

DISCRIMINATION: AN AGE-OLD ISSUE

A HUMAN RIGHTS POLICY
PAPER BY **ELSA MALTA**



elsa

The European Law Students' Association

MALTA

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Foreward

ELSA, the European Law Students' Association is first and foremost a human rights organisation. In fact, ELSA's main purpose is "to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers". On top of this, ELSA's vision is "A just world in which there is respect for human dignity and cultural diversity."

ELSA's vision is what ELSA Malta strives to promote in all its projects and in order to do this, it publishes a number of research and policy papers. These papers are not only written to promote ELSA's vision but also in order to play an active role in the discussion of certain pressing legal and human rights issues. As a celebration of last year's Human Rights Day, which is an event celebrated globally, ELSA Malta published a research paper titled 'Raising Awareness: Domestic Violence and Gender-Based Violence'. This paper focused mainly on the various aspects of domestic violence with the aim of raising awareness on the topic.

As a celebration of this year's Human Rights Day, the ELSA Malta Human Rights Organising Committee proudly presents ELSA Malta's research paper, 'Discrimination: An Age-Old Issue'. This paper aims to take a holistic and complete approach with regards to the topic of discrimination by shedding light on what discrimination is while recognizing the various forms in which it can be found such as in matters of race, religion and health. This was done by giving context and understanding to where people may be subject to discrimination, be it in their work, school or home environment. Even though discrimination has always been an issue in societies, it was very interesting to see how such an issue still exists in 2020, in places where you would least expect it. All this was done while exploring the many efforts which are being employed in order to mitigate discrimination on both a national and international level through various conventions and bills relating to equality. This research paper was inspired by many real-world events such as the discriminatory killing of George Floyd earlier this year. All this was analysed in relation to the pandemic and the effects of the latter on aggravating the situations and even creating various stigmas related to discrimination.

It is for all these pressing issues that ELSA Malta felt that the issue of discrimination deserved utmost attention in order to raise awareness on the matter. We feel that it is our duty to act and spark a discussion on the topic. This project would not have been possible without the many hours of work and dedication of a highly dedicated group of people, to whom I would like to express my personal gratitude to. First and foremost, I would like to especially thank Ms. Sarah Xuereb and Ms. Julia Aquilina, ELSA Malta's Director for Social Policy and Director for IFP & Human Rights respectively, for taking on such a bold project and for seeing that it was completed successfully. I would also like to thank Ms. Suzana Tabone, Mr. John Paul Buttigieg, Ms. Alexandra Gaglione, Ms. Maria Scicluna, Ms. Julia Galea, Ms. Amy Saliba, Ms. Andrea Mifsud, Mr. Warren Farrugia, Ms. Emma De Gabriele, Ms. Kelly Jade Galea and Ms. Michaela Aquilina for their invaluable assistance to the writing of the paper itself. I would also like to extend my gratitude to Dr. Tonio Borg for taking the time to carefully review the research paper and for giving us feedback and guidance accordingly. Lastly, I would like to thank Brittany Wells, ELSA Malta's Director for Public Relations for the design of the paper.

On behalf of ELSA Malta, we hope that you enjoy reading our paper, take the time to think about the subject at hand and to evaluate our suggestions, and lastly to follow us and support us in our aim – to always be proactive!

James Caruana
President of ELSA Malta
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Introduction

What is Discrimination?

Discrimination is an ongoing societal matter which tackles the prejudicial behaviour towards certain people, whilst regarding them as victims of today's world. A number of protests, virtual campaigns and petitions have been circulating the globe, drawing attention to the repercussions of discrimination. Over time, the definition of discrimination has been amended. The Constitution of Malta in Article 45 sub-section 3, defines a “discriminatory” situation as:

“different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

In comparison to the perspective of discrimination of the European Convention of Human Rights issued in the European Convention Act 1987, which states that: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”, there are various differences between the two articles.¹ Article 45 of the Constitution added various terms to its definition over the years, with “sex” being added in 1993 and “sexual orientation or gender identity” in 2013 and is considered as “exhaustive”, whilst the list issued by the European Convention Act in Article 14 is rather “indicative”. The term “exhaustive” suggests that the Constitution prohibits discrimination on certain grounds; other grounds are excluded. However, Article 14's interpretation of discrimination is “indicative”, therefore intimating that other unjustified grounds of discrimination, even if not contained in article 14 can be put forward. As soon as Protocol 12 is integrated with the European Convention Act, (currently

¹ 'European Convention On Human Rights' ([echr.coe.int](https://www.echr.coe.int))
<https://www.echr.coe.int/documents/convention_eng.pdf> accessed 5 November 2020.

being debated in Parliament in Bill No. 96) this will be implemented in Malta at a national level, with a probability that its provisions will be enforced by the national courts. This means that the extended list in article 14 will apply not only “in the enjoyment of the rights and freedoms set forth in the Convention” but for *any* right. However, the amendments of the definition of ‘discrimination’ are contingent on the growth, improvement and change brought about by the people, with an effort to reconstruct the meaning of ‘discrimination’, whilst educating themselves in the types of discrimination which are claiming all types of victims. Discrimination is divided into mainly six different sections, these being: gender discrimination, racial and national discrimination, discrimination on the basis of one’s Sexual orientation, religious discrimination, discrimination on the basis of one’s Age, and discrimination on the basis of one’s health and/or disability.

Gender discrimination, or sexism, refers to prejudicial behaviour towards certain people on the basis of their sex or gender. Sexism is bound to impact anyone however; it predominantly affects females. Gender discrimination occurs due to the belief that one gender is wrongfully superior than the other, ultimately impacting several lives daily. The battle for gender equality has been going on for too long, with Malala Yousafzai’s Me Too and Time’s Up movements which have been fighting for women’s rights. 113 countries still have gender discrimination embedded in their society as they do not have laws to ensure equal pay for equal work among both men and women. Meanwhile, in another 104 countries, certain jobs are unavailable to women. The list continues and is further lengthened in other sections.²

Racial and national discrimination refer to the unfavourable treatment shown to individuals either due to their nationality, their ethnicity, accent, or because they give the impression of coming from a certain ethnic background. Racism is present in every corner of the world, claiming the lives of many people from all backgrounds. However, the present world is holding back from fighting for the rights of these victims, with studies showing that a majority of adults of *colour*, around 65%, have been observing issues of race and racial discrimination and they have at least attempted to educate themselves on the history of racial inequality.³ This world-

² <https://www.panmacmillan.com/blogs/lifestyle-wellbeing/shocking-gender-inequality-facts-melinda-gates>> accessed 6 November 2020.

³ 'Amid National Reckoning, Americans Divided On Whether Increased Focus On Race Will Lead To Major Policy Change' (*Pew Research Center's Social & Demographic Trends Project*, 2020) <<https://www.pewsocialtrends.org/2020/10/06/amid-national-reckoning-americans-divided-on-whether-increased-focus-on-race-will-lead-to-major-policy-change/>> accessed 6 November 2020.

wide division between blacks and whites, with people of colour usually ending up as the victims, has arrived to a point of no return, with lives, such as those of George Floyd, Breonna Taylor and Lassana Cisse, being taken away due to the greed prevalent in certain people.

Sexual orientation discrimination usually refers to a preference towards heterosexual people and therefore a bias against lesbian, gay and bisexual people. This type of discrimination is mostly common in workplaces and in schools and centres of education. Statistics in America show that 1 in every 4 people who form part of the LGBTIQ community, report experiencing discrimination in 2016, with the report explicitly stating that until 2017, neither the federal government, nor most states have imposed laws in order to protect those who are facing extensive discrimination. Sexual Orientation Discrimination, together with all the other forms, is inclined to impact people's mental health and psychological state, with 68.5% victims, in 2016, report that discrimination has had negative repercussions on their psychological well-being⁴.

Religious discrimination refers to the prejudicial behaviour towards believers and/or non-believers of certain religions. This is habitually present at work and education centres. Even though the universal law is protecting citizens from being discriminated against if they belong to an organised religion or even if they are atheists, Muslims and atheists are more susceptible to discrimination in the U.S, as concluded by the University of Washington. Religious discrimination also occurs due to "inappropriate" attire, with women being harassed over religious dress in every 1 of 3 countries in 2012.⁵

Discrimination on the basis of one's age, or ageism, refers to the stereotypical behaviour against people due to their age. Ageism includes various sectors, such as discrimination by association, where someone is inferiorly because of someone else's age, and discrimination by perception, where someone is perceived to belong to a certain age group, even if this is incorrect. Studies show that the number of age-related discrimination charges filed by workers

⁴ 'Widespread Discrimination Continues To Shape LGBT People'S Lives In Both Subtle And Significant Ways - Center For American Progress' (*Center for American Progress*, 2017)

<<https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>> accessed 6 November 2020.

⁵ 'Religious Hostilities Reach Six-Year High' (*Pew Research Center's Religion & Public Life Project*, 2014)

<<https://www.pewforum.org/2014/01/14/religious-hostilities-reach-six-year-high/>> accessed 7 November 2020.

of the age of 65 or more against their employers, doubled from 1990 to 2017. However, only 40% of the victims of age discrimination end up filing a complaint.

Disability and/or health discrimination can also take various forms. Discrimination on the basis of one's health and/or disability is when an individual is treated in an inequitable and prejudiced manner for a reason that relates to their disability or health. In the United Kingdom, disability discrimination, also known as ableism, includes subdivisions such as direct discrimination, indirect discrimination and failure to make reasonable adjustments, with most of the victims experiencing high unemployment and exclusion from the labour market. Surveys show that in Europe, 52% with acute disabilities suffer from unemployment and are therefore not part of the labour force.⁶ However, certain countries are imposing new regulations in order to diminish disability and/or health discrimination, such as Malta's 2015 Budget which enforced that 2% of a workforce with more than 20 employees must consist of persons with a disability. All of these different forms of discrimination are described thoroughly throughout the length of this paper.

