

**“MINORITY RIGHTS AND STATE RESPONSE: A
COMPARATIVE STUDY OF ISRAEL AND TURKEY”,**

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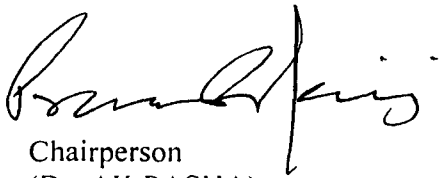
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Certified that the dissertation entitled "**MINORITY RIGHTS AND STATE RESPONSE: A COMPARATIVE STUDY OF ISRAEL AND TURKEY**", submitted by **AJISH P JOY** in partial fulfillment of the requirement for the award of the degree of **MASTER OF PHILOSOPHY** has not been previously submitted for any other degree of this or any other university and is his own work.

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*Dedicated to
Chachen, Amma &
my sister Veena*

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CHAPTER 1

INTRODUCTION

Minorities are groups, which are “numerically inferior to and distinguishable from the rest of the population by their different ethnicity, language, culture or religion”.¹ According to Francesco Capotorti, a minority is a group numerically inferior to the rest of the populace, in a non-dominant position, consisting of nationals of the State, possessing distinct ethnic, religious or linguistic characteristics and showing a sense of commonality intended at safeguarding those characteristics.² Article 27 of the International Covenant on Civil and Political Rights (ICCPR) too attempts to address the issue of minorities.³ The proposal for a European Convention for the Protection of Minorities prepared by the European Commission for Democracy Through Law defines a minority as “a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.” The proposal for an additional protocol to the Convention for the Protection of Human rights and Fundamental Freedoms Concerning Persons Belonging to National Minorities, of the Parliamentary Assembly of the Council of Europe defines a 'national minority' as

a group of persons in a State who reside on the territory of that State and are citizens thereof, maintain long standing, firm and lasting ties with that State, display distinctive ethnic, cultural, religious or linguistic characteristics, are sufficiently representative, although smaller in number than the rest of the population of that State or a region of that State, are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.⁴

¹ Aslan Gündüz, *Security and Human Rights in Europe: the CSCE Process*, (Istanbul: European Community Institute of Marmara University, 1994), p.142

² F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1: Sales No. E.78:14.1, para. 568.

³ The text of the Article reads: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. U.N. Doc. A/6316 (1966).

⁴ A Compendium of the Human Rights Conventions of the European Union, (Brussels: 2003) www.assembly.coe.int/main.asp?link=http://assembly.coe.int/%2SPASG%/2Scommunication_CN%2S.2002/%2SESVS/20029.htm, accessed on 19 July 2004.

Ethnic minorities are based on a common *ethnie* or ethnic group. *Ethnie* is defined as: “a named human population with myths of common ancestry, shared historical memories, one or more elements of common culture, a link with a homeland and a sense of solidarity among at least some of its members.”⁵ In a multiethnic society, each ethnic group or *ethnie* may either be in majority or in minority. An ethnic minority then may be defined as “an ethnic group, which forms less than half the population of a given society, but is an appreciable subsystem with limited access to roles and activities central to the economic and political institutions of the society.”⁶ However such anthropological definitions fail to provide a concrete basis for international law.

Minorities, by their very nature, create issues of exclusion and inclusion. The reality of minority formation challenges any conceptual attempt to impose limits on what counts as a minority and what does not.⁷ Minorities unquestionably seek to uphold their interests, partly because it helps them survive as a community and conserve what are considered to be vital by them, and partly for the self-interest of its individual members. Even though it is exceedingly perilous for a minority to use violence against the strength of the state and the majority, there are several such instances, when members of an ethnic minority opted for armed struggle against the state. However, a minority by definition is outnumbered, and by using violence against the state it faces the power of the state apparatus with its wherewithal, army, hardware, all of which are usually controlled by the ethnic majority. Most ethnic conflicts are caused by unbearable circumstances that come into being because of prejudiced government procedures and practices that infringe upon the basic rights of ethnic minorities. These conflicts are basically a clash of interests, involving preservation of ethnic identity, political representation, and struggles over land, education, language, religion, autonomy, employment opportunities, and self-determination.

⁵ ‘Introduction’ in John Hutchinson and Anthony D. Smith (eds.), *Ethnicity*, (Oxford: Oxford University Press, 1996), p.6.

⁶ Richard Schermerhorn, “Ethnicity and Minority Groups” in John Hutchinson and Anthony D. Smith (eds) *Ethnicity*, (Oxford: Oxford University Press, 1996) p.18.

⁷ Thomas W. Simon, *Protecting Minorities in International Law*, (Pubblicazioni Centro Studi per la Pace, The Italian Institute of Search and Studies for Peace,) Venice, www.studiperlapace.it/ accessed on 30 September 2003.

The International Regime:

There are no uniform patterns in the state treatment of minorities just as there is no unanimously accepted definition of minorities. While some states have legal and constitutional provisions for dealing with the minorities, some other states do not have any individual arrangements. Therefore an international minority rights regime is helpful in streamlining the nature of state treatment of minorities and giving states an overall direction in their relations vis-à-vis minorities. States may follow these guidelines if they want to avoid an eruption of violence against the state itself. However, the problem with the current international regime is that there are few legally binding provisions relating to minority rights and even they are of disputed meaning. Implementation mechanisms, similarly, leave much to be desired. While legally nonbinding instruments offer better guidance on certain aspects of minority rights, their debilitating weakness is that they cannot be used to demand compliance.⁸

The recorded history of minority protection on an international level dates back to early 17th Century, when a Treaty was signed by the King of Hungary and the Prince of Transylvania in 1606, to ensure the freedom of worship for the Protestant minority in Transylvania. In 1648, the Treaty of Westphalia, involving France and the Holy Roman Empire, established comparable freedoms to Protestants. The Congress of Vienna (1815) had provisions focusing on the improvement of the civil status of the Jews, apart from guaranteeing religious freedom for Christian denominations. The 1815 Polish constitution was the first modern document giving international status to non religious minority groups.

The issue of minorities gained further importance after World War-I with the Congress of Oppressed Nationalities meeting in Rome. The first international regime of minority protection was put into place following the War within the framework of the League of Nations. The League system is widely credited both for acknowledging minority rights exist and for legitimizing minority protection as an area of international concern. While the League's Charter did not include any clauses protecting minorities *per se*, the League's administration incorporated treaties that

⁸Jelena Pejic, "Minority Rights in International Law", *Human Rights Quarterly*, Vol.19, No.3, (July 1997) pp.666-685.

protected selected minorities. The League Council had the power to accept appeals, carry out fact-finding enquiries, and issue instructions to the erring states. The stated rationale of all these minority clauses was to shun forced assimilation. The League Council formulated an apparatus for dealing with petitions from individuals or associations acting in support of a minority, but minorities had to rely on the unlikely willingness of the major powers to act on their behalf. Such factors clearly pointed towards the necessity of having a neutral and effective international system for the protection of minorities.

The formation of the United Nations led to a new approach towards minorities by focusing on individual rights. However, the UN Charter and the 1948 Universal Declaration on Human Rights (UDHR) did not make any reference to minorities, although there were suggestions in the latter to introduce a provision on minorities. The UN General Assembly stated in 1948 that "the United Nations cannot remain indifferent to the fate of minorities" and explained that an agreement could not be reached because of the difficulty of adopting "a uniform solution to this complex and delicate question, which has special aspects in each State in which it arises." Consequently, the General Assembly asked the UN Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to make a meticulous study of the crisis of minorities, so that the UN may be able to take substantial measures for the protection of racial, national, religious or linguistic minorities. In 1946, the Sub-Commission presented a report on minorities written by Special Rapporteur Francesco Capotorti, which still stands as one of the most definitive works on minorities.

A few major international conventions and treaties regarding minority rights are the following:

- The Universal Declaration of Human Rights (1948)
- The International Covenant on Civil and Political Rights- ICCPR (1966)
- The International Covenant on Economic, Social and Cultural Rights-ICESCR (1966)

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1969)
- The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Conference for Security and Co-operation in Europe) (1990)
- The Convention on the Rights of the Child (CRC, 1990)
- The Charter for Regional and minority Languages (1992)
- The UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1993)
- The Council of Europe's Framework Convention for the Protection of National Minorities (1993).

The ICESCR for example, calls upon the contracting state parties to ensure the protection of cultural rights of all of its citizens while the ICCPR grants persons belonging to ethnic, religious or linguistic minorities, cultural, religious and linguistic liberties (Article 27). However, the ICCPR gives the contracting parties the option of declaring that they have no minorities, thereby excluding its application to persons within their territory. While states parties to the ICCPR have generally not made use of this exemption, it should be noted that France has used this clause.

Moreover these Covenants have a strong individual orientation with the group factor missing. This means that the rights provided for in Article 27 (ICCPR), are conferred on *persons* belonging to ethnic, religious, or linguistic minorities and it is left to the interpretation whether groups are entitled to such rights. By referring to the *persons* alone, Article 27 apparently conveys the sense that minorities *per se*, lack legal personality. The text, however, also specifies that the rights of individual members of minority groups are to be exercised "in community" with the other members. This has led to divergent interpretations. One explanation is that Article 27 protects only *individuals* belonging to minorities and not minorities as *groups*. On the contrary, the supporters of a liberal approach to international law argue that this clause would be superfluous, if it only recognized rights for individuals, for whom protections could be deduced from other provisions of the Covenant. The problem of

disregarding the group rights is that it would lead to the disintegration of the collective identity of the minorities.

Article 27 of the ICCPR entails States Parties to take such measures as are obligatory in order to aid the minorities to safeguard their main beliefs. Another connotation of the Article is 'freedom from interference' by States with whatsoever action a minority takes on its own attempt to safeguard its traditions. As far as international law is concerned, notwithstanding certain connections between Article 27 and universally recognized human rights, the rights are only protected by treaty rather than by customary law.⁹ Thus the absence of binding treaties hampers the cause of minority rights.

It is argued that the collective element of minority rights must be significant, because it communicates better with both reality and to the aim of minority protection. For example, cultural traditions, as well as educational and religious institutions are-and can be-maintained by a community only on a collective basis. Additionally, the collective enjoyment of culture, shared practice of religion, and use of language are critical to the very identity of minorities. Identity is, consequently, what subjectively determines the existence of a minority.

The collective element of minority rights finds some, although restricted, support in several international instruments, like the UNESCO Convention against Discrimination in Education (1960), International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1965) and Convention on the Prevention and Punishment of the Crime of Genocide (1948). An element of group entitlement is also to be found in the UNESCO Declaration on Race and Racial Prejudice (1978) and the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief (1981). However, none of these instruments could effectively ensure the protection of group rights.

⁹ The most important sources of international law are Treaties, Customs, General Principles of Law, Decisions of Tribunals and eminent and Jurists and Decisions of the Organs of International Organizations like the International Court of Justice, in that order. In most cases, Treaty laws take precedence over Customary Law.

The UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities¹⁰ can be considered an attempt to rectify the shortcomings of the previous Conventions. The declaration is considered as a new international minimum standard for minority rights and attempts to rectify some of the limitations of Article 27 of the ICCPR.¹¹ The Covenant calls upon states to ensure the protection of the existence, identity and basic rights of minorities within their territories, and to grant members of minorities, the rights concerning establishing associations, maintaining contact with other group members and other minorities, education in their languages, promotion of minority cultures and religions, etc. According to the UDHR, all people have the right to claim the rights and freedoms, without discrimination based on race, colour, gender, language, religion, political or other convictions, national or social background, property, place of birth, or any other circumstance, (Article 2).

The European Convention for the Protection of Human Rights and Fundamental Freedoms includes the principle of non-discrimination. The Geneva Report of the Expert Meeting on National Minorities (1991) says that National Minorities form an integral part of the State they live in (Section 1, paragraph 6). The Report calls upon states to adopt provisions that will make it possible for individuals, that are discriminated against on grounds of belonging to a national minority or not, to make use of effective legal means (Section IV, paragraph 3). According to the Copenhagen Document (1990),¹² the right to declare that a person belongs to a national minority is a matter of his individual choice and no disadvantage may arise from the exercise of such choice (Article 32). Respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability and democracy (Copenhagen Document, Article 31). Persons belonging to national minorities have the right to use freely their mother tongue in private and in public and to establish and maintain their own educational, cultural and religious institutions,

¹⁰ Resolution 47/135 of 18 December 1992 of the UN General Assembly. .

¹¹ Patrick Thornberry, "International and European Standards on Minority Rights", in Hugh Miall (ed). *Minority Rights in Europe*, (London: Royal Institute of International Affairs, Pinter Publishers, 1994), p.16.

¹² Document of the Copenhagen Meeting of the Conference on the Human dimension of the CSCE-Conference for Security and Co-operation in Europe, available on <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>.

organizations or associations (Copenhagen Document, Articles 32.1 and 32.2); to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations (Article 32.6).

The Charter of Paris (1990)¹³ asserts that the rights of persons belonging to national minorities must be fully respected as part of universal human rights, (section on the Human Dimension, paragraph 3). Ethnic, cultural, linguistic and religious identity of national minorities will be protected and persons belonging to national minorities shall have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law (Section on Human rights, democracy and rule of law, paragraph 8). The Helsinki Conference states that the participating States on whose territory national minorities exist would respect the right of persons belonging to such minorities to equality before the law, and would afford them full opportunity for the actual enjoyment of human rights and fundamental freedoms (Final Act, Principle VII).

Many of these rights, as mentioned earlier, focus on individual rights, ignoring group rights; nonetheless they indirectly provide protection for the identity-related characteristics of the minority community by preventing the state from restricting the expression of linguistic, religious or cultural characteristics among its members.

Democracies and Minority Rights:

The democracies are expected to implement a politics of recognition of differences alongside a politics of equal dignity¹⁴. However, sometimes, even a truly modern state, based on Western political and legal institutions and principles such as democracy, economic liberalism and the rule of law may face problems because of ethnic heterogeneity. Human rights are a standard part of the legal framework only in a few such states. Therefore it is crucial that the rule of law should be based on justice, tolerance and pluralism as reflected in universal human rights standards that are now becoming a part of international law.

¹³ Charter of Paris for a New Europe: Paris 1990, available on <http://www.hri.org/docs/Paris90.html>

¹⁴ Charles Taylor, "The Politics of Recognition", in Amy Gutmann (ed) *Multiculturalism: Examining the Politics of Recognition*, (Princeton, New Jersey: Princeton University Press, 1994) pp. 25-73,

Democracies based on the rule of law are not essentially impartial in terms of ethnic preferences. There are instances where such preferences relating to language, religion or culture infringe upon human rights principles, mainly non-discrimination, freedom of expression (including freedom to use the language of choice) and freedom of religion. One of the ways of preventing conflicts is to avoid creating an environment of ethnic tension and anger. Following the international guidelines provided by human rights framework can partially help in this endeavour. This in turn means that there are internationally agreed restrictions to the linguistic, religious or cultural preferences of government. For instance, non-discrimination in education implies that states must make available public instruction in a minority language for the members of the minority community, at least in those areas where there is a sizeable minority population.

The way a country treats its minorities will decide how a minority treats its own country. Minority situation is often conceived very differently in democracies. A representative government is said to stand for the whole population as all citizens are free to take part in the creation of government and they can liberally voice their apprehensions and dissatisfactions. Hence the democratic state itself is seen as impartial and universal, its laws and policies applying to everyone. Such a state as a result, it is assumed, is fundamentally not an ethnic or communal political unit. Unfortunately this view of a modern democracy is purely a theoretical construct, since the state, its establishments and laws are often identified with the joint interests of the majority in power, at least indirectly. In such a situation, there are chances that the majority culture will be endorsed above all others as the official or national culture, the majority language will be the official language of government, the religion of the majority will be institutionalised by the state.¹⁵

The relationship between the concepts of accommodation and assimilation is another case in point. States tend to use the alleged reason of accommodation to rationalize what in actuality amounts to artificial assimilation. Assimilation can be

¹⁵ This is what Israeli philosopher and human rights activist Yael Tamir points out when she says that members of minority groups can be outvoted on issues critical to the survival of their communities, a threat that members of majority cultures do not face since they usually control the state machinery. What she and others such as Canadian philosopher Will Kymlicka have pointed out is that in most states, "government by the majority" usually means government controlled by an ethnic majority, with the consequence that ethnic minorities often find themselves excluded, disadvantaged and dominated by the majority which controls the state machinery. For details see: www.incore.ulst.ac.uk/home/publication/conference/seminar/fernand.pdf+Minority+Rights%2BInternational+law&hl=en&ie=UTF-8, accessed on 19 November, 2004.

acceptable so long as it is a result of a natural process. It generally involves the integration of the minority community into the national mainstream. However, in the name of integration, most states tend to practice forced assimilation leading to backlashes from the minorities. One option the states could explore is that of 'accommodation without assimilation'.¹⁶ This is significant as it is a progressive-conservative option as it involves an improvement of their socio-economic conditions and the preservation of their culture. It also offers a middle ground between the necessities of national unity, the welfare of the majority, and the notion that ethnically unique minorities also form an integral part of the state.

Israel, Turkey and the Minorities:

This study is an attempt to examine the status of minorities and minority rights in the democracies in West Asia. Israel and Turkey are the only two acknowledged democracies in the region and have a substantial minority population. Both these countries conduct regular elections; have an independent judiciary and free press. The Arabs form the largest minority group in Israel while in Turkey the Kurds constitute the most significant minority group. While Arabs constitute 20 percent of Israeli population, the Kurds form almost the same portion of Turkish population. In Israel, though defined collectively as Israeli Arabs¹⁷, they include a number of subgroups including the Muslim Arabs (mostly Sunni), Christian Arabs, Druze and Circassians. They live predominantly in villages, towns, and mixed Arab-Jewish cities in the Galilee region in the north, the Triangle area in central Israel, and the Negev desert in the south. Majority of the Kurds in Turkey are Sunni Muslims and are concentrated in the south-eastern part of the country.

Israel and Turkey have a strong obsession for security and minority activities are viewed by both states with suspicion and this is reflected in their treatment of minorities. Israel has special security concerns regarding the Arab population feeling nationally and culturally connected to the Palestinians. The development of the

¹⁶ The concept was suggested by Margaret Gibson in her book, *Accommodation without Assimilation*, about Sikh immigrants in American High Schools. (Ithaca, New York: Cornell University Press, 1988).

¹⁷ Throughout the dissertation, the term *Arabs* denote Israeli Arabs, unless otherwise mentioned.

separate Kurdish identity in Turkey is seen as undermining the Turkish identity and national security. The Turkish government fear that granting more political or even cultural rights to the Kurds would initiate a process that would immediately lead to division and death of the Republic.¹⁸ By virtue of being democracies, Israel and Turkey boast of a relatively independent judicial system, which to an extent makes it possible for the minorities to seek a legal recourse to their grievances. Unlike most other states in the region, these two states have been relatively successful in separating their legal systems from the influence of religions.

The question of national identity is significant as the Jewish and Turkish identities are emotionally, socially and politically strong in the two countries. Not surprisingly, the minority identities, like the Arab in Israel and Kurdish in Turkey are also equally strong. Despite being democracies, these two countries have not yet succeeded in evolving a composite national identity that can represent their multi ethnic composition. And hence some use the term 'ethnocracy' to describe the two states.¹⁹

Israel and Turkey have signed a number of minority-related international conventions such as the ICCPR, ICESCR, CERD, CRC and CEDAW. Turkey, as a part of its attempts to join the European Union, has also signed the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment, the European Social Charter and most importantly the European Convention on Human Rights and Fundamental Freedoms (ECHR). Turkey has incorporated into its legal system Recommendation No.1201 of the Parliamentary Assembly of the Council of Europe (1993), which oversees the representation of the minorities in the Parliament and in the Municipalities; education in minority languages; freedom of publication in the media; and the right to make use of minority languages in the administration and judiciary. The Political Criteria Sub-Committee of the Special Commission on

¹⁸ Stephen Kinzer, *Crescent and the Star: Turkey Between Two Worlds*, (New York, Farrar, Strauss and Giroux, 2001) p.135

¹⁹ For a detailed description on ethnocracies, see, John Hutchinson and Antony D Smith, (eds), *Nationalism*, (Oxford and New York : 1994) and John Breuilly, *Nationalism and the State*, (Manchester: 1993).

Europe-Turkey Relations, attached to the State Planning Organization is presently authorized to look into further such concessions.

The Arabs became a minority following the establishment of the state of Israel. During the Arab-Israeli war that followed the establishment of Israel in 1948, approximately 780,000 Palestinians fled or were forced to become refugees in the neighbouring Arab states and in the West.²⁰ The Arab-Israeli War of 1948 ended with some 650,000 Jews and about 160,000 Arabs living in the newly established State of Israel. Of these Arabs, 111,500 were Muslim, 34,000 were Christian, and 14,500 were Druze and other smaller, less identifiable entities.

Those Palestinians who remained in Israel did not willingly choose Israeli citizenship. The new Israeli identity was imposed upon them and they involuntarily became its citizens. During the war with Israel, they were asked to fight against the Jews by the Arab leadership. But when the hostilities subsided, the Arab leadership fled during the Mandate rule. The Arabs also lost their social elite as most of the professionals like lawyers, teachers, doctors, engineers along with land owners and businessmen also left the country. Thus their middle class was in ruins; their intellectual leadership was no more, and no one sector was capable of constituting, or reconstructing, the spiritual and political life which had been lost. This vacuum led to economic, social, cultural and political crises. Almost overnight, the Arabs of Palestine ceased to be a national majority and were transformed into a weakened and frightened minority. The ensuing upheaval was profound. Arabs were forced to deal with both the shock of defeat and massive exodus of most of their community at a time when the state viewed them with suspicion. Within Israel's borders, following the signing of the armistice agreements between Israel and her neighbours, many Arabs were turned into a breed of internal refugees.

The situation of the Kurds was somewhat different. The Treaty of Sèvres (1920) concluded after World War-1 outlined a proposal for the autonomy of the Kurds who were a part of the Ottoman Empire. In 1922, the Turkish Grand National Assembly (TGNA) passed an Act, promising to establish an administration pertinent

²⁰ <http://www.is-pal.net/greenliners.htm> , accessed on 29 December, 2003.

to the customs of the Kurdish people. However, after the Turkish victory in Anatolia, the Treaty of Lausanne (replacing the Treaty of Sèvres) was signed and this Treaty did not contain any legal provision for the Kurds. Since 1924, when modern Turkish state was formally established, it has attempted to forcibly assimilate the Kurds. Modern Turkish constitution and laws based on the Kemalist ideology stipulated that the Kurds within the Turkish boundaries should subsume their ethnic identity under the Turkish one. Atatürk's aggressive policy of Turkish nationalism cut out any hope of Kurdish autonomy or even recognition of a separate non-Turkish cultural identity.²¹ A society that traditionally had been known as a multi-ethnic and multi-cultural one would be transformed into a uniform and homogenous Turkish nation state.²² Thus the Kurds ended up a minority in Turkey.

