

Forum: General Assembly

Issue: The question of equality before the law and discriminatory penal legislation

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Introduction

Over recent decades the international community put its efforts towards tackling discrimination, but in spite of the progress made in the fight against discrimination, including movements such as “#Niunamenos” and “#Zerodiscrimination”, government discriminatory practices are anything but over. So, what is discrimination? The act of discrimination can be defined as the segregation of individuals or groups of individuals, based on their race, culture, religion, age, gender or sexual orientation, inter alia.

Understanding discrimination and its nature might result polemic, but although any rationalization to discrimination seems absurd, in fact it is part of our human nature to categorize things. When toddlers, we are encouraged to follow signifiers, that appear to be predisposed by human history itself, thus avoiding being subject to question by many. So following the forces of society, stereotypes arise, facilitating discriminatory thoughts, that usually develop from unconscious notions.

Discrimination usually derives from a product of an intricate set of factors including social, politic, economic and/or ethnic forces. Therefore it is the government’s responsibility to provide the appropriate legal framework to prevent and deal with cases involving discrimination.

In Europe, for example, xenophobia and racism are common denominators in discrimination, most probably due to the mass wave of refugees arriving to Europe in recent years, reaching an alarming figure of 1.8 million refugees since 2014. Although the European Union has incorporated many anti-discrimination policies, such as protocol 12 to the European Convention on Human Rights and Fundamental Freedoms, many European governments continue to infringe such treaties. (*Wikipedia, 2018*) Italy remains a clear example of this. The UN has already condemned the way Italian "politicians fuelled a public discourse unashamedly

embracing racist and xenophobic anti-immigrant and anti-foreigner rhetoric”. (OHCHR, 2018) Furthermore, driven by deputy prime minister, Matteo Salvini, Italy has shown to be an anti-immigrant state, particularly shown in its infamous Decree-Law on Immigration and Security, which removes humanitarian care for individuals not qualified to be considered refugees but that aren't able to return to their home country. (The Guardian, 2018)

Definition of Key Items

Penal Code

The full comprehension of the penal code, also referred as the criminal code, is indispensable to the issue at hand. Conformed by a set of crime policies, a penal code is a code of legislation that defines all criminal offences within a nation and sets up punishments for perpetrators; it deals with every aspect of criminal law of a country. Regarding the topic and its relation to the penal code, it is of the utmost importance to concentrate on the laws of a nation that are targeted at a certain group or minority.

Equality and Non-Discrimination

These fundamental elements of international human rights law can be defined in article 1.a. ILO 111 (1958), as: ‘Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which nullifies or impairing equality of opportunity or treatment in the employment or occupation’. (C111 - Discrimination Convention, 1958) Therefore the right of equal treatment refers to the equal and just treatment before the law, a concept very familiar with egalitarianism.

Inequality of Treatment

Inequality of treatment refers to the disparate access to public services and the uneven treatment of the government towards a certain group of individuals. A clear example of such inequality occurs in some countries of the middle east such as Saudi Arabia, where the concept of male guardianship is still present and a woman has to have a male guardian as she is not seen capable of making decisions regarding her own personal life.(Bleiker, C, 2017)

Inequality of Opportunity

Inequality of opportunity refers to the how an individual's traits that are originated at birth, like their gender or their ethnicity, determine to a high degree their opportunities in life. Every citizen has the right to live a decent life, and thus the principle of equality of opportunity is to seek that an individual's opportunities are a reflexion of the effort and choices one has in his or her life, and not inherent to birth. (*Concepts of Inequality Development Issues No. 1. 2015*)

Ex Post Facto Law

A ex post facto law applies to crimes that occurred before the law had become active and is anything that alters the legality of an action or increases its severity. These kind of laws can completely change a country's perspective towards how its penal code acts upon certain races or groups since something that was legal has now become illegal, or vice versa. Ex post facto laws are threats to a country's prosperity and security as they tend to weaken legislation.