Even though we are living in troublesome and uncertain times, discrimination is still prevalent around us. The Covid-19 situation has evoked prejudicial behaviour against certain demographic groups around the world. The reasons for these repugnant actions are undetermined, however, the UN Secretary-General on Covid-19 and Human Rights stated that this way of behaviour might be a result of the agitation and insecurity felt by the population in an attempt to search for answers. Even though victims of discrimination vary in each country, a common target that prevailed throughout the pandemic is the 'other', referring to the foreigner, the individual coming from a different ethnic background than the birthright citizen. Certain discrimination cases remain undisclosed to society or are not being reported to the relevant authorities. Therefore, it is time to break the cycle of discrimination. Many countries are indeed in a position where they have to shed light on types of discrimination which are being kept behind closed doors, such as ageism or ableism. This continues to emphasise the biased personality accompanying discrimination perpetrators. Organisations, foundations and movements, such as the 'Black Lives Matter' movement, are being set up around the world in hope of assisting victims of discrimination whilst demanding for justice to be served. The legal

⁶*(Disability Discrimination at Work)*

<https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_decl_fs_87_en.pdf> accessed 8 November 2020.

system is being called upon in order to make changes and break barriers between societies and communities with the intention of minimising discrimination. Therefore, what has the Maltese legal system done in order to aid victims of discriminations, and what other laws and regulations shall it continue to enforce?

European Convention on Human Rights

The European Convention on Human Rights was the main scope behind the foundation of the Council of Europe. States joined together, forming the Council of Europe, with the aim to guard basic human rights for everyone, given the circumstances of World War I and World War II. This treaty secures human rights for all individuals in countries belonging to the Council of Europe.⁷ The Convention objectively protects everyone from any discrimination as mentioned in both Article 14 of the convention, together with Article 1 of protocol 12. Discrimination is prohibited on all grounds such as; *“sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status.”*⁸

The European Convention on Human Rights is an international human rights treaty which binds the forty-seven member states of the Council of Europe. The first initiative towards an international human rights treaty was suggested during the chaotic times of the Second World War. The purpose behind such treaty was to safeguard people’s basic rights, the principle of the rule of law and to encourage democracy. The Congress of Europe was first held, eight years after the end of the Second World War, with a substantial group of more than seven hundred and fifty delegates. Many influential people had attended namely, Winston Churchill and François Mitterrand, as Churchill declared in his speech that night:

“In the centre of our movement stands the idea of a Charter of Human Rights, guarded by freedom and sustained by law.”

As a result of this meeting, the Convention started developing, with a record number of rights to be safeguarded and put forward by the assembly. Furthermore, several articles were also drawn up from the United Nation’s Universal Declaration of Human Rights.

The Convention was conscribed by the Council of Europe in Strasbourg in 1949. As the charter was finalized and the draft was ready, a great number of parliament members from all over Europe gathered together. The Convention was first signed in Rome in 1950, first endorsed by

⁷ <https://www.equalityhumanrights.com/en/what-european-convention-human-rights>

⁸ <https://www.coe.int/en/web/echr-toolkit/linterdiction-de-la-discrimination->

the United Kingdom in March of 1951.⁹ The Convention was fully implemented on the 3rd of September 1953 and is now effective in all Member States of the Union. The Convention enforces such rights on the member states, as it is implemented in the laws of the European Union. It comprises of various civil and political rights including; *“the right to life, the prohibition of torture and of inhuman or degrading treatment or punishment, the prohibition of slavery and forced labour, the right to liberty and security, the right to a fair trial, the principle of no punishment without, the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, and the right to marry.”*¹⁰

Article 14

Discrimination takes place when one is treated differently than any other individual in an identical situation, leading to unjustifiable treatment.¹¹ Article 14 is embedded with the protection against discrimination through the rights set out in the Convention. The ECHR declared in the case of *S.A.S.v. France [GC], 2014, § 149*, that the doctrine of non-discrimination is ‘fundamental’ and it forms the basis of the Convention itself.

Article 14 of the convention addresses the prohibition of discrimination on all grounds;

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 14 of the Convention forbids discrimination based on unequal treatment established within an identifiable objective, whereby a community of people is distinguishable from any other. In this respect, Article 14 sets out a list of causes which are safeguarded from discrimination which are portrayed by the numerous expressions used in the respective article: *“any ground such as”* and *“any other status”*. The ECHR stated that one can sue on grounds

⁹ <https://www.amnesty.org.uk/what-is-the-european-convention-on-human-rights>

¹⁰

<https://www.equalrightstrust.org/ertdocumentbank/The%20prohibition%20of%20Discrimination%20under%20Human%20Rights%20Law.pdf>

¹¹ <https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination>

of discrimination if the applicant's personal situation is listed in the criteria of the respective article.

Sex

With regards to Article 14 of the Convention, any discrimination on the grounds of sex is totally unacceptable. The European Court of Human Rights aims for all member states to abolish gender inequality in all places. The Court stated in the case of, *Konstantin Markin v. Russia [GC], 2012*, that it was not sufficient to claim that traditions, general assumptions or prevailing social attitudes are excused from gender discrimination. All gender stereotypes that exist, including traditional family ideas, of the mother as carer and the father as breadwinner, are not sufficient reasons for there to be any indifference in treatment.

With substantial case law being covered on discrimination on the grounds of sex, the Court has established different areas of differential treatment including;

1. Equality in marriage
2. Access to employment
3. Parental leave and allowances
4. Survivor's pensions
5. Civic obligations
6. Family reunification
7. Children's surnames
8. Domestic violence

The Court has also handled a number of cases concerning the issues of domestic violence under Article 14. Domestic violence is established as a form of gender-based violence, seen as a form of discrimination against women. A State's violation to the right to equal protection of the law, fails to protect both men and women from domestic violence.

Race and Colour

Racial discrimination emerges from any abuse on the grounds of one's ethnic origin. Racial discrimination is considered as a heinous act due to the number of circumstances which might arise if not given special vigilance and affective reactions from the authorities. It is of utmost importance that the authorities make use of all means possible to fight racism and strengthen democracy's ideal vision of a society, whereby we are all united in diversity.

Any discrepancy in treatment, based on race or ethnicity, is never justified in any democratic society as societies need to enhance the principles of pluralism and respect for different cultures. It is shocking to see those responsible to protect public peace for all, to commit racist violent acts.

Religion

Article 14 of the Convention safeguards against discrimination on the grounds of religion, by safeguarding individuals who choose or choose not to hold religious beliefs and to participate or do not participate religious practises. Religion and belief are notions which are relatively intimate and subjective, as now even recent religions such as Scientology are also qualified for protection.

On multiple occasions, the Court has stated that it is the State's ultimate duty to remain neutral and impartial in regards to various religions, denominations, and beliefs. Recently, the Court has discovered that any difference in treatment on grounds of religion is not justified, thus resulting in breaching of Article 14. Such cases concern:

1. Discriminatory violence based on the victim's faith
2. The incompetence of several churches to offer religious education in school and to conclude religious marriages
3. Prohibition to grant parental rights considering a parent's religious convictions
4. The ban of employees of a private company to wear religious symbols

Political or other opinion

In 1976, it was declared that the right to freedom of expression safeguards not only ‘ideas’ or ‘information’ which is considered useful; however, it also seeks to safeguard those ideas which disturb or surprise both the population and the State. Free elections and freedom of expression are the basis of all democratic systems, resulting in the State having very limited power in regards to restricting political expressions.

National or social origin

Various individuals have come forward claiming that they have been discriminated due to their nationality and/or origin. The below mentioned instances are all examples of discrimination based on the grounds of nationality:

1. Authorities refused to grant emergency assistance to an unemployed man due to the reason that he did not possess an Austrian nationality (*Gaygusuz v. Austria, 1996*)
2. An unregistered resident was denied of legal aid as she contested for paternity of her child (*Anakomba Yulav. Belgium, 2009*).
3. Individuals without a permanent residence were required to pay secondary school fees (*Ponomaryovi v. Bulgaria, 2011*).

Association with a (national) minority

The term ‘national minority’ remains undefined; however, it refers to the exercise of rights of different minorities in several cases. Certain topics which are touched upon are the question of minority groups in regards to discrimination based on ethnicity as well as the protection of numerous sexual minorities.

Birth

In 1979, the Court deemed that any limitation on children’s inheritance rights based on birth, was inconsistent with the European Convention on Human Rights. In all member states of the Council of Europe, children must be treated equally and no discrimination shall be made if they

are born within or outside of marriage, leading to a number of developments in legislation in all member state countries.

A Maltese case, (*Genovese v. Malta, 2011*) involved the denial of granting a Maltese citizenship to a child born out of wedlock. The child's mother was not of Maltese descent, however the Court stated that even though the right to citizenship was not written down in the Convention, it was still found to be in breach of Article 14 of the Convention.

Other Status

The words 'other status' has been given a wide definition, with an unrestricted application within the law. When interpreting such legislation, the law refers to certain statuses such as: ¹²

1. Age
2. Gender identity
3. Sexual orientation
4. Health and disability
5. Parental and marital status
6. Immigration status
7. Status related to employment

Protocol n°12 of the ECHR

The all-round circle of protection against any form of discrimination is completed by Article 1 of Protocol No. 12 to the Convention which generally prohibits discrimination:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹² https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

The Protocol goes a step further in safeguarding individuals' human rights', in comparison to Article 14 of the Convention, as the European Court of Human Rights may make use of Protocol 12 in order to extend its jurisdiction to certain situations which are not mentioned under Article 14 of the European Convention on Human Rights.¹³

The ECHR stated that any approaches of discrimination, as prohibited by both article 14 of the Convention as well as Article 1 of Protocol 12, are to be applied in the same way. The Court makes it clear that Protocol 12 does not only protect "*any right set forth by law*". Currently, Protocol 12 has been implemented in twenty out of the forty-seven member States of the Council of Europe.¹⁴

The year 2020, marks a great milestone for the European Convention on Human Rights, as it has been advocating for human rights for all, for 70 years. This has come to show that after decades of engaging in the atrocities of two World Wars, we as European citizens were all able to come together, differences and all, and remained to this day "*united in diversity*".

¹³<https://www.equalrightstrust.org/ertdocumentbank/The%20prohibition%20of%20Discrimination%20under%20Human%20Rights%20Law.pdf>

¹⁴ https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf

The Different forms of Discrimination

Gender Discrimination

Discrimination remains a prevalent issue in today's society and exists in numerous forms. One such form is 'Gender Discrimination' or 'Sexism'. This encompasses any and all attempts at "exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹⁵ Throughout this section sexism will be thoroughly explained by; key information pertaining to the fight against gender discrimination throughout history, the reasons as to why sexism remains such an alarming element in our globalised world and what the current laws and conventions are doing in an attempt to eliminate gender discrimination on both a supranational and national level.