In comparing the treatment of minorities by Israel and Turkey, it is essential to underline one fundamental difference. Israel treats its Arab citizens fully recognizing their ethnic identity whereas Turkey as a state policy declines to accept the distinct identity of the Kurds. If at all, it is mentioned 'in terms of reactionary politics, tribal resistance or religious backwardness, but never as an ethno-political question'.²³ The Arabs in Israel enjoy formal equality, they vote on an equal basis and elect their Knesset members, enjoy freedom of worship, have jurisdiction over their religious courts and places of worship. They also enjoy freedom of expression. The political involvement of the Arab sector is manifested through national and municipal elections.

Arab citizens run the political and administrative affairs of their own municipalities and advance Arab interests through their elected representatives in the Knesset. Arabs have also held various government positions, including that of cabinet minister. Israel has extensive anti-discrimination laws. Moreover, since the founding of the State, the status of Arab women has been significantly improved by legislation stipulating equal rights for women and prohibition of polygamy and child marriage.

²¹ Beverley Milton Edwards and Peter Hinchcliffe, *Conflicts in the Middle East since 1945*, (London: Routledge, 2001) pp. 67-77

²² Kemal Kirisci, "Disaggregating Turkish Citizenship and Immigration Practices" *Middle Eastern Studies*, vol.36, no.3, July 2000, pp.1-22.

²³ M Yegen, 'The Turkish State Discourse and the Exclusion of Kurdish Identity', in S. Kedourie (ed), *Turkey, Identity, Democracy, Politics* (London/Portland, 1996) pp 216-29.

Israel remains one of the few countries in West Asia where women enjoy equality in rights and personal freedoms, including the right to vote and be elected to local and national offices. Arabic, like Hebrew, is an official language in Israel. Many Arabs have volunteered for military duty and the Druze and Circassian communities are subject to compulsory draft.

Turkey has awarded minority rights to its citizens of non-Muslim origin including the right to education in own language right to publish newspapers and right to express one's identity. Principles such as equality before law and non-discrimination are valid for Kurdish citizens as well, as long as the Kurdish identity is not specifically mentioned. However, of all the states with Kurdish populations, Turkey has been most active in denying their existence. Turkish national discourse has thereby never refused to accept Kurds as Turkish citizens.²⁴ The entire concept of 'affirmative action' by the state for the Kurds therefore is absent in Turkey. However, of late Turkey has permitted the usage of Kurdish languages. Officially Turkish citizens with a different mother tongue are free to talk and write or publish newspapers, books in their second languages. Though broadcast in regional languages are not formally allowed there are nine TV stations, which are de facto presenting TV programs in *Kýrmancý* language in Turkey. *Kýrmancý* and *Zaza* - two of the Kurdish languages spoken in Turkey- may be taught by private institutions to those who desire. Candidates of different ethnic, linguistic or religious origins including the Kurds are free to be elected to the Parliament from the lists of different political parties -including from those political parties with strong regional or ethnic support.

Notwithstanding all the rights available to the minorities, they are also subject to innumerable discriminations. Both in Israel and Turkey there exist official and informal policies and actions directed against the minority groups and activities which are perceived to be posing a fundamental challenge to the existing power relationships or to the government's vision of the nation, or to its key policies. As a result, the Israeli Arabs and the Turkish Kurds face political, legal, cultural, and economic discriminations. The study examines the political, legal, economical and cultural aspects of these minorities. The second chapter will look into the legal aspects of

²⁴ Konrad Hirschler, "Defining the Nation: Kurdish Historiography in Turkey in the 1990s", *Middle Eastern Studies*, Vol.37, No.3, July 2001, pp.145-166

various forms of discriminations prevailing in these states, focusing on the legislations passed by the governments and the constitutional provisions. The third chapter examines the effect of these laws on the status of the minorities and how they are affected by these laws. The fourth chapter will be the conclusions of the study.

CHAPTER II

THE LEGAL STATUS OF MINORITIES

In spite of all the rights available to the minorities including legal guarantees and the right to vote, the minorities in Israel and Turkey are also subject to subtle and at times obvious forms of discrimination. There exist official and informal policies and actions directed against the minority groups and activities, which pose a fundamental challenge to the existing power relationships or to the government's vision of the nation, or to its key policies. Both in Israel and Turkey there are several legislations and administrative decisions that harm the political, legal, economical, and cultural interests of the minorities.

ISRAEL

In Israel, the Arabs enjoy rights unknown to most of their counterparts in West Asia. Nevertheless they are subject to various forms of discrimination, some direct, official, and others less so. These adversely affect the most fundamental assets of democratic society including political and legal rights, economic equality and cultural freedom. Despite being a vibrant democracy with the system of 'checks and balances' in place, the Israeli establishment has put in place a number of legislations that undermine, at least to an extent, the notion of equality of its citizens. While most of these legislations are non-discriminatory in the technical sense of the term as they are equally applicable to all the citizens, on an operational level they work against the Arab minority. Such legislations can be found in the matter of citizenship, in the political arena, resource allocations, etc.

I) POLITICAL ASPECTS:

The fundamental legal framework for political activities in Israel is based on the Israeli Declaration of Independence of 1948. It says that the State "will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture." Moreover, it calls upon the Arabs to preserve peace and participate in the up-building of the State on the basis of full and equal citizenship and

due representation in all its provisional and permanent institutions. But over the years, numerous caveats were placed on this right by administrative and legislative processes.

The Basic Law: The Knesset (1958):

This Basic Law decides on the legality of the political parties in Israel. Initially it had provisions to ban a party list from contesting the elections if the “denial of the existence of the State of Israel as the State of the Jewish people is expressed or implied in its purposes or deeds”. Apart from the legislations, the government has also used administrative decisions to ban parties whenever it deemed necessary. Most obvious example of this practice pertains to *Usrat al Ard* (Family of the Earth) was formed by the Arabs. In 1964, it officially transformed into a political party with the intention of finding “a just solution for the Palestine question, considering it a whole and indivisible unit.....within the framework of the supreme wishes of the Arab nation”.¹ Two days after its formation, the party was declared illegal by the district commissioner of Haifa for violating security and very existence of the State of Israel.²

Another instance of banning a party list took place in 1984, before the elections to the 12th Knesset. In the light of the opinion polls, which showed that *Kach*, the ultra-nationalist and racist party of Rabbi Meir Kahane, would succeed in getting elected to the Knesset, the Central Election Committee³ decided not to allow *Kach* to run for the Knesset. To secure wide support for the disqualification decision, the CEC also decided to ban the extreme leftist Progressive List for Peace (PLP) which had a sizeable Arab support. However, the decisions were revoked by the Supreme Court.

Subsequently, the government amended the 1958 *Basic Law on Knesset* in 1985 so as to include a new Section 7A, which added two more grounds for the

¹ Sabri Jiryis, *The Arabs in Israel*, (New York and London: 1976), p. 190

² *Judgements* 18, part 4:670, Sabri Jiryis v. The Haifa District Commissioner, case 253/64. See *ibid*.

³ The Central Elections Committee (CEC) is a political body, established to conduct Knesset elections and is composed of members of the outgoing Knesset and is presided over by a judge of the Supreme Court. The CEC has the power to disqualify party lists and individuals contesting the elections, (the issue is discussed in detail below) subject to the approval of the Supreme Court.

disqualification of parties. These were denial of the democratic character of the State and incitement to racism. This new clause was used to ban *Kach* in 1988 and the decision was upheld by the court also.

After the outbreak of the *Al-Aqsa intifada* in October 2000, Israel has decided to impose further restrictions on the political activities of its Arab population. In the initial days of the *intifada*, the Arabs took to the streets in support of the Palestinians in West Bank and Gaza. In Nazareth, thousands of Arabs marched in the streets chanting, "With our souls and our blood, we will redeem Palestine."⁴ Alarmed by the rising instances of rioting which it naturally considered as sedition, Israel introduced a set of laws which directly and indirectly impact on the political rights of the Arabs.

The Basic Law: The Knesset (Amendment no.35)-2002:

In May 2002, the Knesset passed the 35th amendment to the 1958 Basic Law on the Knesset. This legislation amended section 7A of the Law and the new law reads:

- 7A. (a) A candidates' list shall not participate in elections to the Knesset and a person shall not be a candidate in the elections to the Knesset if the aims or the actions of the list or the actions of the person, as the case may be, explicitly or implicitly, include one of the following:
- 1) rejection of the existence of the State of Israel as a Jewish and democratic state.
 - 2) incitement to racism.
 - 3) support for an armed struggle of an enemy state/terrorist organization
- (b) A decision by the Central Election Commission that a candidate is disqualified from running in the elections requires the approval of the Supreme Court.
- (c) A candidate shall make a declaration in the matter of this section.
- (d) Details regarding the hearings in the Central Election Committee in the Supreme Court, and in the matter of the declaration pursuant to Subsection(c) shall be established by statute.

The main features of the new amendment are:

- i) It confers the Election Commission the powers to prevent not only party lists but also individuals from contesting elections. The amendment empowers the CEC to delete from the party list, the name of an individual, further augmenting the earlier provision of banning an entire list. The right to ban individuals from contesting the election is seen as a violation of

⁴ Efraim Karsh, "Israel's Arabs v. Israel", *Commentary*, Vol.116, No.5, (December 2003), pp. 21-27

human rights and hence as become controversial.⁵ Moreover, it goes against the spirit of the fundamental rights granted by the Basic Laws.⁶

- ii) The amendment allows the CEC, which is a political body, to disqualify parties and individuals. Giving such quasi-judicial powers to a political body may result in the misuse of powers. Even though the Supreme Court still serves as the final guarantor of rights, to which parties can appeal, it is nonetheless a flawed procedure in which the prosecutors also become the judges.
- iii) The amendment stipulates that parties and individuals will be disqualified for rejecting Israel's identity as a 'Jewish *and* democratic state' (not as a Jewish state and/or a democratic state, as stipulated in the law before the amendment). This discriminates against the Arabs who resent the Jewish-centric Israeli national identity. Moreover, the concept of being Jewish and democratic at the same time itself is problematic as Israel is a multiethnic polity.
- iv) It disqualifies parties and individuals who support armed struggle of enemy states and terrorist organizations against the State of Israel. The definition of 'terrorist organizations' is derived from the *Prevention of Terrorism Ordinance No. 33 (1948)* which gives the State sweeping powers to designate organizations and people as terrorist organizations and terrorists.⁷ A decision of the government in declaring someone a

⁵ Nimer Sultany, *Citizens Without Citizenship: Mada's First Annual Political Monitoring Report: Israel and the Palestinian Minority 2000-2002*, (Haifa), p.28

⁶ Section 6(a) of the Basic Law: The Knesset says: "Every Israeli national who on the day of the admission of the candidates' list containing his name is twenty-one years of age or over shall have the right to be elected to the Knesset unless a court has deprived him of that right...or he has been sentenced to a penalty of actual imprisonment for more than three months ...and seven years have not passed since he completed serving his prison sentence...".
http://www.knesset.gov.il/laws/special/eng/basic2_eng.htm.

⁷ Section 4 of the Prevention of Terrorism Ordinance defines a person who supports a terrorist organization. A person who -

- (a) publishes, in writing or orally, words of praise, sympathy or encouragement for acts of violence calculated to cause death or injury to a person or for threats of such acts of violence; or
- (b) publishes, in writing or orally, words of praise or sympathy for or an appeal for aid or support of a terrorist organization; or
- (c) has propaganda material in his possession on behalf of a terrorist organization; or
- (d) gives money or money's worth for the benefit of a terrorist organization; or
- (e) puts a place at the disposal of anyone in order that that place may serve a terrorist organization or its members, regularly or on one particular occasion, as a place of action, meeting, propaganda or storage; or
- (f) puts an article at the disposal of anyone in order that that article may serve a terrorist organization or a member of a terrorist organization in carrying out an act on behalf of the terrorist organization, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one thousand pounds or to both such penalties. See www.mfa.gov.il/mfa/go.asp & www.us-israel.org/jsource/terrorism/teerotoc/html.

terrorist will be accepted by a court of law.⁸ Technically, any opposition to the Israeli occupation of the West Bank and Gaza becomes a ground for disqualification from running for the Knesset.⁹

The Political Parties Law (Amendment no.13) -2002:

Section 5 of the Political Parties Law (1992) provides grounds for refusing registration for political parties.¹⁰ The purpose of the new amendment was to apply the grounds mentioned in the newly amended section 7A of the Basic Law on the Knesset, to the registration of political parties under the Political Parties Law. Thus Section 5 (2A) was added to the Act to include support for an armed struggle of an enemy state or of a terrorist organization against the State of Israel as a reason for prohibiting registration of a political party. On 15 May 2002, the Knesset passed an Amendment 46 to the Knesset and Prime Minister's Law. Under the provision along with the nomination, the candidates have to include the following declaration:

"I pledge allegiance to the State of Israel and refrain from acting contrary to the principles of section 7A of the Basic Law: The Knesset".

This pledge forces the Arabs to accept and undertake the ethnic characteristic of the state of Israel. Pledging such an allegiance forecloses all chances to work for creating a composite identity for all Israeli citizens irrespective of their ethnicity even through legally accepted political means.

The administrative and political implications of the new amendments were immediately evident. During the elections for the sixteenth Knesset in January 2003, six requests of disqualification were put before the CEC of which four were against the Arab lists and leaders.¹¹ There are precedents of such bans of entire party lists as

⁸Section 8 of the ordinance reads: If the Government, by notice in the Official Gazette, declares that a particular body of persons is a terrorist organization, the notice shall serve, in any legal proceeding, as proof that that body of persons is a terrorist organization, unless the contrary is proved. Source: *ibid*.

⁹ Oren Yiftachel, "The Shrinking Space of Citizenship: Ethnocratic Politics in Israel", *Middle East Report*, No. 223 (Summer,2002) pp. 40-41.

¹⁰ Section 5 of the Parties Law (1992) provides that:

A party will not be registered if any of its purposes or deeds, implicitly or explicitly, contains

- i). negation of the existence of Israel as a Jewish, democratic state;
- ii). incitement to racism.
- iii). reasonable ground to deduce that the party will serve as a cover for illegal actions, available on www.knesset.gov.il/elections16/eng/about/parties-etc-eng.htm

¹¹ For details see the Adalah website, www.adalah.org/eng/elections2003.php

evident from the ban on *Kach* and the PLP in 1984. *Kach* and *Kahane Hai* were disqualified by the CEC in 1988 under the charges of incitement to racism and negation of the democratic character of Israel. However, till the 2002 amendment of the Election Laws, the ban of individual candidates was not possible. Using the new provisions, in 2003 the CEC disqualified two Arab MKs (Members of the Knesset), Azmi Bishara of the National Democratic Alliance (NDA) and Ahmad Tibi from running for the Knesset. The role of the government was clear and overt as the Attorney General Elyakim Rubinstein also submitted requests for their disqualification based on a report filed by the General Security Services. The decision led to extensive debates within Israel with a flurry of opinions for and against the decision.¹² Ultimately the Israeli Supreme Court put the issue to rest by overturning the decision of the CEC and allowing the disqualified leaders and party lists to contest the elections.¹³

In March 2002 the Knesset passed the *Law Amending the Ordinance Extending the Validity of the Emergency Regulations (Foreign Travel) (No.7)-2002*. The original law of 1948 restricted the travel of Israeli citizens to those states designated by the government as enemy states. Travel to such states flouting the provisions of the Ordinance is a criminal offence. However, Regulation 17(c) of the ordinance makes it clear that such travel restrictions do not apply to people who hold diplomatic or service passports. All Knesset members are eligible for service passports according to Section 10(b) of Knesset Members (Immunity, Rights and Duties) Law. The new amendment nullifies Regulation 17(c) thereby lifting such immunity of a Knesset Member. The legislative process for enacting this law was initiated soon after the Arab MK Azmi Bishara visited Syria to deliver an address to condole the death of Syrian President Hafez- al Azad.¹⁴ During his speech he also praised the anti-Israeli movement in the Occupied Territories.

¹² Sultany, n.5.

¹³ See Elections Approval 11280/02, *Central Elections Committee for the Sixteenth Knesset v. MK Ahmad Tibi*; Elections Approval 50/03, *Central Elections Committee for the Sixteenth Knesset v. MK Azmi Bishara*; Elections Appeal 131/03, *National Democratic Assembly v. Central Elections Committee for the Sixteenth Knesset*. Sultany, n. 5, p.83

¹⁴ During the second reading of this bill, Meretz MK, Mossi Ratz said that the government was pushing forward with the bill as it felt threatened because of Bishara's visit to Syria. He mentioned that the Minister for Internal Security was referring to the bill as Azmi Bishara Law, clearly indicating that the immediate motive behind the bill was Bishara's visit to Damascus. Details available on "The 294th sitting of the Fifteenth Knesset". Ibid. p.34.

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In July 2002, the *Knesset Members (Immunity, Rights and Duties) (Amendment No.29) Law* was passed to bring about changes in Section 1(a) of the original 1951 law which provided immunity for the Knesset members from prosecution.¹⁵ The amendment proposed new grounds on which a Knesset member will lose his immunity. These include the rejection of the existence of Israel as the state of the Jewish people and its democratic nature, incitement to racism and support for the armed struggle of an enemy state or acts of terror against the state of Israel or against Jews or Arabs in Israel or abroad. Interestingly, as different from other legislations, this one defines Israel as the “state of the Jewish people” which is different from the common usage, “Jewish and democratic state”. The law was a direct response to the two speeches made by Azmi Bishara, in Umm al-Fahem in Israel on June 5, 2000 and in Damascus on 10 June 2001 publicly praising the Lebanese and Palestinian movements (in the West Bank and Gaza). Bishara was also indicted by the Knesset on two counts. On the basis of the speeches he delivered, the Knesset decided that he committed the offence of supporting a terrorist organization. The second indictment was for unlawfully assisting Israeli citizens to enter into Syria to visit their families.¹⁶

This becomes the first case in the history of Israel that an MK was criminally prosecuted for an offence other than corruption, assault and sex crimes. In 1985, the immunity of Arab MK Mohammed Mia’ri of the PLP was lifted and his freedom of movement was also restricted after he met with the PLO leadership. However, the immunity was lifted for search and detention alone and not for criminal prosecution. Regarding the total freedom of movement, the MKs enjoy the immunity under the *Knesset Members (Immunity, Rights and Duties) Law-1951*.¹⁷ In the history of the State, this immunity from the restriction of movement for the MKs was waived by the

¹⁵ Section 1 (a) (1951) reads: A member of the Knesset shall bear no criminal or civil responsibility, and shall be immune from any legal proceeding, in respect of a vote, an oral or written expression of opinion or any other act, in or outside the Knesset, if such vote or opinion or act pertains to or is directed towards the carrying out of his mandate as a member of the Knesset. Full text is available on www.knesset.gov.il/rules/eng/ethics/html.

¹⁶ Section 18 of the Emergency Regulations (Foreign Travel)-1948 prohibits unlawful exit from Israel.

¹⁷ See section 9(a) of *Knesset Members (Immunity, Rights and Duties) Law-1951*. The law states: A direction prohibiting or restricting access to any place within the state other than private property shall not apply to a member of the Knesset unless the prohibition or restriction is motivated by considerations of state security or military secrecy. Source: n.15

Knesset four times: this involved Meir Kahane (*Kach*) and Mohammed Mia'ri (PLP) in 1985, Hashem Mahameed (*Hadash*) in 1993 and finally Ahmad Tibi (*Talal*) in 2002. It is interesting to observe that other than Kahane all were Arab MKs.

II) LEGAL ASPECTS:

There are a number of legal issues in Israel which threatens the equal status of the Arab minority. The extreme importance given to the Jewish nature of the state and the provision of a 'near-automatic' granting of Israeli citizenship to Jews all over the world, ignoring the claims of several Arabs who were the inhabitants of the region before Israel came into existence raises several legal and ethical questions even while placing the formation of Israel in its appropriate historical context.

Crisis of Equality:

Equality before law irrespective of any differentiating factor is a fundamental guarantee available for all Israeli citizens. This would naturally entail that all citizens enjoy equality irrespective of their ethnicity. However, according to the Declaration of Independence, Israel is a "Jewish state" and the *raison d'être* and aim of the state was the "ingathering of the exiles." While such references to the Jewish nature of the state permeate the Declaration, it contains only one reference to the upholding of complete equality of political and social rights for all its citizens, irrespective of race, religion, or sex. Though the Declaration promises that all Israeli citizens will enjoy complete equality in political and social rights, irrespective of race, religion or sex, this is subordinate to subsequent Knesset legislations. This means that the state from its very outset was a Jewish project, not an Israeli one.

At the same time, Israel is modelled on the western democracies. Zionism has got as its declared aim the plan to rebuild Israel as a Jewish national home, for the Jews to live as free individuals in their own soil, and to die peacefully in their own homes.¹⁸ The Arab citizens bear the brunt of this ethnic exclusivity in Israel. They live with the knowledge that many in Israel consider them as a potential fifth column

¹⁸ Walter Laquer, *A History of Zionism*, (New York: 1976) p.599.

and see their growing numbers as a threat, as the recurrent discussion on the 'demographic problem' reveals.¹⁹

In 1992, the Knesset passed two important laws, 'The Basic Law: Human Dignity and Liberty' and 'The Basic Law: Freedom of Occupation' - which, for the first time, had certain "constitution-like" provisions for the protection of some civil liberties and human rights. Since Israel does not have a written constitution, the Human Rights provisions are actually found in the Basic Laws enacted periodically. The 1992 Basic Law authorized the courts to overturn laws, which violate basic civil liberties. However, violations of rights under this Basic Law will be allowed, "by a law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required or by such a law enacted with explicit authorization therein." The law is also silent on the right to equality. Thus there are no statutory guarantees to ensure the right to equality for the Arab citizens while several ordinary statutes protect the equal rights of women and disabled people.

Problems of Citizenship:

The Israeli Nationality Law of 1952 outlines the procedures for acquiring Israeli nationality. It provides that nationality can be acquired by return (section 2), by residence in Israel (section 3), by birth (section 4), or by naturalization (sections 5-9). The Law of Return, passed by the Knesset in 1950 allows Jews to acquire citizenship by making it a religious and ethnic issue. According to the law, "every Jew has the right to come to Israel as an *oleh* (migrant) and every *oleh* under the Law of Return becomes an Israeli national."²⁰ According to David Ben Gurion, "the right of a Jew to immigrate to Israel is inherent in him from the very fact of his being a Jew....and its source is the never broken connection between the Jewish people and the homeland."²¹ Unheard of in nationality laws across the world, the Israeli Law of Return does not require a Jew who arrives in Israel to apply for citizenship or to satisfy any residence criteria, Any Jew entering the state of Israel who does not want

¹⁹ John Gee, *Unequal Conflict: The Palestinians and Israel*, (London: 1998), p.69

²⁰ The Law of Return, Section 2(a).

