of Daliyat El-Carmel et al v. Prime Minister* (unpublished), cited in *Adalah* p. 25



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