Historically, we note how deeply sated acts propagating gender discrimination are in everyday practises, whereby individuals are treated in an unequal and disadvantageous manner solely based on their gender. Whilst this inequality is an issue which affects both sexes, it is evident that throughout history, women have faced discrimination to a significantly higher degree than men have. This has led to centuries of female oppression and subjugation. As political activist Emmeline Pankhurst stated, "*Men [used to] make the moral code and they expect[ed] women to accept it.*" The fight against gender discrimination was and continues to be spearheaded by the 'Feminist Movement', a movement that actively strives to achieve gender equality and to better the lives of all women. The suffragette movement is known as the 'First Wave of Feminism'. Their efforts were instrumental in the passage of the 'Representation of the People Act of 1918'¹⁶, which was a landmark piece of legislation that granted around 40% of women across the UK the right to vote and thus the right to representation. This is considered to be a pivotal event which propelled the fight to end gender inequality and discrimination.

¹⁵ 'Gender Discrimination' (European Institute for Gender Equality, 2020)
<<https://eige.europa.eu/thesaurus/terms/1161>> accessed 5 November 2020

¹⁶ 'What The British Women's Suffrage Movement Means Today' (Time, 2020)
<<https://time.com/5134820/british-suffragettes-centenary-women-rights-inequality/>> accessed 8 November 2020

While the right to vote was a large step towards the reconstruction of a society, which does not discriminate between genders, the fight remains to this day, an ongoing one. Women are still disproportionately discriminated against in every aspect of life despite our modern-day values and advancements. This is why the Feminist movement, that has been championing equality for the last century, remains such an integral aspect of our community as it actively fights to diminish sexism on all fronts in its various forms. These include firstly, ‘Traditional Sexism’, which refers to discrimination and malicious prejudice in favour of traditional antiquated gender roles. Secondly, ‘Modern Sexism’, which denies that gender discrimination remains a widespread and serious issue and has a flippant and uncaring attitude towards women’s rights and women’s issues. Finally, we are met with ‘Neosexism’ which attempts to justify discrimination towards women based on false stereotypical assumptions of competences and stems from a place of disrespect towards the struggles, women have had to endure.¹⁷

The answer as to why gender discrimination has remained a dictating force in modern society, influencing matters ranging from attitude discrepancies to job opportunities, is not a straightforward one and is influenced by a number of factors. According to research conducted by Stanford University’s Cecilia Ridgeway, gender discrimination and inequality continue to survive as a result of the maintaining and development of societal constructs and processes that knowingly or unknowingly continue to reinforce this inequality. These processes which fuel discrimination appear perpetually due to a widespread system of identification and interaction being built upon broadly shared gender stereotypes, of both a hostile and benign nature. Stereotyping with reference to gender involves a process of “*ascribing to an individual specific attributes, characteristics or roles*” based on generalised assumptions and preconceptions by virtue of the individual’s gender only¹⁸. This existing framework operates by classifying individuals based on their gender and allowing this categorisation to dictate all future interactions and the roles and activities that person is able to perform and partake in. This process can be perpetrated on an individual, institutional and structural level which results in damaging and far-reaching consequences resulting in different forms of discrimination on all

¹⁷ Feminism And Women’s Rights Movements’ (Gender Matters, 2020) <<https://www.coe.int/en/web/gender-matters/feminism-and-women-s-rights-movements>> accessed 5 November 2020

¹⁸ ‘OHCHR | Gender Stereotyping’ (Ohchr.org, 2020)

<<https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>> accessed 5 November 2020

three levels¹⁹ influencing matters such as wage discrepancies, authoritarian figures and familial responsibilities.²⁰

It is an undeniable fact that the situation regarding women's rights has improved significantly over the last few decades, but this doesn't mean gender discrimination has ended. Proof of this rests not only in the lack of equal pay amongst men and women and the disproportionate responsibility that falls onto women regarding familial responsibility but also in the legality of child-brides, 'honour killings' and genital mutilation, in large parts of the world. Indeed, as a result of gender discrimination remaining so prominent in today's society, it is vital that there is legislation in place to protect people who may fall victim to it. We shall be taking a closer look at various legal initiatives, both local and international, which are aiding in the venture to end gender discrimination as well as what we, as a society, can do to stop playing into the various institutionalised cycles that continuously cultivate an environment of discrimination.

In 2019, the Committee of Ministers of the Council of Europe adopted the 'Recommendation CM/Rec (2019)1' on preventing and combating sexism' which falls under Article 15.b of the statute of the Council of Europe. This recommendation comprehensively defines sexism and claims it is "a manifestation of historically unequal power relations between women and men which leads to discrimination and prevents the full advancement of women in society." Moreover, it includes various manners in which one can propagate sexist notions and ideals, progressively recognising sexist online activity as a highly dangerous means of propagation due to the easy accessibility and extensive reach online platforms provide. It also outlines potential purposes behind sexist remarks or actions such as "violating the inherent dignity or rights of a person or a group of people". Additionally, this document recognises that "discrimination on the grounds of gender constitutes a violation of human rights" and maintains that tackling these issues fall under a State's obligation to guarantee and protect human rights. This Recommendation outlines various ways through which countries could combat gender discrimination in major areas such as language and communications, internet and social media including other communication methods, workplace environments, as well as within the justice, education and culture sectors.

¹⁹ Recommendation CM/Rec(2019)1 2019

²⁰ Stanford University, 'How Gender Inequality Persists In The Modern World' (2013)

<<https://scholars.org/contribution/how-gender-inequality-persists-modern-world>> accessed 5 November 2020

This document was tied to the Istanbul Convention, which discusses the grave concern of disproportionate exposure of women and girls to serious forms of violence and the human rights violations associated with these forms of violence. The main aim of this Convention is to create a Europe free from violence against women and domestic violence.²¹ While the Istanbul Convention is in fact a legally binding document which Malta ratified in 2014 making it part of domestic law, the Recommendation CM/Rec (2019)1 does not have the force of the law behind it. While it remains an important piece of consultative literature, it is important that, as urged by the Council, it is supplemented by legislation and policies so that individual States are equipped to prevent and combat gender discrimination, both in public and private spheres.²²

With reference to the European Union (EU) we note how the fight to ensure gender equality and combat discrimination in all forms is at the forefront of its treaties. This is most notable in the 2nd and 3rd articles which call for equality between the sexes and in article 23 of the Charter of Fundamental Rights. This article outlines acceptable practises which guarantee equality between women and men in all areas, including employment, work and pay. For example, ‘Article 141 EC’ states that “Each Member State shall ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work”²³. Moreover, the European Parliament recently approved numerous resolutions aiding in the battle to end gender discrimination. Amongst these are the resolution of the 11th of September 2018 which discussed the “prevention of and fight to counter harassment and sexual aggression in the workplace, in the public domain and in European political life”²⁴ as well as that which was adopted on the 15th of January 2019 regarding “male-female parity which call[ed] for effective measures to be taken to guarantee equality between men and women, to improve the situation in the institutions, both from an administrative and political point of view.”²⁵

²¹ Council of Europe Convention on preventing and combating violence against women and domestic violence 2011

²² Recommendation CM/Rec(2019)1 2019

²³ Article 23 - EU Charter of Fundamental Rights 2009

²⁴ 'Gender Equality In Europe: What Progress In 2019?' (Robert-schuman.eu, 2020) <<https://www.robert-schuman.eu/en/european-issues/0505-gender-equality-in-europe-what-progress-in-2019>> accessed 8 November 2020

²⁵ 'Gender Equality In Europe: What Progress In 2019?' (Robert-schuman.eu, 2020) <<https://www.robert-schuman.eu/en/european-issues/0505-gender-equality-in-europe-what-progress-in-2019>> accessed 8 November 2020

The EU has also released a ‘Gender Equality Strategy’ covering the years 2020-2025 under European Commission President Ursula Von der Leyen who strives to achieve a gender-equal Europe where “gender-based violence, sex discrimination and structural inequality between women and men are a thing of the past” and “where [men and women] can equally participate in and lead our European society.” This plan contains many key pillars which the European Commission plans to focus on and work towards. Firstly, the strategy outlines a plan to rid the EU of gender-based violence as well as a plan to challenge all gender stereotypes which it recognises as a fundamental cause of discrimination within our societies. This report has indicated that 44% of Europeans believe that a woman’s most important function is to take care of her family while 43% believe that the most important role of men is to earn money. Secondly, it includes within it a desire to enable people of all genders to become economically independent and have equal access to finance without being discriminated against based on gender. This provision includes within it plans to close the discriminatory gender gaps in the labour market, as well as plans to achieve equal participation in different sectors of the economy. It is recognised that a contributing factor as to why this is yet to be achieved, is the discriminatory social norms regarding the underestimation, undervaluation and under appreciation of women’s skills. Furthermore, this plan includes, but is not limited to, the funding of actions to end gender discrimination and inequality through civil society organisations and public institutions against discrimination.²⁶

What improvements can be made and what more can be done to limit and ultimately eradicate the effects of gender discrimination? According to the European Institute for Gender Equality, one such improvement can be made through the introduction of a national plan which focuses on ‘Gender Mainstreaming’ and corresponding legislation. Gender Mainstreaming has gained international recognition as a means of moving towards gender equality. It is defined by the Institute as the “integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination.”²⁷ This is accomplished at a supranational level by the European Institutions and on a national level, by the governments of Member States.

²⁶ A Union of Equality: Gender Equality Strategy 2020-2025 2020

²⁷ 'What Is Gender Mainstreaming?' (European Institute for Gender Equality, 2020)

<<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> accessed 5 November 2020

Currently, “Malta ranks 15th in the EU on the Gender Equality Index”²⁸ with the term ‘Gender Mainstreaming’ becoming a part of Maltese political vernacular in 2000. However, since 2012, as society has become more progressive and inclusive, we note a decline in the use of gender mainstreaming tools by the Maltese Institutions.²⁹ Nevertheless, despite being under no legal obligation to do so, in 2019 Malta’s Ministry for European Affairs and Equality set up a Gender Mainstreaming Unit within the Human Rights and Integration Directorate. In fact, after analysis of a public consultation, this unit will be tasked with the implementation of a national gender mainstreaming plan to further promote gender equality throughout the Maltese Islands.³⁰ Although the development of this plan is an important contribution to combatting gender discrimination issues in Malta and despite the fact that principles of gender equality are enshrined within the Maltese Constitution under Article 14 (“The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise”)³¹, there is still more which can be done. Firstly, on an individual level, it is vital that we recognise and understand our own biases, prejudices as well as the aforementioned societally reinforced stereotypes defining the communities surrounding us, and do our utmost to break out of harmful cycles that stand to limit the potential and opportunities of others based on their sex. In order to facilitate this and to strengthen the Maltese position on this issue, safeguarding gender equality through new robust legislation making use of these gender mainstreaming tools to remove gender discrimination is essential.

