

Generic Discrimination Damages Societal Resilience

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The clause in the coalition agreement that permits discrimination against social groups “in services and entry to entertainment venues and public places” is morally and socially objectionable. The initiative is based on exclusionary bias and reflects the notion that Jewish, white, religious, heterosexual males are superior to all others, and further deepens the rifts and existing polarization of Israeli society. Indeed, the very proposal amounts to a blow against societal resilience and, consequently, national security. The fervent and committed opposition to discrimination displayed by many Israelis on both the right and left provides a ray of hope that could signal renewed social solidarity. The Israeli government’s executive and legislative branches must fulfill their legal obligation to guarantee equality for all groups by removing from their agenda legislation that grants the electoral majority a license to discriminate against minorities. If the discriminatory proposal is passed, the Supreme Court should intervene in favor of groups that require protection, and, if necessary, nullify the law.

The coalition agreement between the Likud and its five coalition partners includes a clause stating that “the Prohibition of Discrimination in Products, Services and Entry to Places of Entertainment and Public Places Law (2000) shall be amended, to anchor in law the possibility of holding cultural or educational events for ultra-Orthodox and religious groups...including with gender separation. Separation in such circumstances shall not be considered prohibited discrimination. The law shall also be amended to allow the formation and operation of residential communities on a religious basis, and in a manner that avoids harm to a private business that refuses to provide a product or service due to religious belief.” The proposal's

wording allows discrimination against social groups based on "religious belief" and shields discriminatory businesses from civil lawsuits.

The Anti-Discrimination Act cited above was not passed in a vacuum, but was enacted following numerous cases of discrimination based on race, religion, nationality, country of origin, gender, sexual orientation, and other variables, causing severe injustice to many. The law was intended to prevent group-based discrimination, also known as generic discrimination, as opposed to common individual discrimination, such as an employer hiring a friend over a more qualified applicant. In generic discrimination, the discriminator sweepingly rejects and disqualifies an applicant who belongs to a specific social group. The blatant examples of bias in Israel that demonstrate the imperative need for the Anti-Discrimination Act include: an Arab citizen banned from entering a park; women forced to sit in the back of a bus; a religious Jew of Ethiopian origin barred from employment in wine making, ostensibly for kashrut reasons; an IDF officer of Ethiopian origin refused entry into a club; girls from Sephardi communities excluded from religious schools with Ashkenazi girls; and LGBT couples barred from an event designated for couples. On the individual level, generic discrimination causes severe injustice, while demeaning victims and infringing on their autonomy. They are debased because others believe their status is inferior. Generic discrimination ignores personal characteristics, ambitions, or capabilities, and judges individuals solely on their social group (gender, nationality, color, and so on). The discrimination denies the victims social and economic mobility or self-actualization.

Whether the Supreme Court may nullify this discriminatory proposal if it is passed is a hotly debated question. Under Israeli law, the right to dignity is an unalienable right, enshrined in the Basic Law: Human Dignity and Freedom. As stated in the Basic Law, it is forbidden to violate a person's dignity; and "everyone is entitled to have his or her dignity protected." Thus, the state has a twofold duty: not to violate the right to dignity; and to protect the right to dignity, i.e., to prevent others from violating it.

The right to dignity is the basis for to the constitutional right to equality, which means the right to equal treatment and protection against generic discrimination. Therefore, as with the right to dignity, the state itself is bound by the constitutional right to equality. In other words, generic discrimination is illegal. Furthermore, under the law the state has a duty to take positive measures to protect the right to equality and to prevent others from discriminating against members of any group. More specifically, all three branches of government have an obligation to actively protect the right to equality. It is incumbent on the legislative branch to enact anti-discrimination laws, because legislation is the most powerful tool at its disposal. That is the context of the Anti-Discrimination Act of 2000. Likewise, the government has a duty to protect equality, and as such, must take all necessary measures to enforce anti-discrimination laws and practices effectively. The judiciary is responsible for reviewing the actions of the government and the Knesset to ensure that they do not violate the provisions of the Basic Law. Accordingly, the Supreme Court has the authority to nullify any law that violates the right to equality and to issue injunctions against the government in appropriate cases.

The Anti-Discrimination Act is intended to protect groups that suffer from generic discrimination. Evidence of the need for this protection can be found in the Justice Ministry's Anti-Racism Unit report for 2021, which cited that during that year a total of 458 complaints were received, of which a quarter concerned discrimination in the provision of services. If the proposed amendment is passed, it will grant a license to impose generic discrimination. This means that the Knesset, through this law, would itself violate the right to equality, and simultaneously breach its constitutional obligation to protect equality. To be sure, the Knesset may violate an individual's rights with a law intended for a worthy cause, but in this case, it is difficult to argue that allowing businesses to engage in group-based discrimination is intended for a worthy cause.

Generic discrimination in Israel has a direct impact on societal resilience, and consequently, on national security. Discrimination fueled by hatred and hostility sparks conflicts between social groups and causes deep rifts.

Failure by the executive branch to take proactive measures to eliminate discrimination leads to alienation and a loss of trust in the state and its institutions. An individual whose liberty is limited by discrimination and who is denied the opportunity for self-realization is analogous to someone in handcuffs, who naturally believes his future will be murky and restricted. Furthermore, discrimination assisted or encouraged by the government makes victims feel threatened by the state itself. In this situation, their survival instincts kick in, and they may respond with a "there's nothing to lose" attitude. The concern is that the proposed amendment will push such groups further in this direction.

Large segments of the Israeli public's response to the discriminatory proposal against specific groups is a ray of hope that to a large extent reflects Israeli society's resilience. Many people on both the right and left have spoken up in support of democratic values and human rights, as well as against generic discrimination and toxic political discourse accompanied by oppression of vulnerable groups. The message is that the principle of equality is an important value, and the public is neither willing to relinquish it nor stand idle in the face of attempts to violate it. Even many of those who voted for coalition parties are likely aware of the danger embodied in the proposal and seek ways to negate it.

In conclusion, the proposed amendment granting a license to discriminate against social groups is unworthy and should not be passed. It is incumbent on the Knesset to pass laws that prevent generic discrimination, but the proposed amendment will achieve the opposite result by repealing existing legal protection against generic discrimination while simultaneously granting majority groups a license to discriminate against groups that are now protected by law. Repealing a law intended to protect individuals from group-based discrimination is a severe blow to one of democracy's most fundamental values. That could seriously undermine societal solidarity and resilience and, consequently, negatively impact national security. The government should not submit this proposal for Knesset legislation.

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