²¹ Anis F. Kassim, "The Right of Nationality in the State of Israel" in AW Kayyali (ed) *Zionism, Imperialism and Racism*, (London: 1979), p.109.

to be an Israel citizen, is required to declare that he does not intend to acquire the Israeli citizenship before the concerned official.²²

This law represents a few more complexities as a Jew born in Israel shall immediately become an Israeli citizen from the day of his birth. Under the Law of Return, the citizenship is acquired not by virtue of birth, but by virtue of return.²³ The consequential application of this provision is that all Jewish children born in Israel will *prima facie* be Israeli nationals regardless of the nationality of their parents. Should the child's parents opt out of Israeli nationality their opting out would not necessarily include the child, unless they expressly include him or her in their declaration.²⁴

The right to nationality by virtue of the Law of Return is reserved exclusively for the Jews and this expressly discriminates the non-Jewish people to obtain Israeli citizenship. First and foremost the Law of Return is not applicable to hundreds of thousands of Arabs who became refugees following the establishment of Israel and the Arab-Israeli war of 1948. For those Arabs who wished to remain in Israel, acquiring Israeli citizenship was really tough. As per the Nationality Law, one way for the Arabs to apply for the citizenship was the provision of Nationality by Residence. The procedure is mentioned in the sections 3(a) and 3(b) of the law:

- 3(a): A person who, immediately before the state was a Palestinian citizen and who does not become an Israeli national under section 2 (Law of Return) shall become an Israeli national if:
- (1) he was registered on the 4th Adar, 5712 (1st March 1952) an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949;and
 - (2) he is an inhabitant of Israel on the day of the coming into force of this Law; and
 - (3) he was in Israel, or in an area which became Israeli territory after the establishment of the state, or entered Israel legally during this period.
- 3(b): A person born after the establishment of the state who is an inhabitant of Israel on the day of the coming into force of this law and whose father or

²² See The Law of Return, Section 2(c) 2, "Nationality by Return does not apply to a person of full age who *immediately* declares that he does not desire to become an Israeli national."

²³ See The Law of Return, Section (4) which says that every Jew born in Israel is an *oleh*.

²⁴ Kassim, n. 21, p. 111.

mother becomes an Israel national under subsection 3(a), shall become an Israel national with effect from the day of his birth.

These conditions in reality were difficult to satisfy. Most people did not have passports or identity cards which were required for residence proofs. Most of those who had it were sometimes forced to surrender it to the Israeli military authorities during the war. Even with all documentary proofs the Arabs had to establish that they were actually the inhabitants of Israeli territory between the day of establishment of the State and the day of the law coming into force. This was not easy considering the circumstances prevailed in 1948.²⁵

Israel does not conform to any of the prevailing practices of international customary law in granting citizenship by birth. So far as granting citizenship by naturalization is concerned, international law provides that there should be a “genuine link” between the state and the applicant.²⁶ In the case of Israel it is sufficiently clear that this link is an ethno- religious criterion of the applicant being a Jew. Such a policy is a violation of International Convention on the Elimination of All Forms of Racial Discrimination. The words of MD Gouldman, the first Assistant Attorney General of Israel is relevant in this context, “it could be alleged that the essence of the Law of Return is selective in that it deals with Jews and their families; but then Israel is a Jewish state.”

Right of Return:

The right of return of the refugees who left Israel during the establishment of the state has been a burning issue in all the subsequent peace efforts. While the Palestinian leadership has been adamant on the right of return, Israel has vehemently opposed it. It is in this context that one should look into the Ensuring the Rejection of the Right of Return Law-2001, passed by the Knesset in January 2001. Section 2 of the law says that refugees²⁷ shall not be returned to the territory²⁸ of the State of Israel except with

²⁵ Jirys, n. 1.

²⁶ The International Court of Justice had made this amply clear in the *Nottebohm's Case, Liechtenstein v Guatemala*, See *ICJ Reports, 1955*. Cf. Malcolm Shaw, *International Law*, (New Delhi: 2000).

²⁷ The term refugee normally refers to a person who left the borders of the State of Israel at the time of war and is not a national of the State of Israel. This includes the persons displaced in 1967 and refugees of 1948 or a member of his or her family.

²⁸ This law has defined the territory of the state of Israel as the territory located within the sovereign jurisdiction of the state of Israel.

the approval of an absolute majority of members of the Knesset. Thus while many Arabs who were forced to flee their homes are not allowed to return to their homeland, Jews all over the world, who are not even residents of these territories, are able to claim Israeli citizenship simply because they are Jews.

This apart, there are other laws which directly affects the citizenship rights of the Arab minority in Israel. In May 2002, the government came out with an order to change the existing family reunification policy of granting citizenship to people who are married to Israeli citizens. This clause essentially targeted the Palestinians living in the Occupied Territories.²⁹ On 31 July 2003, the Knesset passed Nationality and Entry into Israel Law (Temporary Order-2003). It was a result of the government's desire to reduce the number of Arabs, who become naturalized following marriage to Israeli citizens.³⁰ Invariably any Arab (the instances of Jews marrying someone from the territories are very few) who marries someone from the occupied territories will have to leave Israel or live separately.

The Knesset is also flooded with a number of bills seeking to put in place more roadblocks for the Arabs in pursuing citizenship. *The Nationality (Amendment-Limitation of Nationality of Spouse) Law-2001*, proposed by the National Union-*Yisrael Beitenu* MK Eliezer Cohen seeks to amend the 1952 Nationality Law. Section 5(a) (2) of the original law allows naturalization for a person who was a resident of Israel for three out of five years preceding the date of his application. The new amendment seeks to change this into:

A person of full age, not being an Israeli national, may obtain Israeli nationality by naturalization if he has been in Israel for three years out of five years preceding the day of the submission of his application, provided that his stay in Israel was *made pursuant to a resident certificate or permit within the meaning of the Entry into Israel Law-1952*. (emphasis added)

²⁹ The interim order reads:

1. Handling of new requests, including pending requests

a) Residents of the Palestinian Authority- new requests of residents of the Palestinian Authority to receive the status of resident or another status will not be accepted; a request that has been submitted will not be approved, and the spouse will be required to stay outside of Israel until decided otherwise.

b) Other persons- the request will be heard taking into account the origin of the individual invited.

³⁰ The Arabs are defined in the law as "residents of the region", the region being defined as Judea, Samaria and the Gaza Strip). The terms Judea and Samaria are used in the bill.

The amendment forecloses all the chances for the spouses of Israeli citizens to acquire citizenship by way of naturalization. With the requirement of the residence permit as mentioned in the 1952 Law, it is impossible for the spouses to obtain citizenship even after satisfying the criteria of staying for three years in Israel. MK Cohen described the amendment as a measure to prevent the “creeping realization of the right of return.” This would affect the Arabs the maximum as they are the ones who marry frequently from the Occupied Territories.

Revocation of Citizenship:

There was an instance in August 2002, in which the Interior Ministry decided to terminate the citizenship of two Arabs on charges of aiding and abetting terrorism. The move was purely an administrative decision. At the time of the decision both the accused had not been convicted by courts. Revocation of nationality is a kind of punishment unheard of in democratic societies. Moreover, similar demands made for the revocation of the citizenship of Yigal Amir, who assassinated Prime Minister Yitzhak Rabin were rejected by the Israeli Supreme Court. Furthermore, the Court has strongly criticized this measure in the case of Yigal Amir. The Court ruled that citizenship is a fundamental right, in part because it is the foundation for the right to vote for the Knesset, from which democracy flows.³¹ On 24 July 2002, a bill was proposed by Druze MK Ayoob Kara of the *Likud* to legalize the revocation of citizenship. The bill, *Proposed Nationality (Amendment- Revocation of Nationality) Law- 2002* was aimed at amending the Nationality Law (section 11) by adding a clause from the Prevention of Terrorism Ordinance-1948:

The Ministry of Interior may terminate the nationality of a person who was convicted by a final judgment of an offence pursuant to subsections (d), (e) and (f) of section 4 of the Prevention of Terrorism Ordinance-1948.³²

³¹ The citation of the Israeli Supreme Court is from the judgment delivered by Earl Warren, former Chief Justice of the US Supreme Court in the case, *Trop v. Dulles*, 356 US 86(1958). “Citizenship is not a license that expires upon misbehaviour. The deprivation of citizenship is not a weapon the government may use to express its displeasure at a citizen’s conduct, however reprehensive that conduct may be. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The civilized nations in the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime”. The full judgement is available on the website of Oklahoma State Court’s Network, www.oscn.net/applications/oscn/deliverdocument.asp?citeid=426033. Also see www.law.duke.edu/journals/lcparticles/lcp6/dAutumn1998p29.htm.

³²The detailed text is available on www.mfa.gov.il/mfa/go.asp & www.usisrael.org/jsource/terrorism/teerotoc/html., accessed on 22 May, 2004.

The Encouragement of Emigration to Arab Countries Law -2001 (proposed by the *Likud* MK Yisrael Katz in July 2001) was aimed at encouraging the Arabs to leave Israel to other Arab countries. The explanatory notes to the bill mention that:

The state of Israel has many nationals and residents who are interested in emigrating to Arab states for national, religious, cultural, or other reasons. The state of Israel is interested in encouraging people to leave in cases where they do not identify with the Jewish character of the state and are interested in emigrating. This bill is likely to result in a reduction in ethnic-based friction within the territory of the state and in strengthening the foundations that will maintain Israel as a Jewish state and a democracy.³³

The bill was strongly opposed by the legal advisor to the Knesset, under section 134(c) of the Knesset's Rules of Procedure on the grounds of racism, but still it was approved for submission though it is yet to be passed.

III) ECONOMIC ASPECTS:

The Arabs have always faced serious economic crises compared to their Jewish counterparts. The longstanding gap in levels of income within the Jewish population and between Jewish and Arab citizens continues. The towns and localities with the highest rates of unemployment are populated by Arabs.³⁴ Most of the legal issues regarding the economic discrimination faced by the Arab community are directly related with the land expropriation measures adopted by Israel. The Arabs' economic woes started soon after the establishment of the State, which initiated a series of land appropriation measures.

One of the basic reasons behind the economic crisis of the Arabs has been the official policy of land appropriation. Most of the Arabs are devoid of any property of their own, due to several legal and administrative decisions. Presently, roughly 93 per cent of the land is state owned, its use and development administered by the statutory Israel Lands Administration (ILA). This is not unnatural in modern states. However, in the case of Israel, the policy and decision making body of the ILA, known as its Council, consists of eighteen persons, half appointed by the Jewish National Fund

³³ Sultany, n. 5, pp 42-43.

³⁴ Details and statistics are given in the following chapter.

(JNF) and the Jewish Agency (JA).³⁵ The agency's charter identifies as one of its goals as "to purchase and develop land as a national resource of the Jewish people, by the Jewish people and for the Jewish people". The majority of this land has been expropriated from Arabs. As a result, Arabs, who constitute roughly one fifth of the population, own approximately 3.5 per cent of land in Israel. Whereas their population has increased six-fold since 1948, land under their control has diminished, and they are barred from purchasing or leasing land in roughly 80 per cent of the country.³⁶

The government passed a series of laws to take over the land previously held by the Arabs. The first of these was the *Absentee Property Law, (1950)*. At the outset, the law was to take care of the land of those refugees who left Israel and who were defined as absentees. However, a closer look at the definition of the absentees reveals the implication for the Arab citizens of Israel. An absentee was defined as:

A person who at any time during the period between November 29, 1947 and the day on which a declaration is published...that the state of emergency declared by the Provisional State Council on May 19, 1948, has ceased to exist, was a legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period-

- (i) was a national or citizen of Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq, or the Yemen or
- (ii) was in one of these countries or in any part of Palestine outside Israel, or
- (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine
 - a) for a place outside Palestine before 1st September, 1948 or
 - b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the state of Israel or which fought against its establishment.

In the period immediately after the partition plan was announced, there were several areas which were not under Israeli control and which was later annexed. The residents usually used to move around quite frequently. The law is so carefully worded that if a property owner had left for a neighbouring country after the partition plan was announced or even changed his residence, his land can be appropriated even if he/she had returned to his/her original place. Once a person is declared an absentee not only his land but all his/her possessions would be expropriated. Put into practice

³⁵ The three entities constituting the ILA are the JA, JNF and the *Minhal*. Only *Minhal* is under the control of Israeli public and administrative law. From the late nineties the ILA has one Israeli Arab member following a Supreme Court directive.

³⁶ www.adalah.org/features/commission/oct2000_eng.pdf. Accessed on 21 January 2004.

the law was used to take over to land owned by Arabs (apart from those who actually became refugees) who were actually present in the state. This led to the coining of the new term “present absentees”. Furthermore, according to Article 17 of the law, if the land has been taken over once and later if it is proved that the owner had valid legal rights over the land, the takeover would still remain valid. Thus, the Arabs had to face one of the worst forms of economic discrimination immediately after the state came into existence.

The Defence (Emergency) Regulations (1945) was another law which was in vogue during the mandatory period, which led to the economic deprivation of the Arabs. Article 125 of the law, known as the ‘closed areas article’ was drafted to give powers to the military governors to restrict access to lands for even those people with valid permits. People were prevented to enter their own lands and they were offered compensations. Once the article was invoked, further permission to enter these lands could only be issued by the Ministry of Defence or the Chief of Staff. The Supreme Court also had ruled that the decision was valid once it is published in the Official Gazette.

The Emergency (Security Zones) Regulation -1949 was also aimed at land appropriation. According to the provisions of this law, the Ministry of Defence, under the directions from the Foreign Affairs and Security Committee, was empowered to categorize a strip of land stretching ten kilometres north and twenty five kilometres along the West Bank, for the length of the Israeli border, or any part of it, as a ‘security zone’. Using the provisions of the law, most of the Arab majority areas like the entire Triangle³⁷, half of Galilee and most areas of Gaza Strip were declared security zones. Once a place was declared as a security zone, no one will be allowed to permanently reside or even enter these zones without the permission from the Ministry of Defence. The law had provisions which would enable the Ministry to ask a permanent resident to leave the area. Though there were appeal committees to redress the possible grievances, there was not even a single instance in which such an order was annulled.

³⁷ The ‘Triangle’ is in central Israel, which runs west of the Green Line separating Israel from the West Bank. It includes the Arab towns of Umm al-Fahem, Taibeh, Tireh, Baqa al-Gharbiyeh and Kafir Qasem.

The Emergency Regulations (Cultivation of the Waste-lands) Ordinance-1949 sought to justify that as a result of the war, most of the cultivated land was left unattended, farm lands were neglected and all the available resources were not properly utilized. Hence, Article 4 of the law gave the Minister of Agriculture powers to take over the land if he is not satisfied that the owner has begun, or was about to begin or would continue to cultivate the land. Article 24 further validated all or any incidents of land seizure, resulting in the cultivation of fallow land, even when the land was taken over without the due process and before the law was passed. This law was often used along with the 'closed zones law' by which the Ministry of Interior would declare an area closed and thereby preventing the entry of the owners due to security reasons. Hence farming activities would stop there and this would be used by the Ministry of Agriculture as a pretext to take over the land, because the land was left unattended. This law was initially passed as an interim arrangement but was extended several times to ensure the considerable expropriation of Arab lands.

The government passed *Law for the Requisitioning of Property in the Times of Emergency in 1949* to establish a competent authority with sweeping powers to take over property or limit the use of property as housing. This was often done by citing reasons like ensuring national and public security, safeguarding essential supplies and services, or for settling immigrants, veterans or disabled soldiers. In August 1958, the government further amended the law by adding that any land the government considers necessary for national security and retains beyond that date is treated as expropriated property.

Finally to make all expropriations legal, the government came up with Land Acquisition (Validation of Acts, Compensation) Law (1953) which gave the finance minister ultimate power to transfer the expropriated land to the control of the state through a development authority. The purpose was to,

legalize certain actions taken during the war and after it. When the government began to take over absentee property for security reasons or for necessary development projects, other expanses of land were seized for the same purpose, essentially in agricultural areas where the rights of ownership were not sufficiently clearly defined. There are reasons connected with national security

and necessary projects that make it impossible to return the land to its owners.”³⁸

Under the provisions of this law the government paid compensations for the land expropriations. However, in effect this legislation legalized and validated the takeovers, by offering a nominal compensation. Notwithstanding the fact that the law came into force in 1953, the compensations were fixed according to the value in Israeli currency not taking into account, its devaluation.

By the end of the 1950s, most of the fertile land in Israel once owned by the Arabs had been taken over by the state and the Arabs started tilling the rocky land areas. However, these lands had not been surveyed by the government and according to the Ottoman laws and the subsequent mandate-period laws (some of which were still followed by Israel), during a survey of an unsurveyed land, the peasants can claim the right for that land.³⁹ To tide over this, the government passed the *Prescription Law* in 1958. Initially the law proposed to increase the prescription period (the period the land being held by a peasant) five fold, up to fifty years. Finally due to massive protests from the Arabs, it was raised to fifteen years. However, an additional protocol was added to the law stating that if the possession of the land was effected not before 1 March 1943, then the five years beginning on the day of the coming into force of this law, that is, 6 April 1958, shall not be taken into account. This effectively made the prescription period twenty years for those who started cultivation after 1 March 1943. The government then, before the completion of the twenty year period starting 1 March 1943, announced that all remaining unsurveyed land was subject to survey. Thus those peasants who had been working on their land for nearly 20 years lost their legal title to the lands. The government also used an aerial photograph taken by the British authorities in 1945, which showed uncultivated lands as an evidence to justify the take over of the lands. The Supreme Court too accepted this as sufficient grounds for land expropriation.⁴⁰

³⁸ Jirys, n.1, p. 96.

³⁹ The 1858 Ottoman Land Law and the Mandate Land (Settlement of Title) Ordinance of 1928 say that anyone who can prove that he has been cultivating a piece of land for a ‘prescription period’, of ten years can claim the title to that land.

⁴⁰ For details on the legal issues regarding the Prescription Law, see the UNESCO website, www.unesco.org/culture/copy/copyright/israel/sommaire.html, accessed on 23 May 2004.

The National Planning and Building Law of 1965 retroactively re-zoned the lands on which many Arab villages were situated as "non-residential." As a result, despite the existence of these villages prior to the establishment of the state, they have been afforded no official status. These "unrecognized Arab villages" receive no government services, and residents are denied the permission to build homes and other public buildings.

The Planning and Construction Law (1965) set down a framework of regulations and a national outline plan for the country's future development. It zoned land for residential, agricultural and industrial uses, and forbade any form of unlicensed construction. The authorities used a combination of house demolitions, land confiscation, denial of basic services, and restrictions on infrastructure development to dislodge residents from these villages. The law allows the planning authorities to prosecute homeowners for building without a permit and to demolish their houses when it is deemed to be in the public interest. Article 97A allows for retroactive approval for buildings established on agricultural land, and was used to retroactively legalize the illegally built *mitzpim* settlements.⁴¹ Article 157A of the law prohibits national utility companies from connecting a building to national electricity, water or telephone networks if they have no building permit.⁴² Most of these land expropriation laws were passed when the Arabs were under the military administration (1948-66). Thereafter most of the Arab grievances were based on the administrative practices (some of which were the direct fall outs of the above discussed laws).

As specified in the *Military Service Law (Consolidated Version) - 1986*, the Arabs, excluding the Druze are not required to serve in the military. Arabs are not prevented by law from serving. Whereas Druze males are subject to compulsory service, other Arabs can volunteer. However, important benefits and services certain education grants, public administration jobs and child allowances are reserved for army veterans.

⁴¹ All *mitzpim* (look out settlements) were built on lands zoned as agricultural on the district plan. Article 97A allows a district committee to approve amendments to its plan that are in keeping with British Mandate regulations. It was used to approve the *mitzpim* plans retroactively, months after work had started.

⁴² Such measures hurt the Arabs most because; it is them who live in a majority of these illegal settlements. For details on this see www.rac-spa.org.tn/data/israel.htm

The Emergency Economic Plan (Legislative Amendments to Achieve the Budget's Goals and the Economic Policy for the 2002-2003 Fiscal Year) Law -2002 was another piece of legislation adversely affecting the Arabs who have not served in the military. The law was aimed at reducing the contribution of the National Insurance Institute to the children's families not holding the 'entitling service'.⁴³ This law is clearly discriminatory as it affects the Arab children alone. Ultra-orthodox Jews, who also are exempted from compulsory service, are far less seriously affected because they receive allowances through other channels, such as the Ministry of Religious Affairs.

The Emergency Economic Plan is a thinly veiled measure to deny Arab families the benefits available to virtually all Jewish families. There have been a number of reductions in the children's allotment over a period of time. The drastic cut in allowances has brought more than 337,000 Arab children below the poverty line.⁴⁴ Apart from this almost 45 percent of Arab families (87,300 families) live below the poverty line. Besides an across-the-board four percent cut on child allowances, it imposed a 20 percent cut for families without relatives in the army, thereby disproportionately affecting Arabs.⁴⁵

While this extreme reduction directly affected the Arabs, the ultra-orthodox Jews and the new Jewish immigrants, were provided a respite by broadening the definition of "holder of entitling service" provisions. This was amended in 2002 and the insurance would be provided if one of the family members (parent, spouse, son or daughter) had served in the army, police force or national service. The Jewish Agency provided huge allowances for the new immigrants while the religious students were provided grants by the Ministry of Religious Affairs. Those citizens under the care of the Ministry of Labour and Social Affairs received increased support from the state treasury.⁴⁶

⁴³ The 'entitling service' in this case is a service in one of the security forces.

⁴⁴ www.rac-spa.org.tn/data/israel.htm, accessed on 9 May 2004.

⁴⁵ *Adalah Press Release of 6 June 2002*. www.adalah.org/eng/pressreleases/02_06_hm, accessed on 24 January 2004.

⁴⁶ *Adva Center Critique of Operation Economic Defense Shield*, www.adva.org/budget2002eds.html, accessed on 17 February 2004.

IV) CULTURAL, LINGUISTIC AND EDUCATIONAL ASPECTS:

The issue of culture has not received its appropriate attention during any discourse on the status of the Arabs because most of these discourses revolved around political and legal equality. However, of late there has been a revival of the cultural issue and demands of cultural autonomy by the Arabs.⁴⁷ For the Arabs their cultural identity has been at a disadvantage as the benefits of citizenship are interwoven with the state's Jewish national identity. The state's symbols reflect the historical experiences of the Jewish people. However, most of the problems faced by the Arabs in the domain of culture, language and education are not exactly due to any legal doctrines. Hence these aspects are discussed in detail in the third Chapter.