Racial and National Discrimination

“For it isn't enough to talk about peace. One must believe in it. And it isn't enough to believe in it. One must work at it.” - Eleanor Roosevelt.

²⁸ European Institute for Gender Equality, 'Gender Equality Index 2019: Malta' (2019)

²⁹ 'Malta' (European Institute for Gender Equality, 2020) <<https://eige.europa.eu/gender-mainstreaming/countries/malta>> accessed 5 November 2020

³⁰ 'Malta' (European Institute for Gender Equality, 2020) <<https://eige.europa.eu/gender-mainstreaming/countries/malta>> accessed 8 November 2020

³¹ Constitution of Malta 2020

In the present world, contemporary forms of racial and ethnic discrimination are both disturbing and complex, surfacing on a daily basis and hindering the progress and success of millions of people globally. From denying the very basic principles of human rights and equality to fueling racial hatred which often leads to a great loss of a number of ethnic minorities. A large number of individuals worldwide face racially motivated discrimination, which in turns affects their dignity, their life opportunities, their prosperity, and most often their personal safety.³² These occurrences are nowhere different in Europe, and albeit the notion of discrimination in terms of race and ethnicity is prohibited by the European Union, this is not enough to suffice such issue. Statistical analyses show that well over half of the European population believe that racial discrimination is predominant in their country. Taking into consideration the recent Black Lives Matter Movement, it serves as a stark reminder that the dispute between equality and the reality of internalized indifference towards what is considered “different” is very much existent and definitely not to be ignored.³³

Racial and ethnical discrimination, being such a broad concept, come in different forms; with overt expressions of racism towards an individual appearing as being the most obvious. Most often it is the case that a particular ethnic or racial territory is used as a ground for discrimination. Taking recent occurrences as examples: the ongoing COVID-19 pandemic as well as terrorist attacks, which attract blame and discrimination unjustly targeted at people with a minority background. Discriminatory behaviors tend to be rooted in institutions, whether these being social, political or financial, consequentially having an impact on the reins of power and policymaking. This structural form of racial discrimination creates an unjust barrier hindering certain citizens simply due to their ethnic origin. All different forms of racism, whether it is anti-black racism, antisemitism, anti-Muslim or anti-Asian racism to name a few, share the brutal reality that the value of an individual is belittled and undermined by stereotypes solely based on prejudice and hatred.³⁴

³² (Combating Racial Discrimination) <https://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination_racial.aspx>

³³ Callie Harbin burt, Ronald L. Simons, Frederick X. Gibbons, 'Racial Discrimination, Ethnic-Racial Socialization, and Crime: A Micro-sociological Model of Risk and Resilience' (June 8, 2012) American Sociological Review

³⁴ Berger, Maximus, and Sarnyai, Zoltán. "“More than Skin Deep”: Stress Neurobiology and Mental Health Consequences of Racial Discrimination." *Stress* (Amsterdam, Netherlands)18.1 (2014): 1-10. Web.

In confront to the persistent expressions of such discrimination, these issues now lie at heart of the social, economic and political concerns found in Europe, with the Council of Europe taking sustained action to combat with such trends for numerous years now. Delving into the few broad categories which fall under racial discrimination, occurring on a day-to-day basis, one can notice the numerous major areas in life which are affected, such as; education and employment, violations within minority communities, access to social services and housing, hostile attitudes and stigmatization towards asylum seekers and migrants, and the alarmingly widespread incidents concerning anti-Semitism. Some of these occurrences appear under the radar frequently, with various xenophobic arguments emerging in political discourse as well as a negative climate when it comes to the public opinion, which plays a major role in the emergence of racial intolerance in society. These instances, albeit varying in scale from one country to the other, hold enough significance to be of concern. Hence, to cope with this situation, European countries have drawn up various responses at both a national and a European level. The most notable feature emerging from the Council of Europe, over the past years, stems from the fact that issues regarding the fight against the rise of racism and national discrimination are addressed from a perspective which ultimately protects and promotes human rights. Hence, the most fundamental right for all human beings according to the Council of Europe is for one to be protected against any form of racial discrimination.³⁵

Coming up with practical and feasible solutions which are actually effective to combat racism and national discrimination in the long run, may differ according to the country. Albeit this, all European strategies are molded in a way that they comprise of certain measures in areas concerning legislation and education, awareness-raising, participation and positive action. Whilst legislation on its own does not suffice to combat such issues of racial discrimination, the law is clearly a cornerstone. In fact, in Europe the most successful advances made in recent years have been in the legal sphere. Multiple member states have made it their mission to come up with reforms in order to supplement legislation relating to anti-discrimination, nationally. Such development is very much welcome from the victims' perspective of such discrimination, providing that adequate measures of the legal sphere aimed to combat such inequality are given appropriate importance in order for them to function as dissuasively as possible. However, the enactment of such anti-discrimination legislation does not necessarily guarantee a total

³⁵ "European Commission: State of the Union - A New Action Plan to Turn Tide in Fight Against Racism." Targeted News Service 2020: Targeted News Service, 2020-09-19. Web.

insurance of equality and human rights for all individuals and societies. It is not only necessary that discrimination is outlawed, it also has to be ensured that in order to overcome it, the provisions applied in confront to these hinderances are actually put into practice and exercised. This also heavily applies for criminal law provisions dealing with the prohibitions of racially motivated acts of violence. The Framework Decision on combating racism and xenophobia by means of criminal law, aids in ensuring that serious acts of racism and xenophobia are to be punishable by effective criminal punishment through the EU, in turn ensuring that any hate crimes and/or hate speech receive an effective criminal penalty and the victims recognized, as backed up by the Victims' Rights Directive. In order for such provisions to be deemed effective, it is highly imperative that they are implemented by the authorities in power, including the judiciary and the police force. It is essential that such provisions are not simply existent on paper, but have to comprise of a large-scale awareness campaign, tailored for the public, for those who are likely to fall victims, and adequate training for the officials in charge. An independent national body with a specialized responsibility of combating such discrimination, needs to be established.³⁶

What is being done to tackle racism?

Venturing to a broader European level, member states in order to combat racial and national discrimination, created the European Commission Against Racism and Intolerance or ECRI, back in 1994. This Commission aids in not only respecting human rights, but also protecting each individual within the territory of the Council of Europe and its member states from any form of racially motivated discrimination. This Commission is built on the existence of independent and impartial members who handle statutory exercises including the monitoring of racial incidents and cases of discrimination, coming up with policy recommendations for the sake of betterment, as well as creating awareness and spreading apt information through its connections within civil society. This Commission remains well renowned for providing a societal understanding for the terms “racial discrimination” and “racism”, which are ever changing notions and presently include those acts which target minorities, not necessarily for their ethnic origin or the colour of their skin, but also for their religious beliefs, nationality, and language. Why is this concept of providing a public understanding and awareness so vital one

³⁶ Ibid 4

might ask? By shedding light on such a concept so wide-spread and daily occurring at a European level, the ECRI created a general prerequisite for aptly combating these insurmountable obstacles by primarily recognizing that such problems are very much existent in multiple communities.³⁷

With European governments constantly facing various challenges, from enforcing action against racial discrimination and addressing the prominent issue of integration, which is heavily debated across all Europe, in which particular attention needs to be drawn to the General Policy Recommendation No. 8 and 11 of the ECRI. Recommendation No. 8 tackles the combating of racial discrimination whilst fighting the concept of terrorism whilst No. 11, adopted on the 29th of June 2007, fights against racial discrimination and racism when it comes to policing. The latter entails a legal explanation of what racial profiling is, which essentially is the act of targeting a person simply on the basis of the assumed stereotypes carried by a specific ethnic or racial group, and requests member states to clearly define and legally prohibit such act. The occurrence of racial profiling is nevertheless still existent and continues to assume new dimensions, Recommendation No. 11 is an important instrument in countering this form of discrimination with the aim of reducing its instances. With regards to the concept of achieving integration, the proper exercise of policies on the pursuit of non-discrimination and equality is very much a necessity.³⁸

Efficient law enforcement, policing and the individual respect for fundamental human rights go hand in hand in a complementary manner. The authorities' play a major role in ensuring that the law is obeyed, and security is given as both are essential when fighting racism and ensuring that discriminatory acts such as the underreporting of crimes do not occur. Indeed, EU agencies such as the Agency for Law Enforcement Training as well as the Fundamental Rights Agency (FRA) have given their fair share of contributions. The European Commission supports member states in preventing certain attitudes of discrimination within law enforcement, developing the vital skills for the prosecution against racial and hate crimes, ensuring the protection of victims and providing them with adequate treatment. A recent EU

³⁷ Gachet, I. (2007). COMBATING RACISM AND RACIAL DISCRIMINATION IN EUROPE.UN Chronicle, 44(3), 24-25. Retrieved from <https://search-proquest-com.ejournals.um.edu.mt/docview/218142604?accountid=27934>

³⁸ Ibid 6

strategy in relation to the under-reporting of hate crime is also a primary tool in tackling this serious obstacle in policy making and enforcement of the law. This strategy provides adequate acknowledgment and security to crime victims coming from vulnerable or disadvantaged communities, which feel threatened to report their crime to the authorities. Hence, the strategy offers these victims a safe environment where one can report a crime without fearing for their safety. Staff diversity within the authorities of law enforcement and inclusive policies also aid in enforcing the level of trust in such bodies of power, hence improving the reporting of crimes. The European Commission against Racism and Intolerance (ECRI) continuously encourages member states to develop such strategies and procedures in order to ensure that the governmental composition reflects the diversity among the population, consequentially creating a more inclusive environment.³⁹

Racism strikes at the heart of European Union values, hence, the constant fight against racism and discrimination within this Union is a joint responsibility and requires ongoing and persistent efforts. Upon a thorough analysis, it is clear that governments and the civil society are constantly bettering their strategies to confront the various forms of discrimination faced by individuals and communities. Numerous organizations, institutions and bodies of power show genuine involvement in the fight against racially involved discrimination throughout Europe. Having said this, the fight for racial and national equality is far from reaching its winning point, and new advances and amendments have to be constantly taken into consideration and effectively exercised, keeping in mind the universal maxim: *“All human beings are born free and equal in dignity and rights.”*

