

From Discrimination to the Denial of Basic Freedoms

By Hassan Jabareen¹

The amendment to the Nationality and Entry into Israel Law (the "Citizenship Law") - which was approved this week by the Cabinet - creates three separate ethnic tracks for citizenship in Israel: a track for Jews, a track for Arabs and a track for "foreigners."

The Arab track not only requires a prolonged and graduated process, like that for "the foreigners," but it also forbids, with very limited exceptions, the reunification of families when one of the partners is a Palestinian Arab who lives in the Occupied Territories. The Jewish track, on the other hand, allows every Jew to become an Israeli citizen automatically, according to the Law of Return.

Supporters of the amendment, including prominent members of the academic world, claim that every country is permitted to determine its immigration policy. This is true. However, first of all, we are not talking about immigration, but about granting legal status to the partner of a citizen.

Secondly, there is no democratic country in the world that restricts immigration on the basis of ethnicity. Thirdly, the ethnic component - the "Arab" component in our case - is the identity of 20 percent of all the citizens of the State of Israel, and therefore, such a step has the power to grant open and official legitimization for discrimination against Arab citizens, in all areas.

Some supporters of the law are trying to justify it by comparing it to Danish policy. This is a misleading comparison, first because Danish law is an exception, and second, it is at present undergoing constitutional review, which will probably lead to its invalidation. In addition, the Danish law does not create ethnic citizenship tracks, nor is it as sweeping as the Israeli law, since it leaves room for considering individual cases.

However, the relevant question is whether supporters of the law are willing to adopt the entire citizenship and immigration policy of Denmark. Their reply will certainly be negative, since they oppose turning Israel into a civil state with modern democratic policies. It seems that some of those same academics have adopted a new hobby: they have become hunters who search for mistakes and defects that characterize democracies the world over, in order to adopt them and to turn them into the supreme norm in Israel.

The central issue here is that we are not talking about immigration, as the government claims, but about abolishing the personal freedom of Arab citizens, and their right to choose their partner and to conduct a normal family life. This restriction does not affect the Jews or the foreigners in Israel, and it has no parallels in democratic countries today.

However, it does have parallels in the past: in the 1950s, the State of Virginia in the United States forbade miscegenation (mixed marriages of blacks and whites). For that reason, the Lovings were forced to leave Virginia, and appealed challenging the constitutionality of the law. The U.S. Supreme Court overturned this legislation because it was racist. In 1980, at the height of apartheid, the South African court overturned - out of its recognition of the right to conduct a family life - an order forbidding a black woman to live with a black man who, because of his work, had received a permit to live in a white area.

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Supporters of the amendment to the Citizenship Law want to justify it for demographic reasons. They are not satisfied with giving preference to one group because of its ethnic affiliation (the Jewish track); they want to deny basic freedoms to the other group, because of its ethnic affiliation (the Arab track). Therefore, the amendment to the law reflects a transition from a situation of invalid discrimination to a situation of racist oppression.

Supporters of the amendment claim that it is necessary in order to maintain the Jewish majority in the country. However, if this goal allows the government to take such a drastic step, and to undermine basic constitutional rights such as the right to a family life, then why shouldn't the Natserat Illit municipality, for example, prevent Arab citizens in the future from purchasing apartments in its jurisdiction, claiming that this is essential in order to protect the Jewish character of Natserat Illit, or alternatively, impose a higher *arnona* (property tax) on Arab residents, in order to deter them from building a house within its jurisdiction? That is the slippery slope of the demographic argument, behind which lies racism.

Supporters of the law claim that international law permits the undermining of basic rights in a war situation. That is true, to a certain extent, but apparently, an elementary fact has slipped their phenomenal memory: international law excludes from this rule the principle forbidding discrimination, which is non-derogable even in a war situation, under Article 4 of the UN International Covenant on Civil and Political Rights (ICCPR), in light of the lessons learned from the horrors of the Holocaust and World War II.

The conclusion is clear: The amendment to the Citizenship Law is not only blatantly and radically unconstitutional, but it also contradicts basic human morality.