TURKEY

The Kurds are the minority group with the greatest impact on Turkish national politics. Because of the size of the Kurdish population, they are perceived as the only minority that could pose a threat to Turkish national unity. As a result, they are kept under a tight leash with the help of a number of political, cultural, economic and legal measures. The Turkish government has been consistently following a policy of forced assimilation of the Kurds. Till recently, it even denied the existence of the Kurds by referring to them as 'mountain Turks'. An analysis of the Turkish Constitution, its legal system, administrative procedures and legislations will never show any sort of overt discrimination their Kurdish identity. The Kurds have got every opportunity to prosper and develop in Turkey so far as they do not openly stress upon their ethnic identity. In fact, on a theoretical level, the Turkish laws always appear to be impartial. However, an in-depth analysis of the legal provisions brings out the various forms of institutionalised discrimination faced by the Kurds.

⁴⁷ Haim Gerber, "Zionism, Orientalism and the Palestinians", *Journal of Palestine Studies*, vol.33, no.1 (Fall 2003) pp. 55-67

D) POLITICAL ASPECTS:

As far as political freedom is concerned, the non-recognized minorities in Turkey face grave problems.⁴⁸ Turkey has a number of legal instruments to constrain free and fair political participation. A number of laws, apart from certain provisions of the constitution of Turkey impose limitations on the scope of independent political activity. The Kurds being the largest minority group constituting about 15 percent of the population faces a lot of problems due to such laws, rules and regulations. The major sources of state discrimination on freedom of political activities emanate the Constitution of Turkey and the Act on Political Parties No. 2820 (1983).

Constitutional Limitations:

Article 68 of the Turkish constitution, amended on 23 July 1995 sets forth the conditions for the functioning of the political parties. The fourth paragraph of this article reads:

The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.

This provision is crucial to the Kurds as it reiterates the seemingly innocuous condition of the 'indivisible integrity' of the state. Any demand for any sort of rights by the Kurds, based on their minority status contravenes this provision as it entails the fact that Turkey has got citizens who belong to various ethnic groups. Once it is established that the statute and programmes of a political party violate the provisions of the fourth paragraph of Article 68, it can be dissolved permanently. The Article 76 of the constitution permits only a *Turk* to be elected, thereby negating all other identities in the state.

The Constitution which determines the state's fundamental structure makes it compulsory for the Deputies elected for the Turkish Assembly to take the oath of "Ataturkism". According to Article 81, members of the Turkish Grand National Assembly, on assuming office, shall take the following oath:

⁴⁸ The only minorities recognized by Turkey are religious (Jews, Armenian and Greek Christians) constituting just about 0.2 percent of the total population.

I swear upon my honour and integrity... to safeguard... the indivisible integrity of the Country and the Nation, and the absolute sovereignty of the Nation; to remain loyal to the supremacy of law, to the democratic and secular Republic, and to Atatürk's principles and reforms....

Ataturkism, considered to be the cornerstone of Turkish nationalism, was expressly against the recognition of any sort of minorities or minority rights in Turkey. Thus any one, who claims any rights for the minorities, including the Kurds, automatically loses his right to get elected.

The Turkish National Security Council looms large over the political establishment of the state. The council which is dominated by the military is an all powerful governing apparatus under Article 118 of the Constitution. It has been kept above all laws and it is virtually impossible to challenge any of its actions as it is given comprehensive exemption by the provisional Article 15 of the constitution. This provision demonstrates the militarist makeup of the state. Also, during the time period from 12 September 1980 to 6 November 1983, the military passed 604 Acts and 907 Regulations, including the Political Parties Act, Martial Law Act, States of Emergency Act, the Press Act, Foreign Language Education and Teaching Act and Assembly, Demonstration and Marches Act. The significance of these provisions for the Kurds is they contain various provisions suppressing freedom of expression, political activities and confer the state with unbridled powers. The National Security Council used the Provisional Article 4 of the 1982 Constitution to ban former politicians from political activities for five to ten years.⁴⁹

The Political Parties Act:

There are specific legislations which severely curtail the political freedom of Kurds. The Political Parties Act (1983) is the most significant among them. It contains several provisions that impose serious restrictions on political activities in a manner unheard of in democratic states. This law has been effectively used with other laws such as Article 68 of the Constitution, to close down non-violent pro-Kurdish parties such as People's Labour Party (HEP), Freedom and Democracy Party (OZDEP) in

⁴⁹ Ihsan D Dagi, "Human Rights, Democratization and the European Community in Turkish Politics: The Ozal Years", 1983-87, *Middle Eastern Studies*, Vol.37, No.1, January 2001, pp.17-40

1993, Democracy Party (DEP) in 1994 and Democratic Mass Party (DKP). In 1999 the People's Democracy Party (HADEP) came under investigation.⁵⁰

Article 4 of this law demands the political parties to be loyal towards the principles and revolution of Mustafa Kemal Ataturk whose fundamental principles being the repudiation of all sorts of ethnic identities, thereby imposing a monolithic Turkish identity all over the country. None of the parties are allowed to criticize or make any adverse remarks about Ataturk, considered to be the father of the Turkish Republic. Article 5 of this law says that the right to form political parties cannot be used with the aim of undermining the indivisible unity of the Turkish State. The article bans creating discrimination in the name of language, race, religion, sect or distinction of regions or any attempts to establish a state order based on these concepts or views.

According to Article 11 of the law, persons who have been sentenced in connection with offences described in the Volume 2, Section 1 of the Turkish Criminal Act shall not be founders of a political party.⁵¹ This particular section includes Articles 125 to 173 of the Penal Code and is a collection of political offences titled *Crimes against the Personality of the State*. The charges described in the section includes disparaging the state and the president, propaganda and membership of banned organizations, separatist propaganda, propaganda and membership of a fundamentalist organization, inciting people by speeches and publications to break the laws and disobey the military, etc. Insulting Turkishness, the Republic, the Grand National Assembly, the spiritual personality (*manevî şahsiyeti*) of the government, ministries, the military, security forces or judiciary of the state are also crimes under this section. Most of these charges are political offences which give the government sweeping powers to indict potential adversaries.

⁵⁰“Human Rights Watch, Country Report 2003: Turkey”
<http://www.hrw.org/press/2003/08/turkeyqa041902.htm>, accessed on 31st March, 2004.

⁵¹Volume 2, Section 1 of the Turkish Criminal Code has been used by other laws also for banning political activities. For example, Article 11, Section f/2 of the Voting Law No.2839 and Article 9 of the Local Elections Law No. 2972 ban those who have been sentenced to crimes or who have been convicted of inciting other to commit such offences, according to the abovementioned section, from being elected to public office, even if their sentences were suspended.

Party regulations are banned from declaring language, race, sex, religion, sect, family, group, social class and professional differences as part of their membership guidelines. The Political Parties Act also contains provisions expressly forbidding the formation of a political party in the name of any minority, which seriously hurts the advancement of Kurdish interests as they are the largest minority in the state. For example, according to Article 31, political parties may not claim that there are minorities within the country of the Turkish Republic.

Consequently, regarding the Kurdish question, none of the political parties can come up with a political solution, providing equal status for the Kurds, no matter how it is structured, without exposing themselves to the threat of being banned. Article 2(3) of the UN Declaration on Minorities establishes the right for minorities to participate in public life effectively. Article 66 of the Political Parties Act, prohibits political parties from establishing relations with political parties based in foreign countries, which ostensibly puts a break on Kurdish political activities.

The political parties are forbidden from writing in their statutes and programs that there exist in Turkey, a different linguistic and religious group other than the Turkish people. Though there are several local languages and dialects in Turkey and many people could just follow only their 'mother tongue', (not necessarily Turkish always), the act bans the political parties from publishing their statutes, programmes, propaganda, posters and placards in any language other than Turkish. Article 82 of the law states: "Political parties shall not pursue the aims of regionalism or racism within the country which is an indivisible unity, or carry out activities thereof." Similarly, the law forbids parties from using the terms like communist, anarchist, fascist, theocratic, national socialist, etc. or words with similar meaning.

II) LEGAL ASPECTS:

The Kurdish citizens are not allowed to state that they are people of a different race and ethnicity, and that they should have their own cultural rights. According to Turkish officials, any claims of such a distinct Kurdish identity and their right of self-determination are a form of propaganda which contradicts the national and territorial integrity of the Turkish state. Article 3 of Turkey's Constitution states the fundamental principle of the Turkish state, which does not permit the existence of a

national minority.⁵² The article says that the Turkish state, with its territory and nation, is an indivisible entity and that its language is Turkish.

The notion of citizenship in Turkey was conceptualized in large measure in terms of a monolithic, unique culture and identity that was the most fundamental product of the process of nation-building; in other words, in a sense, it implies the sense of belonging directly to a (national) community based on the loyalty to the state.⁵³

This put the Kurds, almost out of the national mainstream.

The Turkish Constitution imposes wide limitations on the free exercise of fundamental rights in general so as to preserve, *inter alia*, public order, public interest and public morals (Article 13)⁵⁴. Article 14 forbids the abuse of fundamental rights and freedoms, that is, the exercise of such rights and freedoms with specified aims, including violating the indivisible integrity of the State with its territory and nation, creating discrimination on the basis of language, race, religion or sect or establishing by any other means a system of government based on these concepts and ideas.⁵⁵ Even though one of the expressed aims of Article 14 of the Constitution is to prevent discrimination on ethnic or racial grounds, the wide scope of limitations of fundamental rights and freedoms contained in these provisions, can bring about the imposition of wide restrictions on the non-violent expression of ethno-cultural identity on the part of individuals wishing to express such identity. Besides, specific restrictions are set forth in relation to specific fundamental rights and freedoms, including freedom of expression and dissemination of thought and the dissemination of science and arts (Articles 26 and 27).

Turkey has repealed in 1991, Articles 141, 142, and 163 of the old criminal code, a move which has won wide acclaim as a major reform and a remarkable

⁵² Kerim Yildiz, "The Human Rights and Minority Rights of the Turkish Kurds" in Deirdre Fottrell and Bill Bowring (eds), *Minority and Group Rights in the New Millennium*, (The Hague: 1999)

⁵³ Ahmet Icduygu, Yilmaz Colak and Nalan Soyarik, "What is the Matter with Citizenship? A Turkish Debate": *Middle Eastern Studies, Special Issue on the Seventy five Years of the Turkish Republic*, vol.35,no.4, October 1999, pp. 186-208.

⁵⁴ Article 13 reads: "Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence."

⁵⁵ Article 14 reads: "None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights."

display of commitment to democratization. Sections 2 and 3 of the repealed Article 142 stated that the thoughts of Kurdish nationalists are a form of separatism and proposed heavy sentences. After Article 142 was done away with, nonetheless, the content of this article was relocated into the *Anti-Terror Law No.4126*, which made most forms of expression criminal offences. Thus, the crime of Kurdish expression was abolished and then a new law was passed which again made it a crime. The Government uses the Anti-Terror Law, with its broad and ambiguous definition of terrorism, to detain both alleged terrorists and others on the charge that their acts, words, or ideas constituted dissemination of separatist propaganda.⁵⁶ The law defines terrorism in its broadest possible way and as such it even includes non-violent advocacy of genuine demands. The law prohibits separatist propaganda and even though the amended version of the law requires evidence of actual intent, the concept of separatism covers almost all aspects of political expression. Similar to the Political Parties Act, the Anti-Terror Law also makes use of the “Crimes against the Personality of the State”(Articles 125 to 173 of the Penal Code) to define various offences under its jurisdiction.⁵⁷

All charges under the Anti-Terror Law have been included within the scope of the State Security Courts (SSC), which were formed to try terrorist offences.⁵⁸ As a result, even political prisoners may find themselves being put to trial not at the usual penal or criminal courts, but mostly at the extraordinary state security courts. According to Article 8 of the Anti-terror Law, no one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country, and nation. No one should engage in meetings, demonstrations and marches with this aim. Such activities are forbidden, regardless of the methods,

⁵⁶ Article 1 of the Anti-Terrorist Law defines terrorism: “Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State.”

⁵⁷ This was based on Article 9 of the *Law No. 2845 on the Establishment and Procedure of State Security Courts*. University of Maryland - Minorities at Risk: Background Information”: http://hrw.org/backgrounder/eca/turkey/turkey_violations.htm, accessed on 26 March, 2004.

⁵⁸ *Simplified Legal Background of Turkish Laws*, http://www.tuerkeiforum.net/en/legal_bg.html, accessed on 2 April, 2004.

intentions and ideas behind such activities.⁵⁹ As mentioned earlier, any demand for the acceptance of the minority status of the Kurds in Turkey is considered as propaganda against the indivisible integrity of the state. The anti-terror law makes it all the more difficult for the Kurds as it forbids even peaceful activities with this aim. Those who engage in such deeds will be sentenced to one to three years in prison and given a heavy fine of TL 100 million to TL 300 million. If the offence is repeated, punishment will not be limited to a fine.⁶⁰

Kurds find it difficult to become civic and government officials without subsuming their ethnic identity. Article 17/5 of the Officials Law No. 657 says that persons who have been convicted of “Crimes against Personality of the State” cannot become civic officials if they were sentenced to terms of 6 months or more. This limitation is valid even if the sentences are suspended. These crimes are spelled out in Articles 125-173 of the Turkish Penal Code mentioned above. Several Kurds are convicted of these charges and even if the sentences were suspended, they cannot become state officials. Even without ever having been charged with any crimes, many Kurds are denied posts as civic officials because of mandatory security checks or police reports.

The Associations Act:

Apart from limiting the political freedom of the individuals, the Turkish law also infringes upon the rights of the individuals to form groups and associations. Article 5 of the Turkish Associations Act (Law No.2908), 1983 restricts the freedom for forming an Association and participating in its activities. Article 5 of the Act reads:

It is forbidden to establish associations which violate the Preamble of the Constitution. Associations may not be established if their aim is to destroy the territorial and national identity of the state, or if they seek to claim that minorities of different races, religions, sects, cultures, or languages exist within the Turkish Republic, or if through the promotion of other languages and

⁵⁹ *Anti-Terror Law in Turkey*, <http://www.law.qub.ac.uk/humanrts/emergency/turkey/tur4.htm>, accessed on 15 April, 2004.

⁶⁰ *Change in the Turkish Anti-Terror Law*, <http://www.mfa.gov.tr/grupa/ac/acf/Article8.htm>, accessed on 19 February, 2004.

cultures other than Turkish they seek for one religion, race, class, or group to win privileges over another group of a certain religion or sect.

Persons who establish associations in violation of Article 5 are to be punished with a jail term of one to three years. Article 6 of the law imposes further restrictions on the use of Kurdish language and says that while drawing up the charter of an association, or during assemblies in both public and private places, it is forbidden to use signs, posters, music or video cassettes, brochures, flyers, publications, etc. in a language which is prohibited by law. Although some of these provisions provide grounds for the prevention of the establishment of associations with racist or discriminatory aims, they also excessively hamper the possibilities for individuals belonging to different groups within Turkey to express their ethno-cultural and linguistic identity through the establishment of associations. Although a few civil and administrative law provisions exist in Turkey, especially in the field of education, access to the civil service and in the electronic media,⁶¹ there are no comprehensive civil or administrative law provisions against discrimination.

III) CULTURAL, LINGUISTIC AND EDUCATIONAL ASPECTS:

Turkey, despite being a party to a number of important international agreements guaranteeing minority rights, does not provide the Kurdish minority with a treatment befitting the clauses of those agreements. There are serious restrictions upon freely using Kurdish language, names and any cultural symbols denoting Kurdish ethnicity.

Kurds are not permitted to give their children Kurdish names. Regarding this, article 16 of the Personal Status Law (No. 1587) says, "Names may not be given which are illegal or which offend or do not represent the nation's culture, moral values, traditions, or customs." According to article 77 of the Enforcement Order on Personal Status Regulations, (No. 7/13269):

If an officer determines that the name chosen for the child does not conform to principles stated in Paragraph 1, which emphasizes on protecting the indivisible integrity of Turkish nation, he will reject the name, prepare an appropriate

⁶¹See Article 4 of the National Education Fundamental Act (1739/1973), Article 48 of the Civil Servants Act (657/1965) and Article 4 of the Act on the foundation and Broadcasting of Radio and Television (3984/1994).

protocol, and enter this into the family register. At the same time, he will inform the state prosecutor so that a hearing can be arranged to change the name.⁶²

The law also expressly declares that the citizens are left without a choice in naming their children as they are supposed to give their children only Turkish names. The Regulation on Family Names (No. 2/1759) is very clear on this regard. It says that new family names which are permissible are to be drawn from the Turkish language. Names from foreign races and nations may not be used as family names. (Article 5, Section 7)

Article 26 of the constitution even while granting the freedom of expression, puts a rider on these very rights by using the same argument of the indivisible integrity of the Turkish nation.⁶³ As these articles from the Constitution show, the Kurds are forbidden to express their thoughts publicly in their own language, because the expression or distribution of ideas in the Kurdish language is an attack on the unitary nature of the state and its territorial integrity and such activity is considered separatism in Turkey. Significantly, as mentioned earlier, Kurdish cannot be used in the political arena. Article 81 of the Political Parties Law forbids parties from using any language other than Turkish in their written material or at any formal or public meetings.

According to Turkish law, The Kurds may not open any schools or courses, which offer instruction in Kurdish. According to Article 42 of the constitution, no language other than Turkish shall be taught as a mother tongue at any institutions of training or education. Article 2(a) of the Law No. 2923 Concerning Foreign Language Instruction says that Turkish citizens may not have learned any other language besides Turkish as their native language. According to the Foreign Language Education and

⁶² Council of the European Union - Original title: *Note from the Netherlands delegation to CIREA: Official General Report on Turkey, January 2002 Ref. 7838/02*", <http://ue.eu.int/en/summ.htm>, accessed on 14 February, 2004.

⁶³ Everyone has the right to express and disseminate his thoughts and opinion by speech including the freedom to receive and impart information and ideas without interference from official authorities. The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation....

Teaching Law (1983), which regulates the teaching of languages other than Turkish, the National Security Council (interestingly not an academic body) decides the languages that might be taught. At present, only English, French, German, Russian, Italian, Spanish, Arabic, Japanese, and Chinese may be taught. This ruling applies to public and private institutions. Kurdish being not recognized as a native language in Turkey, despite being spoken by nearly a third of the Turkish citizens, thus becomes a foreign language.⁶⁴

Even though the Law No. 2932 concerning 'forbidden languages' which stated that the native language of the Kurds was Turkish was repealed in 1991, the 'Law Concerning Foreign Language Instruction No. 2923', is still effect. Under this law no Kurdish-teaching schools or learning institutions may be established. State institutions have regulated Greek and Armenian schools according to the clauses of the Treaty of Lausanne which deals with minorities in Turkey. Because this treaty did not foresee a minority status for Kurds (since the Kurds are not an official minority), Kurds are prohibited from teaching their own language in schools and from organizing Kurdish language courses. The constitution also stresses the importance of training the Turkish youth in the principles espoused by Ataturk which invariably means negating the presence of any minorities.

Importing publications about the Kurds which have published in other countries is banned by the law although there has been a slight administrative relaxation on this of late.⁶⁵ Whether or not the content is criminal, the Council of Ministers can prohibit the introduction of publications into Turkey which deals with the Kurds. The Turkish government often makes use of this right and the state register is full of lists of publications about Kurds which may not be imported into Turkey. Anyone who writes or publishes news items or texts which threaten the foreign or domestic security of the state and the indivisible unity of the state's territory or people will be punished. Publications, inciting people to commit crimes like launching an uprising, can be punished under the Turkish law.⁶⁶ Similar provisions can be found in

⁶⁴ Law No. 2923 Concerning Foreign Language Instruction, Article 2c. Foreign languages which may be taught in Turkey are to be determined by ministerial decision through the National Security Council.

⁶⁵ See the Press Law Nr. 5680, Art. 31/1

⁶⁶ Article 6, Law to Fight Terrorism, Act No. 3713

Article 28 of the Constitution which imposes restrictions on publications that undermine 'indivisible integrity' of the nation.⁶⁷

According to Article 30 of the Constitution, printing presses and their associated offices and materials which are operating in accordance with the law can be confiscated on the charge of having operated as an accessory to a criminal offence if they are convicted of an offence directed against the indivisible unity of the state's territory and people, the fundamental principles of the Republic, or national security. Additionally, Article 2 of the Press Law No. 5680 says that presses which produce publications which are guilty of criminal offences shall be closed down.

Kurds are prohibited from establishing radio or TV stations for Kurdish programming. The Law on the Organization and Broadcasts of Radio and Television Stations (Statute 3984) entails all broadcasting to be in Turkish. Non-Turkish languages are allowed if they have "made a contribution to the development of universal culture or works of science," a formulation apparently designed to exclude Kurdish. Even though the government is not seriously imposing the ban these days and there are a few Kurdish TV stations operating, the fact remains that these are legally banned.

IV) ECONOMIC ASPECTS:

There are no laws in Turkey which leads to an outright discrimination against the Kurds. However, one of the basic reasons for the economic backwardness of the Kurds was the relative neglect shown by the government to the South-eastern region where the Kurds were concentrated. The feudal nature of the Kurdish society, their low levels of education and isolated geographic location also added to their plight. It was in this backdrop that the Kurdish movements like the PKK (*Partiya Karkari Kurdistan*) came up leading to a crackdown by the government. This further weakened the already fragile Kurdish economy. However, the most significant reason behind the Kurdish economic crisis was the gratuitous population transfer from the

⁶⁷ Article 28 reads Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state ...and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of offences prescribed by law.

region. Even before the surge of armed movements in 1984, there existed a systematic method of displacing the Kurds. This was a part of the state policy as enunciated in the Law of Resettlement of 1934. The law expressly stated that the non-Turkish population was to be diluted by the settlement of Turks and that in areas where Turkish culture was dominant, non-Turkish elements should be resettled to facilitate their assimilation.⁶⁸

In Turkey, involuntary resettlement is regulated by two main laws: The Expropriation Law, and the Resettlement Law. The Expropriation law is based on Article 46 of the Turkish Constitution, which states that a public agency who executes expropriation carries full responsibility for the task, and expropriation is *solely undertaken for public benefit*. (emphasis added)

The Resettlement Law provides for state-assisted resettlement in the rural and urban areas.⁶⁹ Families who work on the land (farming) are resettled in rural areas, while those engaged in work other than agriculture are resettled in towns and in cities. According to article 10 of the law, resettlement compensation to a family should be sufficient to meet its needs. The current Resettlement Law extends eligibility for resettlement to families whose assets have been expropriated for large development projects, nomadic or transient populations, and certain categories of migrants.⁷⁰ However, the Kurds were not covered by any of these provisions and were therefore ineligible for any sort of compensation, further aggravating the crisis.

The Turkish government announced a Village Return and Rehabilitation Project in March 1999. Four months after its introduction the government introduced a law to supplement the project. The law provided for the resettlement of former nomads, Turkic immigrants from abroad, and people internally displaced by security forces, but it ensures that anyone who refuses to go where they are told to

⁶⁸ Yildiz, n.52.