Religious Discrimination

The act of religious discrimination stems from the prejudice and mistreatment of an individual or a group based on their religious beliefs. In a number of countries around the world, the term ‘Religion’ does not limit the definition to organised religious institutions such as Christianity, Islam and Judaism. The phrase can be extended towards individuals who *“have sincerely held religious, ethical or moral beliefs.”*⁴⁰ Discrimination of such a manner is not limited to one’s

³⁹ Ibid 4

⁴⁰ 'Religious Discrimination | U.S. Equal Employment Opportunity Commission' (Eeoc.gov, 2020) <<https://www.eeoc.gov/religious-discrimination>> accessed 8 November 2020.

personal affiliation but can also extend to the mistreatment of an individual based on a number of forms that includes association, which is often seen in cases of marriage where an individual has different religious views to that of the partner. Individuals can be religiously discriminated against by the means of their attire which denotes a religious characteristic, for instance a Jewish yarmulke. At other times, the perception of an individual can lead to discrimination due to the manner in which they appear, an instance of this that can be seen with women who wear a head scarf to be affiliated with the Muslim religion.⁴¹

The forms of mistreatment on the basis of religion, can vary from intentional exclusion and avoidance of an individual to outright harassment; and in extreme cases, individuals can even be physically assaulted⁴². The scenarios in which such actions can occur also vary. The European Commission⁴³ outlined religious discrimination that occurs in the workplace, to take place in the form of direct discrimination, indirect discrimination, and harassment. “*Direct discrimination involves less favourable treatment on the grounds of religion or belief.*”⁴⁴ Such unfavourable treatment can be through the means of hiring members of staff that belong to one religion or specifically exclude the hiring of individuals devoted to a particular religion. Members of staff being mistreated as a result of their religious association can also be seen as a direct form of discrimination in the workplace.

Indirect discrimination occurs through the implementation of a neutral or seemingly neutral provision or practice that is carried out in any place of work which places an individual at a disadvantage⁴⁵. A typical example of this can be seen with the introduction of a specific work attire or working hours that would prove too difficult for certain religious members to comply with. Various religions reserve particular days at the end of the week towards reflection and prayers and is a time where one does not work. The lack of accommodation towards said members can be perceived to be an indirect form of discrimination displayed by the employer, as a lack of care towards safeguarding staff members.

⁴¹'Religious Discrimination' (U.S. Department of Commerce, 2020) <<https://www.commerce.gov/cr/reports-and-resources/discrimination-quick-facts/religious-discrimination>> accessed 8 November 2020.

⁴²'Defining “Religion” And Types Of Discrimination' (Jules Halpern Associates LLC, 2012) <<https://www.halpernadv.com/defining-religion-and-types-of-discrimination/>> accessed 9 November 2020.

⁴³ Lucy Vickers, Religion And Belief Discrimination In Employment (Directorate-General for Employment, Social Affairs and Inclusion (European Commission) 2007).

⁴⁴ IBID 12

⁴⁵ IBID 13

As opposed to the aforementioned forms of discrimination, harassment consists of “*unwanted conduct related to religion and belief with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.*”⁴⁶ Oftentimes, less extreme forms of verbal harassment is downplayed to be perceived as merely ‘teasing’ or ‘humoristic’, however, it likely creates an unhealthy and uncomfortable environment for anyone. In most legislative bodies around the world, dark humour is not a crime and laws generally do not prohibit this⁴⁷, that being said, it can create a level of hostility in the work environment that can then be punishable by law if the individual in question begins to feel singled out intentionally.

The violation of religious rights is not a new reality. Religion is arguably one of the greatest taboo subjects in social interaction due to a millennial long injustice which arose in the name of religion. When Kings were the leaders of civilizations and any word of theirs was law, there was no room for any individual freedom, let alone religious. Notable wars included the persecution of Christians during the Holy Roman Empire, the Holy Crusades that sought to prevent the growth of Islam in the middle east, the Catholic inquisition throughout the Middle and the Renaissance⁴⁸, Muslim Jihads as well as many others. In the past hundred years alone, the word has faced a great number of conflicts with religion at its forefront. One of most recognisable religious atrocities in recent history has to be the persecution of the Jewish populace in the Second World War. The murder of millions of innocent citizens was not only based on religion, but also race. That being said, the event which is known as the Holocaust, which saw the creation of numerous concentration camps where innocent individuals, most were used as slaves, lab rats, and ultimately brutally murdered. Some reports show that in one concentration camp alone, Auschwitz, around two million Jews were killed⁴⁹.

In less extreme, however equally noteworthy incidents, the American legal system has a vast number of religious infringement cases. In the case of *Everson v. Board of Education* (1947)⁵⁰, the state of New Jersey allowed for reimbursements to parents who sent their children on

⁴⁶ IBID 15

⁴⁷ IBID [1]

⁴⁸ 'The Galileo Project | Christianity | The Inquisition' (Galileo.rice.edu) <<http://galileo.rice.edu/chr/inquisition.html>> accessed 9 November 2020.

⁴⁹ 'The Holocaust' (HISTORY, 2009) <<https://www.history.com/topics/world-war-ii/the-holocaust>> accessed 10 November 2020.

⁵⁰ Artemus Ward, 'Everson V. Board Of Education' (Mtsu.edu) <<https://www.mtsu.edu/first-amendment/article/435/everson-v-board-of-education>> accessed 10 November 2020.

publicly or privately operated transport, which included parochial Catholic schools. The Supreme Court had examined this arguing its intention to aid a religious institution which would be in violation of the Establishment Clause of the First Amendment. The case was ruled in favour of the law's implementation, stating that the reimbursements were being made to the parents themselves and not to any religious institution. As a result, the case “*applied the Establishment Clause to the actions of state governments*⁵¹.” *McDaniel v. Paty* (1978)⁵², another landmark judgement, saw the Court overseeing a Tennessean law that barred clergy members from taking up roles in the public office. This would be in violation of not only the First Amendment Right which disallows Congress from creating laws respecting an “*establishment of religion or prohibiting free exercise thereof; or abridging the freedom of speech*”⁵³; but also, the Fourteenth Amendment Right⁵⁴, which protects citizens’ rights giving equal protection. The Court unanimously ruled that the statute violates the “*Free Exercise Clause of the First Amendment as applied to the states by the Fourteenth Amendment*”⁵⁵ as the law allows an individual to exercise their civil rights only if they surrender their religious rights.

In recent times, China has been under the international spotlight. Back in 2017⁵⁶, the Chinese government had initiated a detention centre project in the region of Xinjiang. The scope of this detention centre was to serve as ‘vocational training and re-education programmes’⁵⁷ for the Uighurs, Kazakhs and other mostly Muslim minorities. This has effectively created a system of internment camps, with the primary aim of targeting specific ethnicity of religious people. These people have been detained for a number of allegations, mostly trivial. In some reports, people were detained for owning a Quran or refusing to eat certain foods such as pork⁵⁸. The

⁵¹ 'Religious Liberty: Landmark Supreme Court Cases - Bill Of Rights Institute' (Bill of Rights Institute) <<https://billofrightsinstitute.org/cases/>> accessed 10 November 2020.

⁵² John R. Vile, 'McDaniel V. Paty' (Mtsu.edu) <<https://www.mtsu.edu/first-amendment/article/738/mcdaniel-v-paty>> accessed 10 November 2020.

⁵³ 'The 1St Amendment Of The U.S. Constitution' (National Constitution Center – The 1st Amendment of the U.S. Constitution) <<https://constitutioncenter.org/interactive-constitution/amendment/amendment-i>> accessed 10 November 2020.

⁵⁴ 'The 14Th Amendment Of The U.S. Constitution' (National Constitution Center – The 14th Amendment of the U.S. Constitution) <<https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv>> accessed 10 November 2020.

⁵⁵ IBID [13]

⁵⁶ Emma Graham-Harrison, 'China Has Built 380 Internment Camps In Xinjiang, Study Finds' (the Guardian, 2020) <<https://www.theguardian.com/world/2020/sep/24/china-has-built-380-internment-camps-in-xinjiang-study-finds>> accessed 10 November 2020.

⁵⁷ IBID [18]

⁵⁸ IBID [18]

exact number of camps are dispute, but some reports⁵⁹ claim there are close to 500 camps. It is suspected that their use differs from prisons to labour camps and even concentration camps where numerous survivors have⁶⁰ reported that people were being tortured. Although the Chinese government claimed that proceedings to wind-down and slowly return these prisoners to society⁶¹ are being implemented, recent developments have shown that in January of 2020 thirteen five-storey complexes near the historic silk road have been developed⁶².

To date, the protection of religious rights and freedoms has become a crucial element with a number of different efforts to combat religious discrimination's various shapes and forms. Locally, the Maltese Constitution protects the freedom of conscience and worship of individuals through Article 40, which states that:

*“(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.”*⁶³

Therefore, it goes against the supreme Constitution of Malta to perform any act of religious discrimination against another individual. It is punishable for a term from six to eighteen months imprisonment under Article 82A of the Criminal Code⁶⁴ of Malta which prohibits; *“threatening, abusive or insulting words or behaviour...or otherwise conducts himself in such a manner, which intent thereby to stir up violence or racial or religious hatred against another person or group on the ground of...religion or belief.”* Internationally, the protection of such freedoms has long been interrelated with legislation. Most notably, the European Convention on Human Rights which⁶⁵ safeguards the religious rights of all individuals through the means of Article 9, which states; *“Everyone has the right to freedom of thought, conscience and religion”*. Quite similar to Article 12 of the American Convention of Human Rights⁶⁶, which

⁵⁹ Alexandra Ma, 'Maps Show 500 Suspected 'Re-Education' Camps And Prisons Where China Is Locking Up And Torturing Its Muslim Minority' (Business Insider, 2019) <<https://www.businessinsider.com/china-uighur-prison-camp-suspected-locations-maps-2019-11>> accessed 10 November 2020.

⁶⁰ IBID [21]

⁶¹ Michael Martina, 'China Says Most People In Xinjiang Camps Have 'Returned To Society' (Reuters, 2019) <<https://www.reuters.com/article/us-china-xinjiang/china-says-most-people-in-xinjiang-camps-have-returned-to-society-idUSKCN1UP15F>> accessed 10 November 2020.