Prejudice

Prejudice is the preconceived judgement, that refrains from being based on reason or genuine experience. This notion is usually a baseless negative attitude directed towards individuals that are members of a certain group.

Sustainable Development Goals

The Sustainable Development Goals (SDGs), proposed by the UN, are a group of objectives aimed at globally solving worldwide issues by the year 2030. Among the 17 goals, goal 16 plays a vital role in solving the issue at hand: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". (*United Nations, n.d*)

Background Information

Isonomy, equality before the law

Legal egalitarianism is the principle that all citizens should be treated equally under the eyes of the law. Therefore, the government has the obligation to refrain from any type of discrimination in the treatment of citizens. Although many stateless small societies have egalitarian laws, almost all well known historical societies with hierarchies had elites with some kind of disproportionate power that inevitably gave them privileges over society: monarch, tsar,

pope, barons, lords, military leaders. However, by the rule of law all norms apply to everyone, regardless of their status, wealth or power, thus through the rule of law the law applies to everyone, even leaders. (*Abrams, N, 2016*) One of the main roots for the reason that many rulers remain largely exempt from the law is corruption, which is common in mostly all democracies in some way or form. Still, it is certainly not impossible to make all elites subject to the same norms in a nation; the most vital solution to the issue seems to be that a country has to find means to separate the sources of power, resulting in coercion from elites. (*Acemoglu. D, Wolitzky. A, 2018*) This would enable a true egalitarian society.

Discrimination in the penal code

Even though the objective of legislation itself is, in essence, to avoid discrimination and inequality, there are various examples of policies, within the laws of a country, that constitute discrimination.

Age discrimination

Although most discrimination policies are perceived as harmful and unethical to the public eye, age discrimination is one of the few types of discrimination that can be beneficial to all citizens. Although these types of policies include voting age restriction, where minors are perceived as inexperienced, immature and credulous, therefore benefiting citizens, they are still not directly helping adolescents in their upbringing. (*Dean, B, 2017*) However, there laws such as driving, enlisting in the military, underage drug consumption including alcohol and sexual intercourse, that aim to protect and guide teenagers to a better future, preventing drug abuse and the spread of sexually transmitted diseases.

Another key aspect of age discrimination in the penal code is the reduction of criminal offences due to the perpetrator's age. Studies show that juveniles offenders are most likely to continue offending in their adulthood. According to the Office of Juvenile Justice and Delinquency Prevention the rate of juvenile delinquency in the US has dropped by 72% since 1996. Still in less developed nations such as latin american countries, minors are responsible for the raise in the crime wave; a 2013 study by "El Tiempo" shows that in Colombia 11% of crimes constituted juvenile delinquency (*Cawley, M, 2014*). In many countries, such as the US, the punishments for crimes are reduced and less severe for

juveniles, a clear case of age discrimination, are still beneficial in many ways as many young offenders are more gullible and have better chances of becoming law-abiding citizens.

Racial discrimination

Apartheid legislation is a clear case of racial discrimination inside a nation's jurisprudence. The Prohibition of Mixed Marriages Act No 55 of 1949, forbade marriages between whites and non-whites. Moreover, the Reservation of Separate Amenities Act No 49 of 1953, segregated public transport and buildings, thus avoiding contact between whites and other races. Furthermore, the Bantu Homelands Citizens Act of 1970, not only removed the citizenship of all all black people, but also forced them to become citizens of the country that corresponded with their particular ethnicity. Another example of racial discrimination within legislation, is seen through the lack of rights that african-americans had during the slave era.