⁶⁹ According to the law, the families dealing with agriculture are provided government assisted rural resettlement. Each household entitled for this type of resettlement receives housing, farm buildings, farm land, and credit to undertake agricultural activities.

⁷⁰ Dogan Altinbilek, Mümtaz Bayram and Turan Hazar, "Resettlement Policy and Implementation in Turkey", available on <http://www.gruppo-cerfe.org/pdf/dogan.pdf>, accessed on 27 May, 2004

immediately loses all rights to rehabilitation. Article 13 of the law states that the Council of Ministers will decide who is to be counted as having been moved 'for reasons of national security' in accordance with recommendations by the National Security Council. Article 14 states that if the displaced do not accept to live in the places directed by the Office of the Prime Minister, their rights to resettlement will be cancelled by the local housing commission. Families in this situation may not make a second housing application.⁷¹

It can be observed that instead of ensuring the equality of all the citizens, the Turkish laws discriminate against its Kurdish citizens albeit indirectly. Even the constitutional provisions that are meant to guarantee the fundamental rights are restricted by the governmental attempts to impose a uniform Turkish identity throughout the state, often forcibly subsuming ethnic diversities and peculiarities. The scope of Kurdish political activities is limited by several legal restrictions, endangering the pluralist ethos of the state. Citizenship in Turkey is artificially and arbitrarily constructed by the state not paying any heed to the presence of the heterogeneous nature of the population and its historical context. Cultural expressions of the Kurdish people are put under a gag in the name of security and economic growth of the Kurdish regions is put on hold citing the same reason. Massive population transfers are carried out to forcibly disperse the Kurds. All such measures are given legal sanctity by passing legislations that aid forcible assimilation.

All these legal provisions adversely affect the minority rights. However, the situation is further aggravated when these laws are put into actual practice by the authorities. Most of these laws provide some leeway to the implementing authorities who interpret and put the laws into practice. These operational aspects are discussed in the following chapter.

⁷¹ "Implementation of the Return to Village and Rehabilitation Project: (2002-2003)" www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries, accessed on 19 June, 2004

CHAPTER III

THE TREATMENT OF MINORITIES

While the legislative and administrative measures adopted by governments, adversely affect the minorities, the operational aspect is also crucial. This becomes all the more significant because most of the legal measures are impartial and with uniform jurisdiction over all the population, not overtly discriminating against the minorities. Most of these legislations appear to be neutral and objective. To understand the real significance of these laws, it is necessary to look beyond these laws, and focus on the historical context of political, legal, cultural and economic crises faced by the minorities in both the countries.

ISRAEL

As explained earlier, the Arabs in Israel are in a unique position as they were a majority population of which large portions were forcibly transferred out from their homeland, making them a minority group. The new state for all purposes was a Jewish project as it was meant for the Jews all over the world. Since the inception of the Jewish state, the Arabs have been considered a marginal group. This marginal ranking is the result of the self-definition of Israel as the Jewish homeland, founded upon the ruins of the previous Palestinian Arab society and perpetually at war with the whole Arab world, and by implication, the wider Islamic world.

The Arabs were made to feel this, as it was evident from the official political expressions of the state and its national and cultural symbols. Most national priorities, projects and institutions are exclusively Jewish, arguably harnessing Arab resources to serve Jewish goals. For most Jewish citizens, being Israeli means being Jewish and as a result the Arab citizens are seen as outsiders who have never integrated into the mainstream. Consequently, a legitimation of discrimination nearly took roots in the Israeli society. The pre-war proto-statal structures of the Zionist movement -- with which the Arab community had been in conflict -- had become the state and the law of the land.¹

¹ International Crisis Group, Middle East Report No.25, *Identity Crisis: Israel and Its Arab Citizens*, in www.crisisweb.org/home/index.cfm?id, accessed on 4 March, 2004.

I) POLITICAL ACTIVITIES:

The Arabs of Israel like their brethren elsewhere were not experienced in democratic culture as they relied on clan affiliations and kinships. This was a genuine disadvantage for them politically. The sheer mechanics of political organization in an authentically representative government were beyond Arab experience.² Moreover, as mentioned earlier, they did not have a proper leadership or adequate finances and they often looked forward to the Jews for guidance.

The rapid demographic changes that took place in Israel, coupled with the extreme antagonism of the neighbouring Arab states against Israel led to a more hostile approach of the authorities towards the Arabs. The distribution of the Arab population was another case in point. The Arab population was concentrated in Galilee (60 percent), while another 20 percent lived in the Triangle, lying adjacent to Jordan. This proximity of the Arab residential areas to such a hostile state too influenced the state policy towards them. The Arabs were under the military administration till 1966. Consequently, the government and the courts recognised the necessity to limit civil rights in the interests of national security.³ As a result, these citizens who were legally entitled to equal status in their country were governed by a separate set of rules. The military government was primarily based on the British Mandatory Defence (Emergency) Regulations -1945 and the Israeli Emergency (Security Zone) Regulations-1949. By invoking these regulations, the Arab enclaves were declared defence areas, security zones and closed regions under the absolute command of the Israel Defence Forces. Thus the army co-opted the executive power as far as the Arabs were concerned.

The military government was authorized to use all force necessary to maintain security. It had unqualified powers and broad jurisdiction to try offences of the Arabs on charges of violation of the Emergency regulations and was permitted to conduct closed trials. The security forces could conduct searches on any premises without prior permission on the grounds of national security. The military government had the

² Howard M Sachar, *A History of Israel, From the Rise of Zion to our Times*, (Oxford: 1976).

³ Russel A. Stone, "Human Rights Within Israel", in Paul J Magnarella, (ed), *Middle East and North Africa: Governance, Democratization, Human Rights*, (Vermont: 1999), p.179.

power to take over land and buildings, restrict and prevent movements, declare curfew and impose severe restrictions on communications. The Arabs had to obtain special permits to travel to other Arab areas. Such extreme measures, coupled with the trauma of being relegated to a minority in their place of birth further alienated them.

Zionist Parties and the Arabs:

Mapai was the main political force in Israel at the time of the foundation of the new state. With the introduction of the concept of proportional representation, *Mapai* brought forth the idea of minority lists as it did not accept Arabs as ranking members of the party on grounds that no Arab could be a loyal member of a Zionist party.⁴ Some of these Arab satellite lists were the Democratic List of Arabs in Israel (Nazareth and Galilee) and Agriculture and Development Party (Western Galilee and the Druze). *Mapai* sought to manipulate the inner rivalries and clan feuds within the Arab ranks to gain their allegiance and most importantly, the votes. It regarded its Arab members as mere associates, whose duty it was to follow the party line and unreservedly vote for the government, as the minority lists were created, financed and controlled by the Jews.⁵

Most of the Arab leaders associated with the *Mapai* gave more importance to their personal interests and as a result the community suffered. These MKs hardly spoke on national issues and were content with raising local issues. "They were hardly interested in rocking the political boat, as this might have been to their disadvantage"⁶. Most of these Arab candidates were working closely with the Israeli security establishments or were collaborators. The Arabs never had an option of free choice but to support the Minority lists sponsored by *Mapai* especially as it had a close linkage with the military administration which worked in its favour during elections. The influence of the *Mapai* over the Arab electorate and its predominance till the end of the military rule can be found from the following table.

⁴ Ori Stendel, *The Arabs in Israel*, (Brighton: Sussex Academic Press, 1996), p.89

⁵ Benyamin Neuberger, "The Arab Minority in Israeli Politics 1948-1992: From Marginality to Influence," *Asian and African Studies* vol. 27, no. 1-2 (May-July 1993) p. 105.

⁶ Sam Lehman-Wilzig, "Copying the Master?: Patterns of Arab Israeli Protest: 1950-1990", *Asian and African Studies* vol. 27, no. 1-2 (May-July 1993) p.85-96

Arab MKs by Party till the VI Knesset.

Knesset	<i>Mapai</i> affiliated lists	Communists	DFLP	Total
I (1949-51)	2	4		6
II (1951-55)	5	5		10
III (1955-59)	5	6		11
IV (1959-61)	3	5		8
V (1961-65)	5	4		9
VI (1965-69)	4	3	1	8

Source: The Statistical Abstract of Israel. Quoted in PR Kumaraswamy, *Political Legitimacy of the Minorities: Israeli Arabs and the 1996 Knesset Elections*, The Emirates Occasional Papers, (Abu Dhabi: The Emirates Center for Strategic Studies and Research, 1998)

The *Mapam*, which was another major Zionist formation, put up an Arab Popular Bloc in the first Knesset elections with no success. However, in the 1951 elections, the *Mapam* managed to get an Arab elected from its list. It focused on an ideological campaign and was the first Zionist party that offered equality to the Arabs and enlisted them as full members in 1954. But *Mapam* did not make significant headway in the Arab sector because it lacked the material resources of the *Mapai* and the ideological zeal of the communists. Nor it had close ties with the Israeli military.

The Communist Influence:

Apart from the two mainstream parties, the communist blocs too attracted a sizeable chunk of Arab votes.

Maki: The Israeli Communist Party, *Maki*, was the first independent non-zionist political party in Israel that managed to start functioning in an effective manner. The communist influence was evident by the tough posturing adopted by the *Maki* in 1952 as it called for the right of self-determination for the Arabs including the right of secession. The party gained huge popularity among the Arabs as it labelled Israel a manifestation of imperialism. However, the difference of opinion between the Jewish and Arab members of the party got aggravated as the Arabs adopted extreme postures. By the end of 1958, all reconciliation attempts failed leading to a split in the party.

Rakah: The New Communist List, *Rakah* was a predominantly Arab party. With its formation, *Maki* lost its pre-eminent status as *Rakah* became the first choice of the

erstwhile *Maki* supporters. *Rakah's* foremost aim was the establishment of a Palestinian state along with Israel. It also called for the return of the Arab refugees who express a desire to do so. This was the major disagreement between the Israeli establishment and the *Rakah*. It also maintained close contacts with the Palestine Liberation Organization and the Communist movements in the West Bank.⁷ However, with the collapse of its chief patron, the Soviet Union and the increasing influence of the Islamic movement, has led to a slump in *Rakah's* popularity.

Hadash: It is also called the Democratic Front for Peace and Equality was formed in 1977 after the merger of the Communist Party and the Black Panthers. *Hadash's* domestic platform focuses on measures to improve the status of disadvantaged Israelis and the extension of full rights and opportunities to Arabs. In terms of foreign and security policy, the party advocated contacts with the PLO and called for complete withdrawal from the West Bank and Gaza and supported the establishment of an independent Palestinian state. The party by its activities and by virtue of its Jewish - Arab composition has enhanced its position as an important political outfit. It had an alliance with *Talal* in the 2003 Knesset elections, winning three seats, with three percent of the votes.

Sons of the Village: This movement was formed in 1972, aiming to fill the void left in extremist Arab nationalist activity⁸. This extreme left fringe movement vehemently opposed Israel and called for the establishment of a secular, democratic state in greater Palestine in its pre-1948 borders, through an armed struggle. They renounced elections conducted in Israel and some support among the Arabs ultimately split in 1983 owing to a difference regarding the participation in elections. Following this, there was a steady decline in the movement's fortunes.

The Progressive List for Peace: The PLP came into existence in 1984 and declared that it was the true champion of the Arab cause as it was free from Marxist fetters and was willing to use extreme steps against the state. The party's leader is Mohammad

⁷ The cooperation reached its peak in the early 1980s when Bashir Bargouthi from Ramallah, who was the editor of *At-Tali'ah*, was the head of the West Bank Communist Party.

⁸ This movement was extremist in the sense that it challenged the sovereignty of Israel, the right of self-determination of the Jews and called for a common front with the PLO and other Palestinian organizations to conduct an armed struggle against Israel.

Mi'ari who was earlier an *Al Ard* activist. As mentioned in the previous chapter, the PLP was disqualified by the Election Commission but the decision was overruled by the Supreme Court. The PLP under Mi'ari and Gen.Matti Peled, was successful in winning seats in the Knesset. It condemned attempts by the *Rakah* to stress the "Israeliness" of the Israeli Arabs and insisted upon "Palestinianism". Dissent, however, soon broke out in its ranks between the Arab faction (Arab Progressive Movement) and the Jewish one (*Alternativa*). Due to this severe infighting, the party could not cross the new threshold margin (one and half percent of the total valid votes) in 1992 and gradually disappeared from the electoral scene.

The *Al Ard*: The *Al Ard* was founded in July 1959 to cater to the need of an Arab nationalist party in Israel, free of foreign influences. To circumvent the legal formalities regarding floating a party, the *Al Ard* activists initially registered the party as a limited corporation in June 1960. Even though the registrar of companies refused to grant it the required licence, the Supreme Court ruled in *Al Ard's* favour. In 1964, this newly floated company tried to register as a non profit association for which the District Commissioner of Haifa denied permission. The Supreme Court upheld the decision of the official as the group rejected Israel's right to exist. The government finally outlawed the group in November, 1964.

The *Al Ard* regarded the traditional Arab parties as obsolescent, without serving any purpose and urged the Israeli Arabs to boycott elections. It was strongly opposed to the Kremlin affiliation of the *Maki* and supported Nasser in Egypt against the Soviet Union. Even as they intended to function as a political party in Israel, it expressly excluded the Jews. After the government ban, the *Al Ard* activists went against their own declared policy, by trying to participate in the Knesset elections by bringing out an Arab Socialist List. This List was banned by the Election Commission in 1965 and the decision was endorsed by the Supreme Court.

The Arab Democratic Party: The ADP was established in 1988 by Abdel Wahhab Darwashah, who was a Labour MK during the height of the first *intifada*. It differed from the *Rakah* and the PLP as it refrained from seeking Jewish support and projected itself as a party exclusively for the Arabs. The party stresses on the "return of previously expropriated land" and develop relations with the dispersed Palestinians

for a common cause. Though it had common grounds with the *Rakah* and the PLP the ADP tried to go it alone. The party successfully targeted those sections of the Arab electorate who were previously cold shouldered by the left parties. The Arab local council heads and the Bedouins were given prominence. The ADP had to seek the support of Islamic Movements like the *Usrat al-Jihad* as the independent entry of such Islamic movements lessened its influence among the Muslims.

The National Democratic Alliance (*Balaad*): The NDA, led by Azmi Bishara, advocates a democratic state for citizens, the return of Arab refugees from the 1948 war, Israel's withdrawal to the 1967 borders and the formation of a Palestinian state. The NDA's constitution calls for the establishment of a regime in the region that would supersede Israel (article 15). The party also acts against encouraging Arabs to serve in the army (11a) and Palestinians who help Israel (11b) and supports the return of the 1948 refugees into Israel (13).⁹

The Islamic Movement: Disenchantment with the secular Arab parties which compromised on several decisions for political expediency and attempted to integrate into the Zionist mainstream led many Arabs to support the Islamic cause. The major leaders of the Islamic movement in Israel were Sheikh Abdallah Nimr Darwish, Sheikh Khalid Muhanna, Sheikh Raid Salah Abu Shaqra Mahajna and Sheikh Hashem Abd Rehman. The movement received further encouragement as the Israeli government liberalized *Hajj* and permitted studies in the seminaries in Occupied Territories. Most of these organizations, like the *Ar-Rabitah al-Islamia* and the *Hizb at-Tahrir al-Islami*, function as charitable organizations with huge popularity in their areas of operation. They have established cultural and educational networks, offer economic assistance and is steadily gaining wide support and their financial resources are vast. The movement openly supported the *intifada*, asking the Israeli Arabs to identify with their fellow Arabs in the Occupied Territories.¹⁰

⁹ Dr. Aaron Lerner, *Israeli Arab Party Strives to Replace Israel*, (Gamla Newsletter, 23 February 1999) <http://www.gamla.org.il/english/article/1999/feb/ler5.htm>, accessed on 12 May, 2004.

¹⁰ Stendel, n.4, pp.134-138.

Electoral Influence of the Arabs:

Until the late 1970s, the political impact of the Arabs was marginal as they were considered more of a security problem. David Ben Gurion put it bluntly when he said that the Arabs have to be judged according to what they could do and not what they have actually done.¹¹ The Arabs were all the more handicapped because of their demographic and social composition with most of the population being poor, marginal and peripheral. From 1949 to 1977, in the Knesset elections, the bulk of the Arab votes went to the *Mapai*/ILP affiliated lists and the communist formations. This period of marginal influence remained till the early 1980s. After this, the Zionist parties had to acknowledge the Arab capability to swing the electoral results. In all the elections from 1984, it was clear that the Arab votes were crucial in determining the nature of the coalition. It led to an intensive courting of Arab votes, instead of the votes being bought by patronage. For example, even the *Likud* opened an Arab Department in 1982.

One reason for such a change in the attitudes and perceptions was the changing demographic and socio-economic profile of the Arab sector. By the late 80s the Arabs represented nearly 15 percent of the eligible Israeli voters. They improved from their earlier small, backward and down-trodden status. They integrated much more effectively into Israeli politics.¹² The transformation of Israeli politics from a Dominant Party system to a Two Bloc system also enhanced the Arab profile.¹³ Moreover, the increasing cleavage between the Jewish Left and Right wings also helped the Arabs to garner more influence. With the advent of the peace processes in the early 1990s, many in the Zionist Left felt closer to the Arabs than to their fellow Jews from the right wing.¹⁴

¹¹ Ian Lustik, *Arabs in the Jewish State: Israel's Control of a National Minority* (Austin, Texas: 1980), p.118

¹² For details on this aspect, see Sammy Smooha, *Arabs and Jews in Israel: Conflicting and Shared Attitudes in a Divided Society*, (Boulder: 1989).

¹³ In the Dominant Party period (1948-77), *Mapai*/ILP was the major group while the opposition consisted of the General Zionists/*Herut/Gahal/Likud*. The dominant nature of the *Mapai*, made the Arab influence marginal as it impeded the Arab capability to tilt the electoral balance. In this context, the 1977 election was a water-shed as it spelt the end of Dominant Party era.

¹⁴ Neuberger, n.5, p.158

Following the initiation of the peace process, the Arab votes can be classified into a nationalist-Communist protest vote, a patronage vote and an ideological integrative vote.¹⁵ The vote for the non-Arab parties who could not deliver personal and collective patronage votes was a vote for integration while the moderate increase in the vote for the peace camp 'left of Labour' (*Mapam*, CRM, *Shinui*, *Meretz*) also shows trends of growing integration. The same applies to an increase in Labour votes while it was in the opposition (thereby not able to dispense with patronage). Consequently, the failure of *Likud* to garner more Arab votes despite being in power indicates that the Arabs are finally departing from the patronage voting pattern and adopting the integrative voting.

However, with the total collapse of the peace process and the outbreak of the *Al Aqsa intifada*, the citizenry in Israel has been polarized as never before. The Arab support of *intifada* and a spate of suicide bombings have consolidated the position of *Likud* under Ariel Sharon, further marginalizing the Arabs. This has led to the Labour and the Arab parties being relegated to the fringe at least for the time being. With the Labour/Meretz being the only realistic option for the Arabs at the national level their relative decline in the electoral politics is a set back for the Arabs.

***Al- Aqsa Intifada* and its Political Significance:**

A significant change has occurred in the Arab leadership over the years as evident from the patterns of the *Al-Aqsa intifada*. During the 1970s and the 1980s, the Arab leadership was constituted mainly by mayors and local municipal leaders, whereas the current Arab leadership is mainly concentrated in the Knesset. Their main concerns lie not necessarily in budgets and development projects but in bringing together the Arab minority on a political platform. During the *intifada*, the Arab leaders, including the MKs, made extreme statements and involved in sheer rabbleroxing, instead of mature political leadership. Some of them even compared the Israeli police to Nazis and termed the government as the 'enemy'.¹⁶

¹⁵ Ibid.

¹⁶ Efraim Karsh, "Israel's Arabs v. Israel", *Commentary*, vol.116, no.5(December 2003), pp. 21-27.

The unprecedented riots and violent demonstrations of Arabs in October 2000 should be understood from this angle. Although a majority of the Arabs stayed away from violence, it was evident from their reactions that most of them identified with the expressions of rage.¹⁷ The events, which came as a total shock in terms of both extent and intensity, astounded the Jews. The Arabs blocked towns, villages and main transportation arteries for several days and Jewish vehicles were attacked. Demonstrations by the Arabs occurred in tandem with those within the Palestinian Authority conveying a sense that the "Green Line"—rigorously stuck on to by the Arabs—disappeared entirely.¹⁸ The events also demonstrated the shift in the balance of power among the Arabs with the Islamic Movement emerging as the primary political power.¹⁹ Another worrying feature of the new generation of Arabs is the increasing ideological-political radicalisation of this sector. This inclination towards extremism is evident from identification with and support of the Palestinian struggle against Israel. The erosion of loyalty to the state was further accentuated by establishment of separate, parallel institutions - such as social service networks and welfare systems or schools - and by the continuing opposition of some political factions to Arabs running for the Knesset.²⁰

Jewish Perceptions of the Arabs:²¹

One of the most worrying aspects for the Arabs is the increasing trends found among the Jewish citizens against their Arab counterparts. Following the *Al Aqsa intifada*, the ethnic divide has come out in the open more than ever before. These disturbing trends were evident from a number of opinion polls conducted among the Jews after

¹⁷ Mohamed Sid-Ahmed, "The Israeli Arabs", *Al Ahran Online*, no.52, (14-20 December, 2000) <http://weekly.ahram.org.eg/2000/512/op3.htm>, accessed on 2 April, 2004.

¹⁸ Lerner, n. 9.

¹⁹ The main areas of confrontation with the police in the first two days of the *intifada* were the towns and villages in the northern part of the "Triangle" and the Galilee—places where the Islamic Movement is most influential. The flags raised in the demonstrations were the green flags of the Islamic Movement.

²⁰ For a detailed discussion on this issue refer to the ICG Report (n.1). Further details are available in the Orr Commission (instituted by the government to probe the violent incidents in October 2000) Reports. The report is available at: <http://www.haaretzdaily.com> (2 September 2003 edition) and on the Adalah web site: <http://www.adalah.org/eng/commission.php>.