⁶² IBID [18]

⁶³ Constitution of Malta 1964

⁶⁴ Chapter 9 Criminal Code

⁶⁵ European Convention of Human Right 1953

⁶⁶ American Convention of Human Rights 1969

permits everyone to the right to freedom of conscience and of religion as well as Article 10 of the Charter of Fundamental Human Rights⁶⁷.

Discrimination on the basis of one's Age

What is Age Discrimination?

Age discrimination (or ageism) is when one is treated unjustly due to his/her age. This type of discrimination affects both the old and the young, as it usually comes from a widespread of beliefs and stereotypes. Furthermore, like any other kind of discrimination, age discrimination is an infringement of one's self-respect. Older people are often perceived by society as weaker and less healthy than younger persons, while younger people are often seen as immature, which leads to them repeatedly feeling prevented from fully taking part in the labour pool. However, even though age discrimination is unenviable, there are certain reasons where the distinctions based on age are justifiable as long as these distinctions do not cause harm to one's dignity, are useful in both the social and economic sectors, and are specifically intended to promote or guard those particular age groups.⁶⁸

Ageism can affect individuals in numerous of ways. First of all, it can bring about social marginalisation. Social marginalisation leads to an increase in poverty, especially in the elderly who are more prone to not being considered for certain job positions due to their age. Moreover, by being denied of the right to make use of goods and amenities which, as a result, affects society as a whole as it may levy significant financial and communal well-being expenses. The ability to work is a means of self-expression all while partaking in the community. However, age discrimination leads to individuals feeling discouraged and therefore unable to reach their full potential, by missing out on numerous job opportunities. The right to work is manifested in a number of human rights legislations, including the European Charter of Fundamental Rights and Freedoms, the UN International Plan of Action on Ageing (1982), the UN Principles for Older Persons (1991), and the ILO Discrimination (Employment and Occupation) Convention (ILO 111).⁶⁹

⁶⁷ Charter of the Fundamental Human Rights of the European Union 2000

⁶⁸ Colm O'Conneide, Age discrimination and European Law (European Commission Nov 11, 2005) 5.

⁶⁹ *ibid* 10

Malta's laws go part and parcel with all European Directives and Conventions, such as the Council Directive 2000/78/EC or the Equality Framework Directive. Paragraph 25 explicitly states; *“the prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce”*. Moreover, it maintains that the change in treatment on the basis of age *“may be justified under certain circumstances”*.⁷⁰ The concept of ageism is established in Chapter 452 of the Laws of Malta, the Employment and Industrial Relations Act of 2002. Additionally, these provisos then gave rise to Article 1(3) and (5) of the Equal Treatment in Employment Regulations of 2004 which deal with age discrimination. On top of that, Article 6 of the European Directive, Justification of Differences of Treatment on Grounds of Age, influenced Article 5 of the Equal Treatment Employment Regulation as it is modelled under this particular article.⁷¹

Types of Discrimination

Direct discrimination is when “one person is treated less favourably than another is, has been or would be treated in a comparable situation”⁷². When it comes to age discrimination an unfavourable choice can be made towards an individual due to his/her age or seeming age.⁷³

*A recent case ruled by the Employment Tribunals (ET) reflecting direct age discrimination is **Portelli v London Legal + Imaging Solutions Limited**.⁷⁴ The plaintiff worked with London Legal and Imaging Solutions Ltd as a print room manager for seventeen years while under the supervision of one of the directors of the company. Mr Portelli faced numerous issues with the company since 2017 and even wrote a formal complaint stating that he was facing problems such as a number of ignored emails and his overtime requests were always rejected. The company exclaimed that Mr Portelli was having trouble adjusting to the changes in the company and provided him a training course. However, problems continued arising between Mr Portelli and his director which led to his dismissal on the 4th of May 2018 due to their*

⁷⁰ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/18

⁷¹ Matthew Brincat, ‘Age Discrimination - Some Current Issues’ (Working for an Inclusive Society conference, University of Malta (Msida), Sep 2005) 237-239

⁷² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/18

⁷³ Matthew Brincat, ‘Age Discrimination - Some Current Issues’ (Working for an Inclusive Society conference, University of Malta (Msida), Sep 2005) 238

⁷⁴ Portelli v London Legal + Imaging Solutions Limited [2019] Employment Tribunals 2201871 [2018] & 2205855 [2018]

*broken relationship and apparent lack of trust and confidence in Mr Portelli. However, soon after his dismissal two younger employees were promoted. The ET held that London Legal did not provide enough material documentation in regards to Mr Portelli's dismissal and the promotions given to the two young employees. In addition, the company never divulged any information which the directors had about Mr Portelli's dismissal. For these reasons, the ET concluded that London Legal hid the real explanation as to why Mr Portelli was dismissed, and the plaintiff's claim of direct age discrimination succeeded.*⁷⁵

Indirect discrimination is defined in article 2(2)(b) of the Equality Framework Directive as; “indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons”.⁷⁶

*A Danish case highlighting indirect age discrimination is the Danish case, Dansk Jurist- og Økonomforbund, acting on behalf of Erik Toftgaard v Indenrigs- og Sundhedsministeriet which was ruled by the Second Chamber of the European Court of Justice (ECJ) in 2013.*⁷⁷ *According to Danish law, when a civil servant is dismissed due to redundancy, the individual must be rewarded for three years what is known as the “availability pay”, ensuring that there would be a group of workers available. However, the availability pay is not granted to those who are of pensionable age. Mr Toftgaard, who was a civil servant with the Interior Danish Ministry, was dismissed due to this in 2006 as he was over the age of 65 and therefore not eligible for the wage. The plaintiff filed a claim stating that he was being discriminated both directly and indirectly by the Ministry. Although his claim was dismissed at first, he appealed to the Danish Superior Court and appeared in front of the ECJ. Firstly, the ECJ ruled that the Danish law was an infringement of the Employment Framework Directive. As the court looked into the objectives of this law, it held that the law guarantees the civil servants' disposal whilst restricting this availability to those who need security and who require to remain available. Under Article 6(1) of the Directive 2000/78/EC, it was seen as legitimate. Furthermore, the*

⁷⁵ 'Portelli v London Legal + Imaging Solutions Limited' (2019) <<https://www.agediscrimination.info/case-reports/2019/9/5/portelli-v-london-legal-imaging-solutions-limited>> accessed Nov 9, 2020

⁷⁶ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/18

⁷⁷ Dansk Jurist- og Økonomforbund, acting on behalf of Erik Toftgaard v Indenrigs- og Sundhedsministeriet [2013] Eq LR 1099, [2013] EUECJ C-546/11, [2013] WLR(D) 360, [2014] IRLR 37, [2014] 1 CMLR 41, [2014] ICR 1

*law was deemed appropriate as civil servants had more protection since it provided a secure income. Nonetheless, it was also judged as unnecessary as it could have been attained with fewer restrictions and individuals of a pensionable age could not even choose between the availability pay and the pension. Although the objective behind this law was appropriate, the measures taken were too strict and lead to prejudice towards pensioners.*⁷⁸

Addressing Age Discrimination in the EU

The first step that needs to be taken to tackle discrimination, is in the legislation as it protects each and every individual. The Equality Framework Directive bans age discrimination within all employment and occupation sectors. The European Commission had proposed another directive in July 2008 aimed at employing equal treatment amongst everyone regardless of their age, (including other kinds of discrimination). However, this directive is still in discussion to this day.⁷⁹ EU member states and civil groups tackle discrimination through the Rights, Equality and Citizenship program of 2014-2020 (REC), providing funding to anti-discrimination developments. This financial support helps civil organisations promote fair treatment and tackle age discrimination, like the AGE Platform Europe,⁸⁰ an NGO that protects the rights of persons over the age of 50,⁸¹ and The National Association of Pensioners which is a Maltese NGO that protects the rights of the elderly and forms part of the AGE Platform Europe.⁸²

How the COVID-19 Pandemic Affected Older Persons

The coronavirus pandemic has drastically affected everyone's life. According to statistics from the World Health Organisation (WHO), in Europe alone, over 95% of the deaths caused by this disease were of people over the age of 60. Moreover, half of these deaths were of people who were 80 years or older and resided in care homes for the elderly. From the beginning of this

⁷⁸ 'Dansk Jurist-og Okonomforbund v Indenrigs-og Sundhedsministeriet' (2013) <<https://www.agediscrimination.info/case-reports/2013/9/26/dansk-jurist-og-okonomforbund-v-indenrigs-og-sundhedsministeriet>> accessed Nov 10, 2020

⁷⁹ European Commission. 'Legal protection against age discrimination' (2008) <[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/age-discrimination_en#:~:text=The%20European%20Union%20has%20since.age%20in%20employment%20and%20occupation.&text=This%20means%20that%3A,n\)%20young%2Folder%20person.](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/age-discrimination_en#:~:text=The%20European%20Union%20has%20since.age%20in%20employment%20and%20occupation.&text=This%20means%20that%3A,n)%20young%2Folder%20person.)> accessed Nov 11, 2020

⁸⁰ ibid

⁸¹ AGE Platform Europe. 'About AGE ' (2013) <<https://www.age-platform.eu/about-age>> accessed Nov 11, 2020

⁸² AGE Platform Europe. 'National Association of Pensioners - Malta ' (2017) <<https://www.age-platform.eu/national-association-pensioners-malta>> accessed Nov 11, 2020

pandemic, it was identified that older people are more vulnerable as virus effects mainly them resulting in a number of governments not taking this virus's outspread seriously from the start. However, when it eventually started affecting the nonelderly, elderly nursing homes were not prioritised. The fundamental human rights of the right to life and health of these individuals were abused. This pandemic shone light on age discrimination and in the way, society has responded to this very crisis.⁸³

In the events of an emergency, the ECHR grants certain rights for derogations which must be in the interest of the public wellbeing as long as they are handled according to law by being regulated in time and controlled proportionally and fairly. When supplies started reaching boiling point during the pandemic, the elderly were refused of intensive treatment simply on the basis of their age. Some argue that these older people would not have endured with all the intensive treatment, but it is unfair to deny and not give one the chance of survival. The pandemic has caused older people to be viewed as weak, unneeded and a burden to society. This kind of reasoning could negatively affect elders' mental and physical wellbeing and as a result, infringe their human rights. Numerous of elderly individuals living in residential homes, have reported that they have been denied testing and were left in isolation as they were locked in their rooms due to the virus. Several countries, including Malta, had implemented the 'no visitor policy' where for many weeks and months, these people were not allowed to have any visitors. This kind of treatment is a detriment to older people's emotional welfare.⁸⁴