Religious discrimination

Although religious discrimination practiced by religious based governments is somewhat uncommon to western society, many nations in the world continue to exercise such practices. Saudi Arabia promotes the Sunni Islam, whilst forbidding the practice of any religion that does not correspond to the Quran. Myanmar, on the other hand, although it does not comply with an official state religion, it still shows preference for the Theravada Muslims; in 2017 the nation gained worldwide attention over the ethnic cleansing of Rohingya Muslims. This does not mean that countries which endorse a certain religion cannot achieve religious peace within its citizens, but instead, that one of the best ways to avoid religious conflict is by achieving secularization, thus avoiding any type of religious exclusion. In 1992, US Supreme Court Justice Harry A. Blackmun wrote in the Lee v. Weisman case: "A government cannot be premised on the belief that all persons are created equal when it asserts that God prefers some."

Implicit bias

Implicit bias can be defined as the unconscious behavior of acquiring stereotypes towards a certain group of individuals. Being part of our subconscious notions, these kind of associations are not accessible through introspection, which makes implicit bias a very difficult

issue to handle. (*The Ohio State University, 2015*) Nevertheless, the most important question one should be asking is: how do these biased attitudes develop? Unconscious stereotypes occur all the time, sorting, generalizations and patterns are all part of natural human psychology, but it is when these types of stereotypes, rooted misconceptions of individuals, become overused that implicit bias occurs, resulting in discrimination and inequalities of treatment. Studies in media psychology link the media to its effects and repercussions on human minds. It has shown that the media unconsciously embeds stereotypical descriptions in people's minds, which may trigger implicit attitudes towards a certain group: this constitutes implicit bias.

Hate Crime and its relation to implicit bias

Motivated by prejudice, any criminal act targeted to a certain individual for its membership to a certain community is considered a hate crime. Examining nazi indoctrination and how Hitler manipulated people's minds, one can realize that implicit bias is a powerful weapon. In 1933 Hitler gained power, at that time youth organizations such as the boy scouts were very popular, yet it was another youth group that started to transcend at the time, one which was created by nazis: the National Socialists. By the end of that same year, the group had nearly two million members and it became known as the Hitler Youth. Later Hitler decided to ban all youth movements aside from the Hitler Youth, forcing children to become part of such group. By the beginning of the 40s almost all German children had become part of the organization. Children became so brainwashed that some even denounced their own families when they did not comply with Third Reich ideology. As years passed, the doctrine became more severe and included with military training such as handling weapons and survival skills. Influencing the youth, the nazis had already built an army. (*Blakemore, E, 2017*) The nazi regime is only one example of the many repercussions that implicit bias provokes: the Klu Klux Klan, the Creativity Movement, the Armenian massacres, the ethnic cleansing of the Rohingya and Hutu people.

Debiasing

Eliminating the growth and repercussions of biases is known as debiasing. One of the first steps towards debiasing is becoming aware of the bias, awareness campaigns are essential in solving the issue as research shows that people will become better at

decision making and metacognition with proper guidelines on how to do so. (*Effectiviology, n.d*) In the past decades, the global community has become more conscious of biases and their effects on human interaction, and thus have become more attentive and thorough in building new and improved mechanisms for debiasing such as the 1998 Implicit Association Test (IAT). (*Wikipedia, 2019*)

Major Countries and Organizations Involved

United States of America

Being one of the most developed nations, the United States, has one of the most intricate and solid constitutions in the world. The 1964 Civil Rights Act gave all Americans equal rights regardless of their race, religion, gender and country of birth, and equal employment treatment. (*Wikipedia, 2019*) Still the US falls short in maintenance of equality, ranking 23rd on the Global Gender Gap. (*Schwab, K., Brende, B., Zahidi, S., Bekhouche, Y., Guinault, A., Soo, A., . . . Tyson, L. 2013*) The alarmingly disproportionate rate of shootings made by the US police force to minorities seems to link police brutality to a deep rooted history of racism. A research made by the Sentencing Project, a project made to address the racial disparities in imprisonments, shows that the increasing rate of crimes in black communities are a product of only 61 to 80 percent of black individuals imprisoned, which means that 39 to 20 percent of black prisoners are in because of other fraudulent causes which may be explained through implicit bias. (*Lopez, G, 2018*) In addition, Trump's administration has awakened a new wave of racist and xenophobic ideologies which has led to more violence such as the white supremacist Charlottesville rally. (*Wikipedia, 2019*) Furthermore, Trump's controversial Executive Order 13769 or "travel ban" was disguised behind the promise of protection against terrorist attacks, but it appeared to be xenophobic as it implicitly entailed that muslims are terrorists.