²¹ This section is mainly based on a number of opinion polls conducted among the Israeli Jews. The sources include *The Israel Public Opinion on National Security-2003*, (Jaffee Center for Strategic Studies' Annual National Security Public Opinion Poll: Memorandum no.67, October 2003, Tel Aviv University). Also see Asher Arian, *Security Opinion 2002* (Jaffee Center for Strategic Studies, 2002)

October 2000. In a *Ma'ariv* survey conducted in October 2000, 45 percent of the Jews felt that the the authorities were too soft in handling the Arab dissent. It has also found that 60 percent of the Jews wanted all Arabs to be transferred out of Israel. Another *Ma'ariv*-Gallup poll conducted in May 2001 showed that 67 percent of the Jews believed that the Arab citizens were against the continuation of Israel as an independent state. An October 2001 survey conducted by the University of Haifa revealed that in response to Arab 'terror hits', a violent Jewish response was desirable. The same survey found that 65 percent of the Jews wanted the government to encourage the emigration of the Israeli Arabs from Israel. This survey also showed an increasing support to the banned *Kach* party of Rabbi Meir Kahane, (20 percent of the respondents said that they would consider voting for *Kach* if it was allowed to run for the Knesset). A staggering 60 percent of those who participated in the survey said that they were not prepared to live together with Arab neighbours. A survey conducted by the same institution after a month revealed that 91 percent of the respondents wanted to retain the Jewish nature of the state. In a survey conducted by the Jaffee Center for Strategic Studies in February 2002, it was found that only 24 percent of the Jews thought that the Israeli Arabs were loyal to the state. Another survey conducted by the same institution found that nearly 80 percent of the Jews were against involving the Arabs in crucial decision making processes.

These opinion polls are significant as they reveal that apart from institutional and official discrimination, the Arabs also face a groundswell of enmity from the Jews although the Arabs themselves are also partially responsible for it, at least to an extent. However, it brings up the debate whether Israel is really a liberal democracy in its truest sense.²² The steady endeavour for inculcating standardized values (predominantly Jewish) among its citizens, the ethnocentric attitudes as evident from the overwhelming urge to keep the state exclusively Jewish and the predominance enjoyed by security concerns do not easily go together with the stature of a liberal democracy. Such attitudes have percolated down to the lowest rungs, making Israel a

²² These negative perceptions are not shared by the general public alone. In one of the worst-ever recorded statements of racism, Israel Koenig, the Head of the Interior Ministry's Galilee Division during the second term of Yitzhak Rabin called the Israeli Arabs, "a cancer in the Jewish body that had to be curbed and contained by increasing the number of Jews in Galilee". Quoted in Ilan Pappé, *A History of Modern Israel: One Land, Two Peoples*, (London: 2004.)

not-so-comfortable homeland for its Arabs. Till date, Israel managed to maintain a stable democratic regime in spite of an acute ethnic conflict, because of the liberal citizenship status enjoyed by the Arabs with sufficient rights and privileges enabling them to air their grievances within the legal frame work of the state.²³ However, this delicate balance is threatened by the rampant radicalization of the Arab sector and the antipathy of the Jewish citizens towards their Arab counterparts.

II) ECONOMIC ASPECTS:

The Arab peasants who were mostly dependent on their lands for their livelihood had to face serious problems as and when their lands were expropriated by the government. They also had to suffer as the *Histadrut*, was initially reluctant to affiliate them in the essential fields of credit, commercialization, and export marketing of goods.²⁴ The loss of large plantations due to land expropriation forced the Arabs to follow subsistence farming. Naturally most of them decided to abandon agriculture altogether and flocked to the cities in search of jobs, adding to the ranks of the growing Arab urban proletariat. More than 75 percent of this population was short of the expertise to compete on the urban job market. This made most of them, easily exploitable cheap labour, as they found jobs as construction workers and day-labourers.

The comparative economic boom in Israel, following the 1967 War, helped many Arabs to attain a certain level of economic independence. Some of them even became successful entrepreneurs and industrialists. However, the industrialization of the Arab sector remains rather inadequate. Companies owned by Arabs are generally small in scope, and deal with sub-contracting, handicrafts and transport and are mostly dependent on the wider circle of Jewish buyers, contractors, and business networks. Moreover, the Arab industry is limited by its own tradition, concentrating on time-honoured products such as textile weaving and nutritional supplies while the Jewish industries focus on a higher degree of technological complexity and expertise.

²³ Yoav Peled, "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State", *American Political Science Review*, Vol.86, No.2, 1992, pp. 432-443.

²⁴ The *Histadrut* started giving membership to the Arabs in 1953 but they were conferred the full benefits only after another six years.

The lack of government subsidies and budgetary stimulus for the Arab sector also retarded progress in this sphere.²⁵

Ironically, Israel's economic growth also had an unpleasant fallout for the Arabs as the longstanding gap in levels of income between Jewish and Arab citizens got exacerbated. This community that has long lived on the margins is facing a serious economic crisis of late as the Israeli economy is facing a cyclical recession. They often face discrimination in the job market. Israel's severe economic downturn, especially in the last decade (the 1990s), has hit the Arabs, the hardest. Till 2003, only the Ministry of Health and Ministry of Religious Affairs had representation of more than five percent of Arabs in their personnel. The Ministry of Housing, Transportation, and Industry, all had representation of less than one percent.

Despite a Knesset bill (October 2000), requisitioning that minorities and underrepresented populations be granted "appropriate representation" in the civil service, and on the boards of government corporations, there has been not much change in the ground realities. A brief glance at the economic indicators of Israel conveys the sense of crisis prevailing in the Arab sector.

Socioeconomic status by sector [2002]

Economic Indicator	Arab Sector	Entire Israeli Population (including Arabs)
Percentage of Population	20%	100%
Unemployment Rate	14.0%	9
Average Income	4,211 NIS/month	5,918 NIS/month
Poverty Rate-Children	50%	25%

²⁵ Sergio Robert, *The Arab Israelis*, (Jerusalem: Hogashama, Department of the WZO), 6 May 2001, <http://www.wzo.org.il/en/resources/view.asp?id=21&subject=151>, accessed on 4 May, 2004.

Arab and Jewish Workforce by Occupation

Category of Occupation	Arabs	Jews
Academics	7.3	13.3
Managers	2.0	7.0
Trades and Technicians	8.9	15.5
Subtotal	18.2	35.8
Clerical	7.6	18.4
Sales	15.3	18.8
Subtotal	22.9	37.2
Professional Labourers	43.2	19.6
Unskilled Labourers	13.8	7.5
Subtotal	57.0	27.1
Total	100	100

Source for both tables: Report on Equality and Integration of Arab Citizens in Israel, 2001-2002 (Jerusalem, Sikkuy), Israel Government Digest, (Sikkuy, B'tzelem), The Israel Association of Human Rights, and the Arab Association for Human Rights-quoted in Gerald B. Bubis, Israeli Arabs: Expectations and Realities, (Jerusalem Center for Public Affairs Policy Papers, no.478, May 2002).

As shown in the above Table, the ratio of white-collar workers is almost 1:2 (Arab: Jewish), while the ratio of blue-collar workers is over 2:1 (Arab: Jewish). The economic crisis experienced by the Arab sector is further aggravated by the financial neglect showed by the Israeli government.

The Mossawa Center for Arab Rights in Israel reveals that government allocations for development and investment in the Arab sector have been reduced considerably. The average per capita income in the Arab sector for the year 2003 is NIS 4472 (approximately \$1,000), which constitutes only 60 percent of per capita income in the Jewish sector. The differences are largely due to varying educational levels and types of work done by the Arabs compared to the Jews. The Israeli government gives special subsidies and tax benefits for areas designated as 'development areas' and these exclusively apply to the Jewish areas while the Arab areas are excluded.²⁶ The Ministers have the discretionary power for the allocation of

²⁶ There is no legal restriction in providing these benefits for the Arab sector. However, as a matter of practice, the Jewish areas are always preferred over the Arab ones.

benefits especially in the areas of education and religious services. Also the Arab sector finds it increasingly difficult to secure revenue from the non-governmental sources. This along with a limited ability to collect taxes and absence of managerial skills result in a chronic gap between the Arab and Jewish local authorities in areas of services and industrial development.²⁷

In a report about the socioeconomic situation in Arab municipalities and among Arab citizens of Israel, it has been revealed that the Arab sector in Israel is facing a severe economic crisis.²⁸ In 2001, the Israeli government decided to invest NIS 1 billion annually in a plan dubbed “the four billion plan.” The objective was to devote four percent of the state budget to developing Arab municipalities. According to the report, the government has gone back on the plan in the 2004 budget, which has aggravated the socioeconomic crisis of Arab municipalities and Arab citizens in general.

The 2003 reports by local municipalities show a deficit of close to NIS 1 billion. A total of 30 Arab municipalities—out of 80 municipalities all over Israel—are not paying salaries and benefits to employees. In some municipalities, basic services were cut, such as water and telephone services. A total of 95 percent of the Arab municipalities were classified in the lowest socioeconomic category published by the Central Bureau of Statistics.²⁹ Also most of the budget allocations earmarked to help in purchasing apartments were not aimed particularly at Arabs, but at particular sectors of the Jewish population. Even though the Arab women in Israel are much well off when compared to their counterparts in other Arab countries, they too face severe economic hardships as compared to the Jewish women in Israel. Nearly 80 percent of the Arab women are unemployed. The density of population in the Arab sector is also staggering as it is almost twice that in the Jewish sector. The population

²⁷ Elia Zureik, “Being Palestinian in Israel”, *Journal of Palestine Studies*, Vol.30, no.3, (Spring 2001) pp. 88-96

²⁸ *Adva Center Critique of Operation Economic Defense Shield*, www.adva.org/budget2002eds.html. Cf. Nimer Sultany, *Citizens without Citizenship: Mada's First Annual Political Monitoring Report: Israel and the Palestinian Minority 2000-2002*, (Haifa). p.28

²⁹ Dr. Shlomo Swirsky, *The Mossawa Center Report on Equality and Social Justice in Israel*, (Tel Aviv, 28 April 2002), available on http://www.mossawacenter.org/en/projects/legal_status.html, accessed on 31 May 2004.

density in the Arab sector is 1.41 persons per room, compared to 0.88 persons in the Jewish sector.³⁰

Health care is another source of alarm for the Arabs. While the Jewish citizens benefit from top quality health services which are at par with the western standards, according to the Public Health Insurance figures, there is a rise in infant mortality in the Arab municipalities. In the Negev Desert region, this is very high at 17 per 1,000 births. The Bedouins face another grave problem because the National Health Insurance does not set up and manage clinics in unrecognized villages in the Negev leaving them with no options for proper health care.

Immigration policy also manifests the economic discrimination faced by the Arabs. While the Arabs face a serious economic crisis, the new Jewish immigrants receive immediate citizenship and are entitled to a settlement package which includes tax breaks on cars and other imports (financed by the Customs Authority), free Hebrew language courses, a monthly living stipend, a half-year of free health insurance (financed by the Ministry of Immigration and Absorption), free higher education, and a free ticket to Israel from their country of origin. These special provisions are in addition to the Law of Return granting the Jews any where in the world, automatic citizenship in the state of Israel.

Land and Housing:

Of the total land area of Israel today, it is estimated that 93 percent is classified as publicly owned by Israel's Lands Authority.³¹ Most of it came into state hands due to the result of land expropriation from its Arab owners, making use of a number of legislations including the *Absentee Property Law*, the *Land (Acquisition for Public Purposes) Ordinance*, the *Defence (Emergency) Regulation*, the *Israel Lands Administration Law*, and the *Agricultural Settlement (Restrictions on the Use of Agricultural Land and Water) Law*. Sixty new Jewish villages were created from

³⁰ Ibid.

³¹ See "Israel's Report Concerning the Implementation of the International Covenant of Civil and Political Rights". Cited by The Association for Civil Rights in Israel, *Comments on the Initial and First Periodic Reports Concerning the Implementation of the ICCPR*: ACRI, 1998.

1948 to 1975 by using over 800,000 *dunams*³² of land taken from the Arabs citizens. The Land Day Commemoration which started in 1976 was a direct result of such land take over by the government. To construct the city of Carmel, 6,000 *dunams* of land were seized by the government in 1975-1976. There were widespread protests by the Arabs on the issue and massive protest demonstrations were held. In the ensuing clashes with the Israeli police, six Arabs were killed. The anniversary has since been observed by the Arab community as Land Day. In the aftermath of this incident, the Israeli government adopted a new approach and started constructing new Jewish towns around Arab land, even as categorizing the area surrounded by it as agricultural property. Such a provision puts an end to all the prospective improvement of the land and construction activities in it owing to the 'agricultural classification'.

The new Jewish settlements that have been established since 1948, numbering around three hundred were constructed in line with Israeli government zoning plans. Consequently, they are qualified for governmental support with municipal services and infrastructure. On the contrary, most of the Arab residential areas lack the authorization and therefore are not recipients of this support. The residents of the unrecognized villages are not eligible for government services even though they pay taxes to the Government. As a result, such villages have limited or no access to infrastructure, including power, water, and drainages, which have crippled their education, health care, and employment opportunities. New buildings in the unrecognized villages are considered illegal and are subject to demolition.

Since 1976, committees such as, the Chaim Koversky Committee (1976) and the Markovitz Committee (1986) have been instituted to look into the crisis of "illegal" housing among the Arabs. The committees have suggested that comprehensive policy be drawn for the Arab localities, and it should be the benchmark for future buildings. Nevertheless, the recommendations are yet to bear fruit, and were suggested again by Gazit Committee in 2000.³³ Another major problem for the Arabs is the lack of proper representations in those institutions

³² One dunam is approximately one-fourth of an acre.

³³ Report of the Committee to Investigate Illegal Building in the State of Israel: Ministry of the Interior, Government of Israel, 2000, available on <http://www.weeklystandard.com/Content/Public/Articles/043/019/012/950mcrdk.asp>

dealing with land allocations and construction plans. Only two Arabs serve on the thirty-two member National Planning Council, putting the community at a distinct disadvantage. The same lack of adequate representation is obvious on the local level as well. In the Galilee, where the Arabs constitute 52.3 percent of the regional population, only one Arab serves on the seventeen member-Regional Planning Committee. Thus the community has been allowed too little input in planning decisions that affect their schools and municipalities. Also there were reports that mosques and cemeteries belonging to the Islamic *Waqf* (religious endowment) have been neglected or expropriated unjustly for public use.³⁴

In August 2000, the Israeli High Court has ruled, that the Government's use of the Jewish National Fund to develop public land was discriminatory, since the fund's by-laws prohibit the sale or lease of land to non-Jews. However, the Court pronounced that its ruling was case-specific and it would not impinge on earlier land allocations and that discriminating between Jews and non-Jews in land allocation might be legal under unspecified "special circumstances. Even as late as in 1996, the government came up with a Master Plan for the Northern Areas of Israel, which had as its aims, increasing the Galilee's Jewish population and blocking the territorial contiguity of Arab villages and towns.

Land Use by Sector. [2001-2002]

	Housing	Industry	Industry as % of Housing
Arab Localities	82.2%	1%	1.2%
Small Jewish Localities	47.5%	8.3%	17.5%
Large Jewish Localities	66.3%	14.4%	21.7%

Source: The *National Plan for Israel 2020*, Planning Department of the Ministry of Interior, Cf. *Report on the Social, Economic and Political Status of the Arab Citizens of Israel*, (Haifa: Mossawa Center, October 2003), available on www.mossawacenter.org/en/reports/2004/03/040324, accessed on 18 April 2004.

³⁴ US Department of State, *Israel and the Occupied Territories- Report on Human Rights Practice for 2003*, (Washington DC), available on <http://www.state.gov/g/drl/rls/hrrpt/2003/nea/8262pf.htm>, accessed on 19 May 2004.

The disparity in preference for land use can be basically explained by the amount of land accessible to the Jews and the Arabs. The Arabs are denied permission to develop beyond the existing town limits whereas the Jewish towns face no impediments in expanding to meet the needs of their inhabitants. Such discriminatory attitude from the part of the government is evident from the land use choices of the Arab and Jewish sectors. As shown in the table, the Arabs use the bulk of their land possessions to meet their growing housing needs. Therefore they have little land left for agriculture, industrial development, or public open spaces. The Mossawa Center Report on the Social, Economic and Political Status of Arab Citizens of Israel elaborates:

The unequal allocation of government funding prevents towns and villages from creating the infrastructure needed for healthy growth, leading to overcrowding, lack of adequate municipal services, and lack of housing. In contrast to Jewish settlements with generous allowances for roads, parking, and public space; Arab localities are cramped and overflowing. Children build apartments on top of their parents' homes for lack of space. There are virtually no parks or green areas. Drivers face regular jams due to narrow roads that do not accommodate the flow of traffic.³⁵

III) CULTURAL ASPECTS:

The issue of culture has not received appropriate attention in discourses on the status of the Arabs because most of these revolved around political and legal equality. The marginalization and omission of Arab culture from mainstream society only serves to further isolate and leave out the Arab citizenry of Israel.

However, of late there has been a revival of the cultural issue and demands of cultural autonomy by the Arabs.³⁶ The Arabs are a distinct cultural and linguistic entity who are part of a national and cultural group, distinct from the majority group of their country and one that preceded the new majority. As such they are entitled to certain group rights. Consequently any attempt to improve the status of the Arabs would mean granting them not only equal individual rights, but also considering them as part of a national and cultural context that is accorded equal respect. In fact, Haim

³⁵ *Report on the Social, Economic and Political Status of the Arab Citizens of Israel*, (Haifa: Mossawa Center, October 2003), available on www.mossawacenter.org/en/reports/2004/03/040324, accessed on 18 April 2004.

³⁶ Haim Gerber, "Zionism, Orientalism and the Palestinians", *Journal of Palestine Studies*, vol.33 no.1 (Fall 2003) pp. 55-67.

Gerber argues that as the natives who bore the cost of the establishment of Israel, the Arabs believe that the state has an unpaid debt to them not only as individual citizens but as part of the nation that was crushed by the state in 1948.³⁷

The State of Israel has never recognized the Arab citizens as a national minority. For the Arabs their cultural identity has been a disadvantage as the benefits of citizenship are interwoven with the state's Jewish national identity. The state's symbols reflect the historical experiences of the Jewish people. Even though the Jewish public at times is willing to accept and even respect Arab culture, it still discounts the historical narrative of the Arabs. Also the exclusivist identification of one group leaves out the others and as a result, at best the Arabs are tolerated and in conflict situations they end up in the Jewish definition as an enemy.³⁸

Mostly, Arabs and Jews live in ethnically homogenous towns and neighbourhoods, talk different languages, go to parallel school systems, and celebrate different holidays. Whereas to an extent this is true of all Israeli sub-communities including the Jewish ones, the intensity of separation between the Jews and the Arabs is far greater.³⁹ Furthermore, the Arabs are unable to have a cultural cross-over and one major reason for this may be that they do not share the single most integrating cross-community experience in Israel, which is the service in the Israeli Defence Forces. The geographic hurdles that separate the Jews and the Arabs are reflected in their social outlook. Inter-marriage is extremely unusual and frowned upon by vast majorities in both.

Although Arabic is an official language of Israel, it is virtually ignored in many government documents and by much of the Israeli society. For example, more than 80 percent of the road signs in Israel are in Hebrew and English, even though English is not an official language. Notwithstanding the economic viability of using Arabic everywhere, these are the things that a democratic dispensation should look

³⁷ Ibid.

³⁸ Zureik, n.27

³⁹ An excellent description of this separation can be found in the "From the Hebrew Press" section of the *Journal of Palestine Studies* Vol.30, no.3 (Spring 2001), pp. 97-106. It contains three articles on Israeli Arabs, extracted from the Hebrew Daily, *Ha'aretz* and Russian Daily *Vesti*.

into, to assuage the feelings of a minority community. The domination of the Hebrew language is revealed in a number of governmental legislations on language. For example, the High Institution for Hebrew Language Law (1953) established an institute with the charge to develop and do research on the Hebrew language. No corresponding organization has been established for the Arabic, which is also an official language.

At present, the public education laws for the Jewish citizens require the study of the Arabic language in junior high school only. On the other hand, Hebrew is a required course of study for the Arabs starting in the primary school, and Arab students are tested in Hebrew for their qualifying examinations. The study of Hebrew is particularly important for Arabic speakers who desire to carry on their education beyond high school. This becomes all the more relevant as none of the public universities in Israel offer courses taught in Arabic, except for courses in Arabic as a foreign language. Moreover, Arab children constitute just about one-quarter of the public school population, but historically government resources granted for them were proportionately less. Present allocations do not recompense the historic inequities in government investments in educational infrastructure.

According to a report submitted to the Ehud Barak government in November 2000 after the violent incidents in the Arab sector of Israel during the *Al Aqsa intifada*, the Israeli government uses the Arab education system as “a tool of ideological control, manipulating it to divide the Arab population in a manner that clouds their Palestinian identity.”⁴⁰ The education system in Israel is divided by language--Hebrew and Arabic. Regardless of how Arabs are categorized, by race, religion, language, nationality, or ethnicity, international law protects them from discrimination on any of these and other grounds. Part II of the Compulsory Education Law prohibits local educational authorities from discriminating on the basis of ethnicity in the registration and admission of students, and in tracking or creating separate classrooms for students within a school.⁴¹ The Pupils Rights Law contains a

⁴⁰ The report was edited by Dan Rabinowitz, As'ad Ghanem and Oren Yiftachel and was titled, *After the Rift: New Directions for Government Policies towards the Arabs in Israel*. Available on www.spirit.tau.ac.il/soc Cf. Zureik, n.27

⁴¹ The Compulsory Education Law specifies: The local education authority and an education institution will not discriminate on the basis of ethnicity in 1) registration and admission of students; 2)

similar provision. However, these laws apply only to local authorities or the schools themselves, and not to the central government.

The State Education Law (1953) and its 2000 amendment give recognition to Jewish educational, religious, and cultural practices and institutions, and define their aims and objectives strictly in Jewish terms. In the field of education, it is debatable whether the Arabs get a sufficient opportunity to learn their history. Arab children are taught more about Jewish history than their own.⁴² Government funded pre-schools do not operate in Arab areas. Since a number of Arab villages are non-recognized, the government does not operate any schools there, badly affecting the Arabs. In many Arab villages, students travel long distances to school. Due to distance and the lack of a suitable study environment at home, achievement levels are low and there is a high student dropout rate. Overall the dropout rate of Arab students is high at 40 percent while for Jewish students it is 9 percent. The matriculation success rate of Arab citizens is 31.5 per cent, compared to 45 per cent for Jewish citizens.⁴³

Many schools in the Arab sector are decrepit and congested, lack special education services and counsellors, have poor libraries, and have no sports facilities. This is not surprising as the Arabs received a paltry seven per cent of the Ministry of Education's 2004 budget. The average numbers of Arab and Jewish students per classroom are 32 and 27 respectively. Arab students comprise only six percent of the total students in Israel despite the fact that Arabs constitute 20 percent of Israel's population. Investment per Arab student is just 60 percent of that of a Jewish student.⁴⁴ Such lopsided allocation of resources has adversely affected the Arab education system. The Ministry of Education employs a dual-track method for assessing the needs of Arab and Jewish schools which is a sure recipe for discrimination. Arab schools also generally are not entitled to the extra funding

designation of separate educational programs and paths for advancement in the same educational institution; 3) creation of separate classrooms within the same institute.

⁴² Jamil Dakwar, *The Challenges Faced by the Palestinian Minority in Israel*, www.wcl.american.edu/hrbrief/v5i2/html/arami.htm, accessed on 18 October, 2003.