On the 1st October 2020, the International Day of Older People (IDOP) celebrated its 30th anniversary, where several NGOs throughout Europe came forward claiming that any kind of discrimination towards the elderly must be abolished. Amongst these organisations was the HelpAge International that tirelessly works to draw attention to the stereotypical beliefs that society has created by promoting different reasoning. ZDUS, a Slovenian organisation, stated by taking action against this kind of discrimination and not be a bystander. The German NGO BAGSO, addressed politicians and the media to make a difference by depicting the elderly differently to increase diversity and bring about a more encouraging impact on elders' self-perception and sustain coexistence of different age groups. In a published statement, the Global

⁸³ Nena Georgantzi. 'HOW COVID-19 IS COMPOUNDING INEQUALITIES AGAINST OLDER PERSONS' (2020) <<https://equineteurope.org/2020/covid-compounding-inequalities-against-older-persons/>> accessed Nov 12, 2020

⁸⁴ *ibid*

Alliance for the Rights of Older People has expressed that the maltreatment that elderly people have suffered during this pandemic cannot repeat itself and they believe that now more than ever the time to fix the legislation, by introducing a UN Charter protecting the rights of elderly persons.⁸⁵

Age discrimination is probably one of the most common kinds of discrimination and yet, the least addressed. Age discrimination can happen anywhere, at any time and awareness needs to be made. No country in the world is even close to solving the problem of age discrimination leading to stereotypes and labels on the basis of one's age. A lot of awareness has been raised on racial and gender discrimination, the same should apply for age discrimination; as it must be known and addressed in order for it to be tackled. Educating society is the first of many steps which need to be done, ageism ends now and today!

Discrimination on the basis of one's Sexual Orientation

"Laws criminalizing homosexuality pose a serious threat to the fundamental rights of lesbian, gay, bisexual and transgender individuals...criminalization perpetuates stigma and contributes to a climate of homophobia, intolerance and violence."⁸⁶

- UN High Commissioner for Human Rights, Navi Pillay, 1 February 2011

Discrimination on the basis of sexual orientation is regulated by Article 14 of the Convention which prohibits discrimination holistically. Although this article does not strictly mention discrimination on the basis of sexual orientation, case law has repeatedly included such discrimination to be among the 'other grounds' safeguarded by article 14⁸⁷.

⁸⁵ Estelle Huchet. 'COVID-19: Did it change the way we address age and ageing?' (2020) <<https://www.age-platform.eu/special-briefing/covid-19-did-it-change-way-we-address-age-and-ageing>> accessed Nov 12, 2020

⁸⁶ Tackling Discrimination On Grounds Of Sexual Orientation And Gender Identity<https://www.ohchr.org/Documents/Issues/Discrimination/LGBT_discrimination.pdf> accessed 9 November 2020.

⁸⁷ Guide On Article 14 Of The European Convention On Human Rights And On Article 1 Of Protocol No. 12 To The Convention<https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf> accessed 10 November 2020.

However, what is meant by sexual orientation and who can be subjected to such classification? The words sexual orientation alludes to a person's attraction towards another which might be of a physical, emotional and/or romantic nature⁸⁸. Sexuality is a whole spectrum, where everyone's sexual orientation is intrinsic to one's identity. There are homosexuals (also referred to as gay men and lesbian women) who are attracted to individuals of the same sex, heterosexuals (also referred to as 'straight') who are attracted to individuals of the opposite sex, and there are bisexuals who are attracted to both sexes. Apart from these sexualities, there are asexual people who are not attracted to any gender, pansexual people who are attracted to individuals irrespective of their gender, and polysexual people who are attracted to multiple individuals but not all genders. Individuals who do not identify perfectly with homosexuals or bisexuals often consider themselves as queer. Many fail to make a distinction between sexual orientation and gender identity as said above, sexuality is a whole spectrum. Gender identity is how individuals feel about themselves. Indeed, transgender people have a different gender identity than the sex assigned at birth.⁸⁹

The European Court of Human Rights (ECHR) has a substantial number of case-law regarding discrimination on one's sexual orientation. Indeed, the first violation of article 14 on the basis of sexual orientation was the case of *Salgueiro da Silva Mouta v. Portugal* in 1999. The courts held; "that the Court of Appeal made a distinction based on considerations regarding the applicant's sexual orientation, a distinction which is not acceptable under the Convention"⁹⁰. The Courts of Appeal exclaimed that the "custody of the child should be awarded to the mother". The courts took into account the applicant's homosexuality and how he was currently living with another man and while shamefully remarking that the child should be raised in a "traditional Portuguese family". In addition, the courts added, that whether homosexuality is an illness or not or whether it is one's sexual orientation, both cases were abnormalities and "children should not grow up in the shadow of abnormal situations"⁹¹. Such statements exhibit the disgraceful discrimination experienced by the applicant and thus, the ECHR found that indeed there was a violation of article 8 in conjunction with article 14. This judgement set a precedent in regard to the heinous discrimination on the grounds of one's sexual orientation.

⁸⁸ LGBTI EQUALITY: FREQUENTLY ASKED QUESTIONS <<https://www.unfe.org/wp-content/uploads/2018/10/FAQs-English.pdf>> accessed 10 November 2020.

⁸⁹ Ibid.

⁹⁰ *Salgueiro da Silva Mouta v Portugal* ECHR (ECHR).

⁹¹ *Salgueiro da Silva Mouta v Portugal* ECHR (ECHR).

The Courts have repeatedly emphasized that discrimination on the grounds of sexual orientation is a severe form of discrimination like any other. Indeed, in the case of *Vejdeland and Others v. Sweden*, 2012, the courts held that such discrimination was as grave and serious as any discrimination based on “race, origin or colour”. Such statement further encapsulates and reinforces that such rights and freedoms should be enjoyed freely and by everyone. The State’s narrow margin of appreciation is addressed in *Kozak v. Poland*, 2010 and *Karner v. Austria*, 2003, where the disparity in treatment is on ground of sexual orientation. Furthermore, the ECHR in *E.B. v. France*, 2008 amongst several other rulings, found that differential treatment based merely on considerations of sexual orientation was not permissible under the Convention.

Many injustices on grounds of sexual orientation relate to the right to respect for private and family life. Most cases which are scrutinized by the ECHR on the basis of such discrimination, are indeed cases which relate to Article 8 of the Convention. Additionally, the court has interpreted the article whilst taking into account today’s realities and conditions. Consequently, the court recognized that relationships of cohabiting different sex couples as well as same sex couples, living in a committed and stable relationship, conform to the notion of “family life”. This was clearly established in the case of *Schalk and Kopf v. Austria*, 2010 in which the court reiterated that same sex couples; “are in a relevantly similar situation to a different-sex couple as regards their need for legal recognition and protection of their relationship.”⁹² The ECHR also holds that if two women, in a civil partnership, are living together and raising a child conceived by one of them, also falls into the notion of “family life” as established in Article 8 of the Convention.⁹³

Same sex marriage has been endorsed through a number of religious believes, legislation and customs in the majority of the world’s countries. Indeed, the social and legal reactions to such union have ranged from honoring and celebrating, to on the other hand criminalizing. Currently, there are only 29 countries around the world which recognize same sex marriage with the Netherlands being the first ever country to set this precedent in practice, with a marriage equality bill back in 2001.⁹⁴ The United States of America legalized same sex

⁹² *Schalk and Kopf v Austria* ECHR (ECHR).

⁹³ *Gas and Dubois v France* ECHR (ECHR).

⁹⁴ 'The 29 Countries Around The World Where Same-Sex Marriage Is Legal' (Business Insider) <<https://www.businessinsider.com/where-is-same-sex-marriage-legal-world-2017-11#22-the-united-states-supreme-court-made-marriage-equality-federal-law-in-2015-22>> accessed 13 November 2020.

marriage in 2015 by the landmark judgment of *Obergefell v. Hodges* and 3 other cases consolidated by the Supreme Court (*Tanco v. Haslam*, *DeBoer v. Snyder*, and *Bourke v. Beshear*). The Supreme Court of the United States held, that all states must permit same sex couples to marry, recognizing such unions was in accordance with the Fourteenth Amendment. The court further emphasised that banning homosexual couples from marrying, burdened their freedom and failed to safeguard their equality as set in the Fourteenth Amendment. Moreover, the Court refused that legalizing same sex marriages should be left to state voters as; “fundamental rights may not be submitted to a vote”.⁹⁵ Two years later, the Maltese parliament passed the marriage quality bill by a landslide, with a staggering 66 votes in favour and only 1 against to become the 25th country in the world to legalize same sex marriages.⁹⁶ In contrary to the US situation, the ECHR in *Schalk and Kopf v. Austria*, 2010 and *Chapin and Charpentier v. France*, 2016 held that the impossibility of same sex marriages was not in breach of Article 14, in conjunction with either Article 8 or 12. However, in the ruling of *Vallianatos and Others v. Greece*, 2013, the Court found a violation of Article 14 in conjunction with Article 8 as homosexual couples were excluded from civil unions.

Many religions preach the idea to strictly forbid any form of homosexuality. Indeed, amongst many religious denominations, the level of rejection homosexuals face ranges from discouraging any homosexual attitude, to publicly condoning and prohibiting such behaviour, by actively supporting criminal sanctions and in some cases the death penalty. However, hope was initiated when last October, during a documentary, Pope Francis declared his believe that homosexual couples have the right for “civil unions”, by adding that “they are children of God and have a right to a family” and “nobody should be thrown out or made miserable over it.”⁹⁷ He continued by stating that homosexuals should be legally covered by the creation of a civil unions law. However, the Pope’s beliefs were not welcomed and accepted by all as many oppose the idea of the Catholic Church ever accepting same sex unions. The Pope’s inconsistency on this topic have created some confusion as to what the Catholic Church actually tolerates. Although endorsing same sex civil unions opposes and stating that nobody should be made “miserable” due to their sexual orientation, still opposes men who identify as gay from joining the clergy. People all around the globe are learning to accept homosexuals

⁹⁵ *Obergefell v Hodges* [2015] The Supreme Court of the United States of America (The Supreme Court of the United States of America).

⁹⁶ ACT No. XXIII of 2017 2017.