Yemen

As product of the strong bond between the Shari'a or Islamic law and Yemen's constitution, the situation of gender inequality in Yemen is extremely serious. This proposes a major problem to the legal system of Yemen as the Shari'a violates the core element of equality of the Universal Declaration of Human Rights, thus denying the exercise of such rights for people living under Yemeni law. (*IHEU, 2008*) It is clear that women in Yemen not only lack protection of the law which exposes them to domestic abuses, but also are discriminated by

Islamic laws since under Shari'a law women (muslim and non-muslim) are not given the same treatment as muslim men. (HRW, 2017) Another key aspect of Yemen's legislation is that women require the authorization of their male guardian not only in many legal proceedings such as obtaining a passport or identity card, but also for everyday activities such as leaving their own home. Furthermore, according to the 2011 MENA Gender Equality Profile, the female labour market participation rate in Yemen is extremely low: only 20 percent of women that actively participate in the labour force. In terms of the gender education gap, according to the UN, the adult literacy is 77 percent for men whilst for women the number decreases to 40.5 percent.

Nordic Nations

Iceland, Finland, Norway, Sweden and Denmark are the pioneers of sex and gender equality: they find themselves between the ten highest-ranking countries in Global Gender Gap reports. Through strong investments in research towards finding mechanisms to fight inequality and creating Anti Discrimination laws and policies such as mandatory paternity leave, the Scandinavian countries have achieved a high female workforce in the labour market and the lowest gender salary gaps in the world. These countries have not only successfully closed the gender gap in education, but have also benefited from these expenses ranking top in the economic participation and opportunity section of the Global Gender Gap report. (Schwab, K., Brende, B., Zahidi, S., Bekhouche, Y., Guinault, A., Soo, A., . . . Tyson, L. 2013) The policies applied in nordic countries are a model for the international community to find ways to improve legal equality. (NIKK, 2018)

Amnesty International

Amnesty International is an international non-governmental organization (NGO) formed by more than 7 million supporters that join the fight against human right violations by governments. Evaluating and exposing discriminatory laws exploited by governments, which undoubtedly are abusing the human rights of their citizens, Amnesty International seeks to protect everyone without exception or bias. Furthermore, the organization has and still does cooperate with the United Nations as a consultant in many UN Conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC), raising awareness seeking the universal implementation of such rights.

Human Rights Watch

The Human Rights Watch is a nonprofit NGO made up of nearly 400 human rights experts that defend human rights internationally. By investigating violations, globally exposing them and the offenders, and by reminding authorities to respect the undeniable rights of the people, the Human Rights Watch works on building a positive impact on fairness and equality worldwide. Moreover, it maintains a strong bond with various branches of the United Nations such as: the Human Rights Council, the General Assembly and the Security Council. The organization devotes its efforts in preserving the civil and political rights of individuals through declarations, documentations and reports of the abused and their situation.