⁴³ Figures for 2002. for details ICG Report, n.20

⁴⁴ *Israel's violations of ICCPR*, (B'tselem - The Israeli Center for Human Rights in the Occupied Territories), 2 August 1998, available on <http://www.acri.org.il/english-acri/engine/story.asp?id=100>, accessed on 25 March, 2004.

allocated to schools in National Priority Areas or to communities absorbing new Jewish immigrants.

Even though both the Arab Schools and the Israeli Orthodox religious schools are funded by the government, the former suffers from institutional discrimination. In Israel despite their cultural and national distinctiveness, the Arabs have not been granted autonomy in educational and cultural spheres- in contrast with the curricular, administrative and budgetary autonomy given to educational streams of the Jewish religious schools.⁴⁵ The amount of autonomy enjoyed by the Arab public schools in the fields of planning, management, and defining goals and content is negligible when compared to the Jewish religious schools. On top of this the education system is partly run by municipalities, which are responsible for establishing and maintaining educational facilities. Thus apart from the discrimination endured in state funding, the Arab schools face problems at the municipal level too due to the problems of chronic under-funding, economic backwardness, mismanagement and corruption so prevalent in Arab local-government institutions.

Association for Civil Rights in Israel notes that the public school syllabi focus more on Israel's Jewish culture and heritage. A petition was filed with the High Court of Justice in May 1997 to challenge the discriminatory policy of the Ministry of Education's refusal to provide Special assistance programme to Arab students.⁴⁶ The Attorney General's office agreed that the policy constituted impermissible discrimination. Despite the official assurances to correct this by 2004, the discrimination still continues. The government is yet to put into practice the recommendations of the Margalit Commission (July 2000) which was instituted to establish the implementation of the Special Education Law.

⁴⁵ Gerber, n 36

⁴⁶The special education program is meant to provide academic assistance to students from disadvantaged backgrounds.

TURKEY

The term minority in the Turkish Republic has always had a particular treaty-defined meaning dating back to the Treaty of Lausanne signed on 24 July 1923. The official position of the Turkish republic is that the concept of any section of Turkey's Muslim citizenry being viewed as a "minority" is quite simply alien.⁴⁷ The Kurdish population differed from the rest of the population not only because of ethnicity, but also because of its clan-based feudal societal constitution. The Kurds have been described as 'a feudal people of extreme religious beliefs.'⁴⁸

D) POLITICAL ASPECTS:

The political history of the Kurds from the establishment of the Turkish Republic till the current period can be broadly classified into four phases. The initial phase from the founding of the state till the collapse of the single party system in 1946 was dominated by the government under Mustafa Kemal Ataturk in which there were a few Kurdish rebellions, which were suppressed by the establishment. The second phase which started with the emergence of a multiparty system went on almost till the formation of the PKK- *Partiya Karkari Kurdistan* in the late seventies. This phase saw the return of the traditional *aghas*, who were the feudal landowners and religious leaders in Turkey.

The third and the most turbulent phase [from the beginning of the 1980s till the capture of the PKK leader Abdullah Ocalan in 1998] was the one which saw the Kurdish political activities being totally dominated by the PKK and it was this phase that witnessed a civil war in Turkey, which resulted in the death of thousands of people. The Kurdish issue gained worldwide attention in this period. The fourth phase saw the exit of the PKK from the scene, perhaps opening up a chance for the peaceful settlement of the disputes.

⁴⁷ *Separatist Terror: Menace of the Post Cold War Period: A Case Study of the PKK in Turkey*, <http://www.ataa.org/ataa/ref/pkk/articles/casestudy.html> (Foundation for Middle East and Balkan Studies)

⁴⁸ Patrick Kinross, *Ataturk: The Rebirth of a Nation* (London: 1964), p. 397.

The Kurdish political aspirations and genuine demands for the acceptance of their ethnic nature were kept under tight leash by the Ataturk régime. When Ataturk formed the new Turkish Republic in 1923, and consolidated his position, he issued a decree on 3 March 1924, prohibiting the use of Kurdish language, banning education in Kurdish, and making all Kurdish publications illegal.⁴⁹ Some Kurdish nationalists responded to this by revolting against the government: the Sheikh Said's revolt in 1925, Khoybun in 1927-1930, and Dersim in 1937.⁵⁰

Initial Political Activities:

One of the earliest Kurdish tryst with political activity happened when the domination of the Republican People's Party (RPP) came to an end in 1946. In this second phase of Kurdish political activism, they supported the newly formed Democratic Party (DP-1946). The DP shrewdly used a mixture of offers- including greater civic liberty and more religious freedom⁵¹- to further ensure Kurdish support. The party employed the services of the Kurdish tribal chiefs called *aghas* to influence the Kurdish votes.⁵² This new alliance affected the entire socioeconomic profile of the Kurds.⁵³ Due largely to the perpetuation of the tribal structures, the Kurdish areas have always lagged behind the rest of Turkey in terms of political participation and economic development.⁵⁴

The DP, while facing a severe economic crisis towards the end of 1950s, turned authoritarian and suspended all political activities. This led to an army take-

⁴⁹ John Bulloch and Harvey Morris, *No Friends but the Mountains: The Tragic History of the Kurds*, (Oxford: 1992), p.172.

⁵⁰ Nader Entessar, *Kurdish Ethnonationalism*, (Boulder: 1992), p.86-87

⁵¹ Even during the religious suppression in Turkey by Ataturk, Islam prospered and Sufi Brotherhoods operated in the Kurdish areas and therefore the DP assiduously wooed the Kurds. Revivalists like the Mawlana Khalid Naqshbandi movement were active in Kurdish areas and they supported the DP.

⁵² Jack David Eller, *From Culture to Ethnicity to Conflict* (Ann Arbor:, 1999), p. 149-51.

⁵³ The DP ardently supported private property, strengthening the hands of the *aghas*. This was given religious sanctity by the *fatwas* issued by them. Thus they became the undisputed leaders of the region and they faithfully delivered the votes under their control to the DP. The *aghas* and the DP were quite successful in the absence of an educated peasantry or middle class among the Kurds. While this policy has been advantageous both for the government and the *aghas*, it has been less so for the Kurdish population as a whole.

⁵⁴ Svante E. Cornell, "The Kurdish Question in Turkish Politics", *Orbis*, Winter 2001, Vol. 45 Issue 1, pp.31-47

over under the guise of the National Unity Committee (NUC). The DP was wound up forcing the Kurds to look towards other parties. The New Turkey Party and the Justice Party (supported by the *aghas*) attracted a number of Kurds.⁵⁵

Ironically, the military government enacted a new liberal constitution in 1961, which allowed freedom of thought, expression, association and publication. This gave the Kurds some chances of highlighting their plight and expressing their demands. The period also saw the establishment of the first Kurdish political party, the Democratic Party of Turkish Kurdistan (KDPT) under Faik Bucak, though it did nothing for improving the situation of the Kurds. However, fairly large number of Kurds joined the Turkish Worker's Party (TWP-1966) which was based on the leftist ideology. The TWP in its Fourth Congress in 1970 passed a resolution stating that there is a Kurdish people in the east of Turkey, who are repressed by the fascist authorities.⁵⁶ This incurred the wrath of the authorities and the TWP was banned. However, with the advent of these parties, the mantle of the Kurdish struggle against the state was taken over from the tribal peasantry and the landlords by the young professionals and educated youths who were city-dwellers.⁵⁷ This period also saw the establishment of Turkish Popular Liberation Army (TPLA) and the Turkish Popular Liberation Front (TPLF) with Kurdish support.

In the general elections that followed the military rule, the RPP under Bulent Ecevit came back to power. It is important to make a note of the Kurdish voting pattern in the elections. There was a palpable split in the Kurdish votes: while the predominantly urban Kurds voted for the RPP under Ecevit, the rural population supported the National Salvation Party.⁵⁸ Thus the Kurds got polarized in the left and right camps of Turkish politics. The Socialist Party of Kurdistan (KSPT) also started operating during this period which also saw the formation of a number of other clandestine Kurdish organizations. A number of violent clashes were reported between the rightist and leftist and the law and order situation was once again

⁵⁵ Derk Kinnane, *The Kurds and Kurdistan*, (London: 1964) p.33

⁵⁶ Nezan Kendal, *People Without a Country: The Kurds and the Kurdistan*, (London: 1980) p.97

⁵⁷ David Mc Dowall, *A Modern History of the Kurds*, (London: 2000) p. 408

⁵⁸ The Salvation Party was an Islamic revivalist group led by Necmettin Erbakan, a *Naqshbandi*, openly advocating Islamist idealists.

virtually out of control despite martial law. Finally on 12 September 1979 the Army once again took over the Turkish administration. The army used an iron hand to put down the various rebellious groups. The administration codified a new constitution for Turkey, replacing the relatively liberal 1961 constitution.

The Role of the PKK:

The Kurdish struggle after the formulation of the new constitution gained wide attention due to the presence of the PKK- *Partiya Karkari Kurdistan* or the Kurdistan Workers Party. The founder of this organization was Abdullah Ocalan, who was initially involved with a number of leftist groups. Ocalan drew his members from the Kurdish proletariat and they combined the ideals of Kurdish self-determination with the communist concept of class-war. The PKK initially sought to foment communist revolution in Turkey. In particular, it advocated a revolution to clear away the contradictions in society left over from the Middle Ages, including feudalism, tribalism, and religious sectarianism.⁵⁹

The PKK came out in the open in 1984 launching a series of ambushes on the Turkish military in the Kurdish regions leading to a perceptible change in the attitude of the Kurdish public, which was one of allegiance towards the *aghas*. The PKK assassinated many of these land owners and created an environment of fear. The government decided to counter the guerrilla tactics by resorting to the village guards system. This put the Kurds in a dilemma because refusing to join the guards would invite the wrath of the government while joining the guards would lead to retribution by the PKK. Many innocent Kurds were killed in the gang wars between the PKK and the village guards. However, the PKK suffered from lack of public support due to extreme ruthlessness at this juncture. Extreme brutality towards the same people it claimed to stand for disenchanted many Kurds, who saw little distinction between the Turkish state organs and the PKK.

The Governor-General and the Emergency:

To ensure further control over the Kurdish territories, the government in 1987 appointed a governor general for the Kurdish provinces in which the state of

⁵⁹ Michael M. Gunter, *The Kurds in Turkey. A Political Dilemma* (Boulder: 1990), p. 60.

emergency has been declared. He was also given extensive powers to evacuate villages and carry out a number of security measures, which he deemed necessary. This gave the security forces a free hand in carrying out their operations, resulting in alleged human rights violations. The situation brought about another perceptible change among the Kurds as the support for the PKK increased among the younger generation. A civil resistance movement gained momentum and the PKK gained further acceptance as it stopped attacking the Kurdish people. Most importantly, the Kurdish crisis became a part of Turkish national discourse. One of the mainstream parties, the Social Democratic Popular Party (SDPP) publicly admitted that there was a genuine problem in the south east of the country. The party even published a report listing the problems in the region and came up with a few recommendations.⁶⁰ The PKK meanwhile, at its annual conference held in Syria in December 1990, announced that its idea is to have a federation within the Turkish state and decided to use violence only against the Turkish military.⁶¹

There were some encouraging movements from the side of the authorities also. In 1991 President Turgut Ozal announced his decision to permit the use of Kurdish except for broadcasts, publications and education. He also mooted a suggestion of allowing Kurdish programmes in the GAP television. By the end of 1991 the PKK also offered a cease fire with preconditions that Turkey should free the PKK prisoners, allow freedom of political activity in Turkey, stop its operations in the southeast and declare a cease fire. However, Ozal was not willing to consider the ceasefire option as it would have badly affected his electoral prospects. In the general elections held in 1991, the PKK demonstrated its support in the southeast by getting over 70 percent votes for the pro-Kurdish People's Labor Party (HEP),⁶² which had an alliance with the SHP.

⁶⁰ The report was written by Hikmet Cetin, a TGNA Deputy from Diyarbakir. Incidentally this was the first time a Kurdish view point was aired publicly by someone from non-left spectrum.

⁶¹ Gunter, n.59, p. 49

⁶² The HEP could not qualify to contest and therefore 22 HEP members joined the SDPP and got elected.

The Islamist Angle:

Meanwhile, there has been a genuine polarization among the ordinary Kurdish people. A large number of the Kurds were influenced by the Islamists, weaning them away from the largely atheist PKK. Most of them shifted their allegiance towards the right wing parties. The process of Islamisation was supported by Saudi Arabia and Iran and a large number of mosques and other religious establishments came up in the Kurdish regions.⁶³ Ankara also passively encouraged it despite it being against the principles of Atatürkism, since it helped to contain the PKK. New Islamist parties, like the *Hezbollah Yumruki* (The Fist of God Party) and *Yurtsever Dinadamlari Birliđi* (The Patriotic Men of Religion) became very popular in Diyarbakir, challenging the PKK. There were allegations that the *Hezbollah* is funded and nurtured by the state and therefore they were sometimes referred to as the 'contras'.⁶⁴ This forced the PKK to make an ideological shift; from an extreme leftist position to a more religious one. Under the PKK tutelage, a number of organizations like the *Partiya Islami Kurdistan* (PIK) and *Islami Harekat* (Islamic Movement) came into being, leading to support from Saudi Arabia and Iran.

Ocalan announced a unilateral ceasefire on 17 March, 1993. He said that the Kurds do not want a separation from Turkey and they look for peace, dialogue and free political action within the framework of a democratic Turkish state. Most importantly this phase also saw an attempt of reconciliation between the various warring factions amongst the Kurds. The PKK reached an understanding with the Kurdistan Socialist Party (PSK) with which it had a long standing feud. They also came up with a vision document to solve the Kurdish crisis.⁶⁵ The Kurds called for a cessation of population displacement, ceasefire by Turkey, a new democratic constitution, freedom of action for Kurdish political parties, lifting the ban on Kurdish cultural expressions and also an economic-revival package for the Kurdish regions. However, the peace efforts suffered an immediate set back due to the death of President Ozal who was one leader who showed political maturity and foresight to

⁶³ *Conspiracy and Crisis: Turkey and the Kurdish Question: From the Nineties to the Present Day*, Turkey, (Unpublished), available on <http://www.zmag.org/content/ForeignPolicy/aram0122.cfm>, accessed on 29 May, 2004.

⁶⁴ Martin van Bruinessen, "Turkey's Death Squads", *Middle East Report*, no.199, April-June 1996), p.23.

⁶⁵ Gunter, n.59, pp.76-77

comprehend the problem. Moreover, the Turkish authorities construed the ceasefire offer as a sign of the weakening of the PKK and decided to take more stringent measures.

Decline of the PKK:

Beyond disallowing inner-party opposition, Ocalan developed a personality cult around himself. The Marxist-Leninist ideology, which never really had much support in the traditional Kurdish society, became a liability for the party after the collapse of the Soviet bloc. The Turkish army emphasized discipline within its ranks and initiated a public-relations campaign that included the introduction of health and educational facilities for the population of the southeast and adapted successfully to guerrilla warfare. By 1998 the PKK's only lifeline was Syria.⁶⁶ Spurred by its alliance with Israel, the Turkish government felt strong enough to threaten Syria with war unless it expelled Ocalan and shut down the PKK bases in the Bekaa Valley. Unable to rule out the prospect of Israel's joining a Turkish punitive expedition, Damascus complied and expelled Ocalan, completing the collapse of the PKK, in October 1998. After the PKK's forces relocated to northern Iraq, a subsequent Turkish incursion dealt a severe blow to their military capabilities. Since Ocalan's capture at Nairobi, his unreserved submission to Turkish authorities seems to have damaged the PKK so seriously that it is doubtful that it will ever again become a credible actor.

Even after the collapse of the PKK, the Government maintains an unusually strict policy vis-à-vis Kurdish political parties and leaders. The Kurds functioned within the Turkish political parties, in particular the People's Socialist Party, SHP, the party most sympathetic to their objective of complete equality for all citizens of Turkey, till 1991. The People's Labor Party, HEP, was founded in the spring of 1990, by seven Kurdish parliamentarians who were expelled from the SHP, in 1989, for attending a conference in Paris on the Kurdish question. Despite the fact that the HEP

⁶⁶ Syria has been PKK's key and constant ally. It hosted Ocalan for twenty years and provided training facilities in the Bekaa Valley of northern Lebanon. Syria's reasons for opposing Turkey were diverse. Most fundamental is a border row over the Hatay province, which is claimed by Syria but was conceded to Turkey by France (Syria's League of Nations mandatory) in 1939. Besides, Turkey's economic growth program for southeastern Anatolia, which was launched in the 1980s, planned to use water from the Euphrates and Tigris Rivers to irrigate large swathe of the parched area. Syria, fearing this would put at risk its right to use to water from the Euphrates, increased its support not only for the PKK, but also for Armenian terrorist organizations targeting Turkey. Cf. David Mc Dowall, *A Modern History of the Kurds*, (London: 2000)

promoted a political resolution to the Kurdish issue, the government changed the election laws to prevent HEP from taking part in the 1991 elections, forcing the HEP, to enter into an alliance with the SHP. Ultimately the party won 22 seats of parliament.⁶⁷

The HEP was banned by the Constitutional Court on charges of separatism as the HEP parliamentarians spoke about Kurdistan. This led to the formation of another party called the Democracy Party, DEP. In early March 1994, the Turkish parliament lifted immunity against DEP parliamentarians and on 16 June 1994, the DEP was formally banned by the constitutional court. In December 1994, eight Kurdish members of Turkish parliament were put on trial, and charged with promoting separatism. Five of them were sentenced to 15 years each and others with lesser sentences. The remaining DEP members soon after formed the People's Democracy Party, HADEP. It was allowed to participate in the elections in opposition to the Refah Party, an Islamist party, to reduce its votes among the Kurds.⁶⁸

The government continues to harass the pro-Kurdish People's Democracy Party (HADEP), as well as the closely related Democratic People's Party (DEHAP), through various methods including police raids and detentions. Ironically, this campaign against pro- Kurdish activists intensified after the arrest of Ocalan, when some HADEP members expressed support for Ocalan. Authorities detained a large number of HADEP members, and party leaders allege that many were tortured or beaten. HADEP was finally closed down in October 2003 by the Constitutional Court on charges of supporting the KADEK/KHK⁶⁹ and perpetrating separatist acts. The Court also prohibited 46 HADEP leaders from participating in political activity for five years. The Supreme Court of Appeals' Chief Prosecutor has filed a case seeking the closure of the DEHAP on similar charges. The case against DEHAP is still continuing.

⁶⁷ Burhan Elturun, "Turkey Cracking Down on Kurdish Aspirations", *The Washington Report on Middle East Affairs*, Vol.XI, No.1, June 1992, pp.41-42.

⁶⁸ Jonathan C. Randal, *After Such Knowledge, What Forgiveness? My Encounters with Kurdistan*, (New York: 1997), p.253.

⁶⁹ PKK changed its name to the Kurdistan Freedom and Democracy Congress (KADEK) and later on to the Kurdistan Peoples Congress (KHK).

Throughout 2003, police raided several of DEHAP offices, principally in the southeast, and incarcerated hundreds of DEHAP officials and members, according to Human Rights Watch.⁷⁰ DEHAP and HADEP members were regularly harassed by *Gendarmerie* and security officials, including verbal threats, arbitrary arrests at rallies, and detention at checkpoints. Villagers, who are perceived as sympathetic to HADEP/DEHAP are regularly harassed by the Security forces. Most detainees face trials, for "supporting an illegal organization," "inciting separatism," or for violations of the Law on Meetings and Demonstrations. The ban on such ethnically based parties deprives the Turkish government of the opportunities to negotiate with legitimate and democratic interlocutors.⁷¹

Human Rights Violation Due To Population Displacements:

The unprecedented uprooting of the civilians from the Kurdish heartland in the name of fighting the rebel forces was a gross violation of established norms of human rights, especially the provisions of the European Human Rights Convention, to which Turkey is a state party. Even though the governments can remove individuals and communities from their places of residence, this right is strictly limited. The UN Resolution on Forced Evictions says that instances of forced evacuations are *prima facie*, incompatible with the requirements of the ICESCR and could only be justified in the most exceptional circumstances and in accordance with the relevant provisions of international law'.⁷²

The Fourth Geneva Convention and its Additional Protocol are very clear about civilian displacements. It says that the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians or imperative military reasons so demand. In the case of the Kurds, none of these conditions were met. The Turkish forces apart from forcing the Kurds out of

⁷⁰ *Human Rights Watch, Country Report: Turkey*, (New York:2003) available on <http://www.hrw.org/press/2003/08/turkeyqa041902.htm>, accessed on 31 March, 2004.

⁷¹ Ergun Ozbudun, *Contemporary Turkish Politics*, (Boulder: 2000), p.14

⁷² UN Resolution 11993/77 on Forced Evictions (1993) adopted 10 March 1993, at the 49th Session of the UN Commission of Human Rights. Available on www.unhcr.org

their residences obliterated their villages, by burning houses and destroying property.⁷³

II) ECONOMIC ASPECTS:

The conflict in Southeast Turkey has left the Kurds, in an exceedingly vulnerable situation affecting their social and economic development and has considerably increased regional inequalities in Turkey. Even before the rise in the hostilities in the region, the South-eastern regions suffered a great deal of economic neglect. In fact, scholars like Mahmood Monishpouri argue that the rise in Kurdish nationalism has largely resulted from the economic deprivation of the South-eastern region.⁷⁴ According to the State Department, the figure of one million internally displaced persons is a realistic estimate for the total inhabitants who ran off because of the widespread tension in their localities.⁷⁵ The total number of people who became displaced within Turkey is difficult to estimate. Some local NGOs give the figure of 2 to 3 millions internally displaced persons because of the conflict.⁷⁶ The Turkish Government reported that 378,000 persons had "migrated" (it disputes the term "evacuation") from 3,165 state of emergency region villages between 1994 and 2000. According to the Interior Ministry, in the 25 provinces in the former state of emergency region, 4,455 villages and hamlets have been destroyed or deserted. The Government justified the practice as a means of protecting civilians or preventing PKK terrorists from obtaining logistical support from the inhabitants.

⁷³ Such actions directly violate articles 3 (prevention of collective punishment and deliberate infliction of inhuman and degrading treatment), 8 (the right to respect for home and family life), and 14 (the right to non-discrimination) of the European Convention on Human Rights to which Turkey is a state party. It also violates the first article of the First Protocol to the Convention which grants the right for peaceful enjoyment of one's property and possessions. The European Court of Human Rights has upheld these violations in the case *Akduvar and Others v Turkey*. Application No. 21893/93, *Akduvar and Others v Turkey* in KHRP: Cases Declared Admissible by the European Commission on Human Rights, Volume I-III. Cited in Kerim Yildiz, "The Human Rights and Minority Rights of the Turkish Kurds" in Deirdre Fotrell and Bill Bowring (eds), *Minority and Group Rights in the New Millennium*, (The Hague: Martinus Nijhoff Publishers, 1999)

⁷⁴ Mahmood Monishpouri, *Islamism, Secularism and Human Rights in the Middle East*, (Boulder: 2000), p.125.