Timeline of Events

Date	Description of Event
March 21, 1804	Napoleonic Code is enforced
July 19 and 20, 1848	First Women's Rights Convention
June 26, 1945	UN Charter signed
December 10, 1948	Universal Declaration of Human Rights signed
September 15, 1963	16th Street Baptist Church bombing
July 2, 1964	US Civil Rights Act
December 18, 1979	Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is signed
April 1, 2001	Netherlands becomes the first country to legalize same-sex marriage in the world
June 12, 2016	Orlando Shooting

January 27, 2017

President Donald Trump signs first travel ban

Relevant UN Treaties and Events

- Universal Declaration of Human Rights, 1948 (**UDHR**)
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (**A/RES/3/260**)
- International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, 1966 (**A/RES/2200A(XXI)**)
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (**A/RES/2106(XX)**)
- Convention on the Rights of the Child, 1989 (**A/RES/44/25**)
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (**A/RES/33/177**)
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 (**A/RES/36/55**)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 (**A/RES/47/135**)
- the United Nations Convention Against Transnational Organized Crime, 2001(**A/RES/55/25**)
- The International Convention on the Elimination of All Forms of Racial Discrimination (**A/RES/ 2106 (XX)**)

Previous Attempts to Solve the Issue

Local Campaigns

In the 21st century, freedom of speech has become one of the most transcendent and respected principles of people's lives in the global community. As a result of the daily exercise of that this right over the past years, civil rights movements and the influential grassroots movements have been increasingly active through nonviolent protests such as #Metoo or Pink Dot.

International Activism

Promoted by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Conference against Racism (WCAR) consists of a group of global events that promotes the fight against racism. The first conference, the 1979 Geneva World Conference against Racism, was centered around ending the apartheid scheme of racial bias and discrimination. Yet the conference of 1983, also held in Geneva, had a more universal focus in upbrining mechanisms to stop racism. The 2001 conference, held in Durban, discussed the ways in which countries could end xenophobia, and dealt with subjects such as the ill treatment of Israel towards Palestine, attempts to violate human rights and crimes against humanity such as genocide and slavery. The latest WCAR was held in Geneva in 2009. It focused on assessing the effectiveness of the mechanisms created in the 2001 WCAR and on promoting the International Convention on the Elimination of All Forms of Racial Discrimination. *(Wikipedia, 2018)*

Another well-known anti discrimination movement is the The International Movement Against All Forms of Discrimination and Racism (IMADR). This non profit NGO was founded in 1988 and stands in the fight against any form of discrimination, defending minorities and strengthening the mechanisms of human rights.

All of the treaties shown in the “Relevant UN Treaties and Events” section should be considered as previous attempts to solve the issue, thus delegates are encouraged to look into such treaties and their effects on the issue at hand.

Possible Solutions

Although the actions to be taken in order to fight discriminatory penal legislation mainly rely on the internal affairs of a country, instead of international treaties and conventions, there is a lot a country can do in the fight against discrimination and inequality of treatment. For instance, governments should seek efficient organization as a method to ensure transparency and legality. There are multiple ways in which a government can become more organized such as the correct division of its powers, which ultimately makes each section of the government more accountable of its actions, thus increasing the chances of proper attention and resolution

of discrimination cases. Moreover, the country may set up a government agency that would ensure the protection of groups which are usually victims of discrimination a clear example of this method is the Singapore Presidential Council for Minority Rights which was formed to safeguard minorities.

The founding aspect of raising awareness and ensuring that people thoroughly understand all aspects of equality is education. Governments could include tutoring programmes and awareness campaigns that would provide education on the forms of discrimination and their undeniable rights as citizens.

Another essential aspect of minimizing discriminatory penal legislation is by producing solid anti discrimination laws, for instance, in 2010 the United Kingdom implemented the Equality Act 2010 which contained provisions forbidding any type of discrimination. Moreover, reducing the chances of the creation and application of ex post facto laws is an excellent way of avoiding discrimination and weakening the rule of law.

International organizations may also aid in the issue by putting pressure on authorities that are not complying with international legislation and equality. The UN can enforce international law through legally binding organs such as the Security Council, which can enforce sanctions to states that prejudice.

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Appendix or Appendices

- I. http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf
- II. <https://www.unicef.org/gender/files/Yemen-Gender-Eqaulity-Profile-2011.pdf>
- III. <https://www.ohchr.org/Documents/Publications/training9chapter13en.pdf>