⁷⁵ Omer Taspinar, "Turkey's Kurdish Question", *Pakistan Daily Times*, 6 April 2003, www.brookings.edu/views/op-ed/fellows/taspinar20030406, accessed on 21 January, 2004.

⁷⁶ Ibid

The economic crisis due to the Kurdish problem has led to further problems for the non-Kurdish citizens too and the peril is that this long-running conflict may result in distrust and bigotry against Kurds. During the conflict, Turkish security forces exposed the civilian populations to numerous violations of human rights and humanitarian law, including random arrest, persecution, extrajudicial killings, and haphazard attacks and significantly stringent economic blockades citing reasons that the Kurds might be helping the insurgent groups.

The most common form of displacement was the evacuation of entire villages as carried out by the Turkish armed forces to deprive the Kurdish armed movements from logistical support from the civilian population. No other state, has conducted so extensive a programme of rendering its own citizens homeless. One significant point to be noted is that the Kurds are facing these grave economic problems just because they are far too proud about their ancestry. If they are willing to agree that first and foremost they are Turks, they are eligible to participate in Turkey's prosperity. But they are stubborn and therefore they are among Turkey's poorest citizens. Most of them are unemployed and unhappy.⁷⁷

The situation of the displaced people is further aggravated by the catastrophic economic conditions prevailing in the south-eastern provinces. The region, due to Turkish military operations was under emergency rule for several decades. Indiscriminate use of force without any concern for the population has led to unprecedented devastation. The entire infrastructure of the region was ruined. Agriculture, the mainstay of the economy was in shambles and houses were razed to ground. This has made the economic recovery of the region extremely difficult. Agriculture suffered further because during the military occupation, the entire region was filled with land mines making it extremely hazardous. Though the government promised to clear off the mines, nothing has happened. This has brought farming activities to a virtual standstill. Also the farmlands are occupied by the Special Forces who have come to fight the Kurds and they are very hesitant to leave the lands. There have also been reports that households applying for return assistance have been pressured by authorities to give up beforehand any claims on compensation for the

⁷⁷ Stephen Kinzer, *Crescent and Star: Turkey Between Two Worlds*, (New York, 2001) p.111

loss of their properties.⁷⁸ The government offensive has led to another major problem. Faced with immense economic hardships the displaced Kurdish households are unable to send their children to school. Unfortunately, an increasing number of displaced children in urban areas are trying to make their living in the street without going to school. Housing programmes have failed to adequately manage the needs of the Kurdish population in south-eastern Turkey.

The Kurds who were confined to their mountainous villages for ages are finding it really difficult to cope with the new situation in the cities. A major problem has been the general health condition of the displaced Kurdish population, who face an increased risk of diseases such as TB, malaria and mental illnesses. Reasons behind the limited access to health services are economical, the lack of a health or other social insurance and cultural differences. The inability of social adaptation is another issue of major concern, which has been caused by unemployment, shelter problems, children's educational problems, health problems, environmental pollution, cultural differences, and feelings of exclusion. The psychosocial status of the displaced women is also an issue of grave concern to local NGOs. Coming from a traditional rural background, they suffer from isolation and lack of hope in their new urban environment. High level of suicide among displaced women has been reported".⁷⁹

After the capture of Abdullah Ocalan, the leader of the PKK, there was a lull in the fighting in the south-eastern provinces. As a result, from mid-2002, there was a general trend among the Kurds to return to their villages. There are reports that nearly 40000 people have returned to their villages and grazing fields since the level of hostilities has come down. The government has announced a number of schemes for the rehabilitation of the uprooted Kurds. One of them was the "Back to Villages and Rehabilitation Project". This was meant to lure the people back to the conflict zones in the southeast by offering them aid for reconstruction of their villages and houses.

⁷⁸ *Systematic Destruction of Properties and Possessions Continued Through 2002 (1994-2002)*, IDP Project Report, (Norway:2003)

<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/4238906405FCA0ECC1256AB20026114B>, accessed on 19 July 2004.

⁷⁹ Ibid

The Central Villages Project was envisioned to relocate evacuated villagers into newly built villages.

Nonetheless, these return programmes were not really sufficient to redress the grievances of the uprooted Kurds. They were not really willing to move to the new settlements because most of them have been built without any regard for their complaints and suggestions. In case of the first rehabilitation project, only a few villagers have been given the permission by the provincial governors to return to their homes. In many cases, the Kurds were prevented by the local military authorities from entering the villages and were even forced to sign that they had to leave because of terrorism. Sharp criticism came from Human Rights Watch, who suggested that the government village return program was largely fictional with most abandoned settlements remaining no-go areas, which in some cases have been occupied by government-armed village guards.⁸⁰

Furthermore, the Return to Village and Rehabilitation Program does not suggest any effective technical, financial, or political support to returning villagers. And in some cases, to be eligible for rehabilitation, most villagers had to renounce their permissible privileges to seek damages for their displacement. The Turkish establishment has turned down proposals to engage intergovernmental organizations with a genuine concern in development and displacement that are already working in Turkey-the World Bank, the United Nations High Commissioner for Refugees (UNHCR), and the United Nations Development Program (UNDP)-in the implementation of the Kurdish return programme.

The Government has stubbornly avoided any sort of international action regarding the welfare of the Kurdish minority. Most international humanitarian organizations, including the Red Cross, have been refused access to south-eastern provinces and those organizations which ultimately get the permission from the authorities are always closely monitored by the police. Interestingly, of late the authorities are showing a more even-handed approach in dealing with the Kurds. The South-eastern regions are returning to normalcy after decades of hostilities. The

⁸⁰ *Human Rights Watch, Country Report: Turkey*, (New York:2003), n.70

restrictions on cultural expressions have also been relaxed to an extent and the government is coming up with a number of new economic packages for the region.

III) CULTURAL ASPECTS:

Throughout the history of the Republic, forcing the Kurds to discard their language and become native speakers of Turkish was the primary goal of the official language policy. A range of methods have been used in the past eight decades to marginalize the Kurdish language. The government initially imposed the prohibition on the use of Kurdish. There was a ban on spoken language in public places, government offices and schools. In the earlier decades, special government officials were charged with implementing the ban in urban centres.⁸¹

Physical violence and separation from one's own family were some of the other methods used in Turkish schools to prevent the student from speaking Kurdish. The names "Kurd" and "Kurdistan" were banned and replaced by *Dagli Türkler*, 'mountain Turk' and *Dogu*, 'the East'.⁸² The all-round effort to get rid of the Kurdish language has somewhat succeeded in scattering the once heavily populated southeast, in Turkifying large numbers of Kurds, and bringing Kurdish culture (oral and written literature, music, and dress) to the brink of extinction.⁸³ The Kurds are also not permitted to use Kurdish place names for cities and villages. The names of towns and villages where Kurds lived were changed to Turkish. This continued until the point when there were no longer any villages with Kurdish names. According to the government, the motive behind the change of names was to prevent confusion. The process is continuing.

Kurdish names are viewed as denying and challenging Turkish national culture. They are seen as names from a foreign race and nation. Accordingly, thousands of Kurdish names were forcibly changed in the aftermath of the 12

⁸¹ Nezan Kendal, *People Without a Country: The Kurds and the Kurdistan*, (London: Zed Press, 1980) p.124

⁸² Amir Hassanpour, *Nationalism and Language in Kurdistan: 1918-1985*, (London: Edwin Mellon Press, 1992), pp. 150-152

⁸³ Amir Hassanpour, *A Stateless Nation's Quest for Sovereignty in the Sky*, Paper presented at the Freie Universität Berlin, 7 November, 1995 available on <http://www.cogsci.ed.ac.uk/~siamakr/Kurdish/KURDICA/1999/JUL/policy.html>, accessed on 31 May, 2004.

September 1980 military coup. People who opposed this were threatened by police and were interrogated. There are name registries in the Kurdish regions with lists of acceptable names and names are often forcibly changed as a result of official threats. In late 2001, the Interior Minister sent out a circular requiring provincial governors “to ensure that parents name their children in a manner appropriate to our national culture, moral values and customs” as required by the Civil Registration Law.⁸⁴ More recently, in July 2003, the public prosecutor opened a case in the south-eastern city of Siirt, demanding that parents should change the Kurdish names of their children. The case covered children born in 19 families between 10 July 1997 and 19 March 2002.⁸⁵

Turkey has a very dynamic press. Newspapers and television programmes include stringent condemnation of government and government policy. Debates range freely over almost every plausible topic. But three themes are potentially perilous: Turkish secularism and the restrictions imposed on religion in politics; minority rights and the role of ethnicity in politics; and the role of the military in politics. News programmes on such topics can lead to prosecution and incarceration. Currently, there is no legal obstacle to publishing newspapers and magazines in Kurdish, but in most instances the authorities confiscate these publications and prosecute their publishers on charges of separatism.

The Interior Ministry has sweeping powers to close down publications which produce works about the Kurds even if a court acquits the publisher. When a publication which deals with the Kurds is published, it is immediately confiscated by the police on the grounds that it violates the territorial and national integrity of Turkey. In the end, the state prosecutor files charges against the authors, the publisher, and the printer. The police then destroy the confiscated publications, usually by burning them, before the trial has been concluded.

However, of late, Turkey has been taking steps to further liberalise its media and cultural sector. In an attempt, presumably aimed at the European membership,

⁸⁴ *Human Rights Watch Report: Turkey*, n.74

⁸⁵ *Amnesty International Report, 2003-Turkey*, <http://web.amnesty.org/web/web.nsf/print/2003-tur-summary-eng>, accessed on 20 May, 2004.

Turkey has relaxed its tough stand on Kurdish cultural expressions. The authorities officially allowed Kurdish-language broadcasts to start from 9 June 2004. The Turkish State Television broadcasted its first-ever programme in the most widely spoken Kurdish dialect, *Kurmandji*. The country's most well-known female Kurdish politician, Leyla Zana— who had spent ten years in jail after being convicted on charges of belonging to the PKK, was released on the same day. The government also permitted thousands of Kurds to commemorate the occasion, waving the once-banned red, green and yellow Kurdish flag.

Though Turkey has allowed in principle, broadcasts in the traditional languages of the country, including Kurdish, the implementing regulations set stringent time-restrictions on such broadcasts, that is, 45 minutes per day, 4 hours per week on radio and 30 minutes per day, 2 hours per week on television. The regulations also entail that Kurdish radio programmes be followed by the same programme in Turkish and that Kurdish television programmes have Turkish subtitles. The High Board of Radio and Television (RTUK), which oversees the Turkish media, punished several private radio and television stations for broadcasting programmes in Kurdish.⁸⁶

The authorities occasionally use various methods of censorship against publications with pro-Kurdish content, particularly in the southeast. In April 2003, an Istanbul court convicted the owner and editor of the daily *Ozgur Gundem* for publishing an article about Abdullah Ocalan. The Economist has reported that an Istanbul court convicted writer Zulfikar Yildirim and his editor Baris Baksi in connection with an article on Kurdish issues. The court fined the journalists and ordered the 15-day closure of the journal in which the article appeared.⁸⁷ Between 5th and 12th June, 2004, the Istanbul Police detained 25 Kurdish journalists who were accused of alleged links with the PKK.⁸⁸

⁸⁶ US Department of State, Turkey- Report on Human Rights Practices for 2003, (Washington DC) <http://www.state.gov/documents/organization/19606.doc> 2003 Human Rights Report, accessed on 7 April, 2004.

⁸⁷ Ibid

⁸⁸“A Day to Celebrate”, *Economist.com*, June 10, 2004, http://economist.com/agenda/displayStory.cfm?story_id=2745413, accessed on 9 April, 2004.

Besides, individuals who condemn the Government openly always face retaliation and the Government continues to restrict expression by individuals sympathetic to Kurdish nationalist or cultural viewpoints. For publishing a 1999-2001 Report on Forced Displacement describing the plight of the internally displaced Kurds, Sefika Gurbuz, head of the Social Support and Culture Association for Migrants, has been indicted by the authorities and she is facing trial in an Istanbul State Security Court on propaganda charges. The Istanbul SSC sentenced DEHAP parliamentary candidate Ruknettin Hakan to 6 months imprisonment for "making speeches in a language other than Turkish" while he was campaigning in Kurdish, even after the language ban was lifted.⁸⁹

Moreover, Kurds cannot produce any theatre works, video cassettes, musical works, films, etc. Films, video cassettes, and musical works must be legally registered. Any work which the government thinks incites people to commit crimes with respect to the territorial and national integrity of the state, national sovereignty, the Republic, national security, the public and general order, or the public interest, general morals, and health, can be denied registration, banned or can be subjected to prosecution. Music cassettes in Kurdish can be found legally on open sale in Istanbul and Diyarbakir, but occasional police purges result in mass confiscations of such cassettes. Local governors periodically circulate lists of cassettes banned from sale in city markets. To cite another example, Abdullah Yağan, a bus driver, was sentenced to 45 months imprisonment in July 2003, by Diyarbakır State Security Court for playing Kurdish music to the passengers in his minibus.

Even though there was some amount of respite in the field of publishing during the last years of the Turgut Ozal government (1992-93), ostensibly to qualify Turkey for the European Union membership, this reprieve did not lead to a fundamental change and the very acknowledgement of any Kurdish cultural identity is seen as endangering the union of citizens who are by definition Turkish.⁹⁰

⁸⁹ US Department of State, Turkey- Report on Human Rights Practices for 2003, (Washington DC) n.86

⁹⁰ Konrad Hirschler, "Defining the Nation: Kurdish Historiography in Turkey in the 1990s", *Middle Eastern Studies*, Vol.37, No.3 July 2001, pp. 145-166.

A detailed observation of the minority problems in Israel and Turkey reveals the constantly changing nature of state-minority relations. To start off, Arabs and the Kurds had to face a lot of problems in the initial stages of the establishment of their countries. The Arabs for nearly the first two decades were under the military administration in Israel while the Kurds raised a number of armed rebellions against Turkey immediately after the establishment of the state. Thereafter the Kurds mainly operated through mainstream Turkish parties. The Arabs were wooed back to the national mainstream by the Labour party after its defeat in 1977. This increased the importance of the Arabs as they became active participants in the political processes. However, with the outbreak of the *Al Aqsa intifada* in October 2000 in the Occupied Territories and the support given by the Israeli Arabs to the movement again led to their marginalization. Meanwhile the situation of the Kurds worsened due to the outbreak of the civil war between the PKK and the government in south eastern provinces. Their situation improved marginally with the relaxation of the martial law after the capture of PKK leader Abdullah Ocalan.

CHAPTER IV

CONCLUSIONS

The state responses to minorities have been undergoing constant changes in Israel as well as Turkey, the two recognised democracies in West Asia. In Israel, the Arabs initially had to face the troubles of a military rule. There was a separate set of rules and regulations for them and their freedom and liberty was severely curtailed. However, with the revocation of the military rule in 1966, their situation gradually improved. The year 1977 marked a defining moment in the history of Arabs in Israel. With the right wing *Likud* coming to power, the era of Labour dominance came to an end. With emergence of the Two Bloc system, the political parties, especially the Labour party, realized the importance of Arab votes, which had a substantial capability to swing the electoral results. The Arabs profited from changes in Israel's political landscape.

One important thing to be noted here is that, the Arabs were wooed by the parties as Arabs, irrespective of their ethnicity and there was no attempt to suppress the minority identity. This period corresponded with the improvement of Arab-Israeli relations throughout the region, significantly by the Oslo process. However, the enhanced status of the Arabs did not last long as the *Al Aqsa intifada* started in October 2000 and many of the Israeli Arabs supported this anti-Israeli violence. The move resulted in increasing alienation of the Arabs as the *Likud* and the right wing parties gained further ground. It is interesting to observe that *Likud* has been performing consistently better since the *intifada* started. As a result, the Arabs are once again under the threat of being relegated to the background of Israeli mainstream. The declining fortunes of the Labour party which had its worst electoral defeat in January 2003 Knesset elections is a cause of further concern for the Arabs.

The Kurds had a very uneasy relationship with the Turkish government right from the establishment of the State. After the Turkish authorities backtracked from their promises of a Kurdish self-government guaranteed in the Treaty of Sevres, there were a number of Kurdish revolts in Turkey and the Kurdish political activities took

place albeit through mainstream Turkish parties. The Turkish government maintained a tight leash on the Kurdish political, economic and cultural activities. The situation changed drastically after the establishment of PKK- *Partiya Karkari Kurdistan*. The PKK advocated violent methods to meet its demands, which varied from limited autonomy to outright independence of Kurdistan. The relation between the Kurdish minority and the Turkish government reached its lowest ebb during the civil war between the Turkish government and the PKK.

Things changed for better for the Kurds, especially because of two developments. Abdullah Ocalan, the PKK leader was arrested in October 1998, leading to the downfall of the movement. This normalized the situation in the Kurdish areas to an extent with the ceasing of hostilities and return of normalcy. Along with this another major factor is also working in favour of the Kurds. Turkey is desperate to join the European Union. However, most of the EU member states try to block Turkey's candidature for many reasons but a common explanation cited frequently by all of them is Turkey's abysmal human rights record, especially the treatment of the Kurds. To tide over this criticism, Turkey has relaxed a number of its laws and administrative procedures by which it controlled the Kurdish population.

The fundamental reasons behind the minority crisis in Israel and Turkey can be categorised as:

- absence of an all-inclusive national identity; and
- overriding security concerns.

In these countries, an all encompassing, composite national identity, which can effectively reflect and represent their multi ethnic social composition, is yet to evolve. Even in a democratic system with an impartial judiciary and proper grievance-redressal system, in the absence of an inclusive national identity, there are bound to be frictions. In both the states, it is precisely the absence of this identity, which has led to most of the minority related conflicts. Israel has not yet been able to define the essence of an Israeli identity, which is different from the exclusive Jewish identity and can include all the ethnic communities. Similarly the Turkish identity is overwhelmingly assimilationist, totally negating the presence of any other identities.

Secondly, the pre-occupation of both the countries of their security needs, impedes the welfare of the minorities. Since the foundation of Israel the Arabs were perceived through a security prism, which largely undermined their position. The end of the military administration in 1966 partially mitigated the situation and the removal of the monopoly of the Labour Party in 1977 paved the way for their greater political recognition and acceptance. In its desire to unseat the *Likud* and return to power the Labour Party found a potential ally in the Arab electorate. The peace process including the Oslo Agreement not only brought hopes for Israeli-Arab reconciliation but also removed the prolonged existential threat faced by Israel. This in turn worked in favour of Arabs.

However, the onset of the *Al Aqsa intifada* and the willingness of the Israeli Arabs to identify themselves with the Palestinians of the Occupied Territories rekindled the Israeli apprehensions vis-à-vis its Arab citizens. As security issue come to dominate the lives of ordinary Israelis the painstaking progress made since 1966 were undermined if not reversed. This new situation manifested in the form of a series of attempts aimed at marginalizing the political role of and space for the Arab minorities. The declining fortunes of the Israeli Left did not improve the situation either.

The geographical distribution of the Kurds, stretching across Turkey, Iraq, Iran and Syria has important implications for Turkish foreign policy. The Kurds occupy a geographically contiguous territory, adding to the security worries of Turkey. The PKK was based in the Kurdish stronghold of south-eastern Turkey during its insurgency operations and the Turkish military had to stretch itself to the maximum with heavy casualties to retain control. The presence of high security prisons throughout the Kurdish region, the frequent imposition of martial law, the enactment of several anti-terrorist legislations- targeting the Kurds and the establishment of dedicated Special Security Courts with extraordinary jurisdiction (mostly trying the crimes under the Anti-terrorist law) shows the extreme anxiety of the Turkish government regarding security.

The Turkish security concerns have further aggravated now with the Kurds in an almost de facto sovereign control in the Northern Iraqi cities of Mosul and

Kirkurk. This in fact forced Turkey to threaten a military intervention in Northern Iraq to prevent the Kurdish forces from taking total control of these regions. Such is the level of threat perception in Turkey regarding any rise in the Kurdish fortunes.

A major point of divergence that governs the two minority groups, the Arabs and the Kurds can be located in the nature of the political systems in Israel and Turkey. While the Arabs are members of a liberal democratic polity in which the civilian authorities are under absolute control, the Kurds have to cope with a powerful military which is the actual power centre in Turkey. The Turkish political dispensation is dominated by the Turkish military – a provision evident from the powerful National Security Council. This limits the freedom of the Kurds considerably while the Arabs since 1966 never had to face such a problem. The Kurdish crisis was aggravated in the 1990s with the Kurdish regions being put under military control by the imposition of the martial law. Even though the military no longer directly govern the Kurdish provinces and has ended its internal security function after the withdrawal of the martial law, the, *Jandarma* troops continued to be in control in these regions and remain under the operational control of the military. On the contrary, the Arabs in Israel are under civilian authority just like the Jewish majority. Significantly, the options available with the Arabs for the redressal of grievances are more fair and impartial because of the independent judicial system in Israel.

Secondly, there are several instances in Israel where the Arabs have won their cases against the discriminatory practices of the state. In Turkey, most of the cases relating to Kurdish political activities are tried in the State Security Court System, which is notorious in international legal circles. Moreover, for anyone in Turkey to initiate proceedings against any member of the security forces will have to initially obtain clearances from the government. Such an overt militarist orientation of the state hampers the chance of its citizens, especially the minorities to seek legal recourses.

Thirdly, with the exception of a few legislations, the Israeli legal and administrative policies are neutral affecting the citizens-both the majority and minority communities- uniformly. The problems of Arabs lay in the operationalisation

rather than laws *per se*. The Turkish legal system has several in-built discriminatory practices that adversely affect the Kurdish minority. This aspect is all the more explicit in the legal control over cultural expressions and practices.

Fourthly, while the Israeli laws put no restrictions on the ethnically specific aspects of the Arabs, the Turkish government makes the explicit manifestation of ethnicity a punishable offence for the Kurds. Finally, the Turkish laws affect the Kurds on both individual and collective levels, as the expression of ethnicity- individually or collectively- is considered an offence. In Israel, the individual rights are respected- the different communities are governed by their own personal laws in matters of religion. The problem often comes up on the group level as evident from Israel's reluctance to give the Arabs (including Christians and Druze) collective rights including a national minority status.

Hence the minority groups in Israel and Turkey both face some forms of discrimination even though the two countries are democratic polities. While the absence of a composite identity and the predominance of security concerns are the two major common factors in these countries leading to discriminatory practices, the two countries also differ from each other in a number of crucial aspects including the role of the military in politics, the nature of the laws and legal systems, freedom of expression and significantly, the respect of individual human rights.

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