⁹⁷ 'Pope Francis Indicates Support For Same-Sex Civil Unions' (BBC News, 2020)
<<https://www.bbc.com/news/world-europe-54627625>> accessed 14 November 2020.

and respect their rights, meanwhile there are still groups of people who may find it challenging to accept homosexuality and unfortunately resort to abuse and discriminatory behaviour.

The topic of adoption is a very sensitive topic to some which raises many mixed perspectives. Indeed, people whom protest against gay parenting, argue that it goes against their fundamental religious values and if legalized it would undermine the moral foundations of society established by religion. Homosexual individuals continue to counter moral prejudice about whether they are indeed appropriate parents. To the contrary, people pro-gay adoption state that individuals in the adoption cycle want to be adopted, loved and cared for irrespective of whatever couple adopts them. Moreover, gay couples, just like straight parents, can be as capable of parenting with some arguing that homosexual couples tend to be more committed and motivated than heterosexual couples, given that they chose to have a family rather than immediately becoming a parent. In the judgement of *E.B. v. France*, 2008, the ECHR found a violation of Article 14 on the ground of sexual orientation, as the competent authorities declined to grant permission for adoption due to the applicant's 'lifestyle' as a lesbian, similarly to ⁹⁸ *X and Others v. Austria*, 2013 whereby the courts, found it discriminatory for adoption to be unavailable for homosexual couples when it was easily accessible for heterosexual couples in identical conditions. Very recently, the government of Hungary proposed to amend Hungary's Constitution, resulting in the banning of adoption by homosexual couples. Same sex marriage is still illegal in Hungary however, adoption was possible if one partner applies on their own. Indeed, the proposed amendment holds that; "the mother is a woman, the father is a man", and only married couples are allowed to adopt children. In addition, children would need to be raised to conform with "Christian" perceptions of gender roles as the bill; "ensures education in accordance with the values based on Hungary's constitutional identity and Christian culture". The same amendment would only allow single people to adopt, after authorization from the minister responsible for family affairs. Such radical proposal left a massive outcry from a number of human rights groups and activists which have publicly condemned the draft legislation. Critics have also viewed this as an attack on single-parent families.

Some people argue that exposing homosexuality to young, developing minors could influence their sexual orientation. On the contrary, others dispute this line of thought and emphasize that

⁹⁸ *EB v France* ECHR (ECHR).

learning and spending time with people who identify as being LGBTQI does not in any way influence the sexual orientation or gender identity. The same advocates for homosexuality exposure argue, that having age-appropriate sex education is essential to safeguard healthy and deferential relationships. Moreover, denial or lack of such information further contributes to stigmas and consequently, young LGBTQI people may have to endure a sense of isolation, depression, rejection, and drop out from formative education with many sadly resulting to suicide attempts. In *Bayev and Others v. Russia*, 2017, the ECHR held that there was a violation of Article 14 in conjunction with Article 10, as it related to a statutory prohibition on the promotion of homosexuality among minors which constituted to inclined prejudice from the heterosexual majority to the homosexual minority.

The workplace is perhaps one of the places most prone to discrimination on the grounds of sexual orientation. According to an online survey carried out by the European Union Agency for Fundamental Rights, 20% of the 139,799 people who identify themselves with LGBTQI and partook in this survey, have experienced discrimination in the past 12 months at the workplace.⁹⁹ People from all EU member states, together with the candidate countries of North Macedonia and Serbia, felt discriminated for conforming and identifying themselves as being LGBTQI. In the United States, a recent U.S. Supreme Court judgment, issued on June 15, 2020, held that; “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”¹⁰⁰ Although Title VII of the Civil Rights Act of 1964 is not so explicit, but rather only mentions an “individual’s race, colour, religion, sex, or national origin”, the U.S. Supreme Court ruled that banning an employee who identifies as gay or transgender, is an illicit act of discrimination.

Throughout the years, people conforming with the LGBTQI groups have been subjected to hate speech, offensive comments and even death threats. Due to the rapid evolvement of social media and its influence, hate speech on social media platforms became a constant battle. The judgement of *Beizaras and Levickas v. Lithuania*, 2020, consisted of a homosexual couple who faced numerous offensive comments and grave threats after posting a Facebook picture of

⁹⁹ 'A Long Way To Go For LGBTI Equality' (Fra.europa.eu, 2020)
<https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf> accessed 12 November 2020.

¹⁰⁰ *BOSTOCK v CLAYTON COUNTY, GEORGIA SUPREME COURT OF THE UNITED STATES* (SUPREME COURT OF THE UNITED STATES).

themselves. However, the authorities refused to prosecute as they deemed the couple's behaviour to be "eccentric" and inconsistent with "traditional family values" in Lithuania. The ECHR held that the applicants had undergone discrimination on the basis of sexual orientation, and such offensive and hateful statements made by private individuals, were instigated by a bigoted attitude towards the LGBTQI community. The same intolerant and discriminatory attitude are clearly exhibited by the authorities' who fail to fulfil their duties and obligations to investigate in an effective and competent manner. Recently, Norway have banned hate speech on all grounds, against bisexual, pansexual and all others with queer identities in a landmark amendment of its penal code. The 1981 law only safeguarded gays and lesbians from hate speech with the possibility of prison time. However, the new amendments passed by the Norwegian parliament on the 10th of November 2020, prohibit hate speech based on "gender, gender identity or expression" which also incorporates and protects trans people.¹⁰¹

Ban Ki-moon, the eighth Secretary-General of the United Nations, described violence and discrimination on the basis of one's sexual orientation and gender identity as a "monumental tragedy for those affected and a stain on the collective conscience."¹⁰² It is saddening to witness injustices against homosexual's in today's modern world. Recently, in Jakarta Indonesia, the police raided and arrested nine men for organizing what the police described as a private "gay party". Usman Hamid, an Amnesty International Indonesian Executive Director stated that "there is no legal justification for criminalizing the behaviour these men are accused of" and that "the authorities are being discriminatory and violating the human rights to privacy and family life, freedom of expression, and the freedom of assembly and association."¹⁰³ This is unfortunately still the reality in a number of countries around the world. A state's law enforcement's duty should be to maintain a safe environment for its citizens and not stoke anymore discrimination and injustice. Attacks of this nature further highlight the real threat people identifying with LGBTQI groups face in countries all over the globe.

¹⁰¹ 'Norway Bans Hate Speech Against Bisexual And Transgender People' (PinkNews, 2020) <<https://www.pinknews.co.uk/2020/11/12/norway-transgender-bisexual-lgbt-hate-speech-parliament-penal-code/>> accessed 11 November 2020.

¹⁰² Human Rights Council Panel On Ending Violence And Discrimination Against Individuals Based On Their Sexual Orientation And Gender Identity <<https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/SummaryHRC19Panel.pdf>> accessed 14 November 2020.

¹⁰³ 'Indonesia: Men Accused Of Holding 'Gay Party' Face 15 Years In Jail - Amnesty International Australia' (Amnesty International Australia, 2020) <<https://www.amnesty.org.au/indonesia-men-accused-of-holding-gay-party-face-15-years-in-jail/>> accessed 14 November 2020.

Very recently, the European commissioner for equality, Helena Dalli stated, that any EU member states which do not respect the rights of the LGBTQI community should be penalized financially. Indeed, she believes that this is a solution on how to “bring a member state in line”, by encouraging member states to adhere to the rule of law which form part of a series of negotiations over the European Union’s long-term budget. Dalli further explained that such mechanism is designed to endorse and uphold EU values on the matter as she claimed that “We have entered a new era in the fight for equality” in which “this strategy is part of this new era.” This strategy ought to set the ball rolling for the implementation of essential provisions such as a call for an extended ‘EU Crimes’ list to include hate speech and hate crime, recognition of LGBTQI parenting, and same sex partnerships across the EU amongst other ambitious provisions. Nonetheless, this proposal was met with fierce opposing arguments from the Polish minister for Justice, who described Dalli’s action plan as “groundless and illegal” by threatening an EU court battle against the Commission on the said matter.

Discrimination on the Basis of One’s Health and Disability

Introduction

Disability affects millions of lives across the globe. According to a study held by the World Health Organisation in 2011, over one billion of the population world-wide (approximately 15% of the population) suffer from some type of disability.¹⁰⁴ This figure is constantly on the rise due to the ageing population and the poor health conditions found in many developing areas.¹⁰⁵ People suffering from a disability are often faced with some form of discrimination and/or unequal treatment. Even by being categorized into groups such as “disabled” triggers such discriminatory treatment as they are put under this broad title which has a negative connotation. Disability in itself, is hard to define due to the complexity of the term. Often, disability is mainly used when referring to people with a lack of ability or certain characteristic.¹⁰⁶ The term disability however is only a social construct defining a health condition into a social pathology that may effectively restrict these people from habituating

¹⁰⁴Mattila, M., & Papageorgiou, A. (2017). Disability, perceived discrimination and political participation. *International Political Science Review*, 38(5), 505–519. <<https://doi.org/>> accessed 10th November 2020

¹⁰⁵ Ibid

¹⁰⁶ Ibid

normally in their society.¹⁰⁷ In other words, discrimination often negatively impacts the people who fall under the category of “disabled” since it could trigger discriminatory behaviour by people who do not fall under this category. Discrimination on the basis of one’s health and disability often stigmatize people who are referred to as “disabled” in a number of ways and in a multitude of areas of the social sphere.¹⁰⁸

Conventions Which Seek to Eliminate This Form of Discrimination

Disabled people are often looked down upon or discriminated because of a disability they cannot control; this is a reality that many states seek to eliminate through different legislative materials. One of the major conventions that strive to protect anyone under this heading is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).¹⁰⁹ It is an international Human Rights Treaty which was adopted by the United Nations on the 13th of December 2006. From February 2011, this convention was ratified by a total of 147 signatures as well as 98 State parties, making it the first Human Rights Treaty endorsed by the European Union.¹¹⁰ This convention calls upon states to regulate their legislation, in order to be in line with this act. It covers an array of fundamental topics which disabled people have a right to, such as, equal recognition before the law, living independently, and being included in the community.¹¹¹ One of the most important Articles in the UNCRPD is Article 5 which states that; “*States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.*”¹¹²

Article 5 ensures the equality and non-discrimination of people with disabilities in all matters of life, therefore be treated equally according to law. This specific Article also ensures that states safeguard this principle and in turn safeguard the lives of disabled people.¹¹³ Thanks to this Treaty, the Council of Europe member states are duty bound to follow such regulations and examine if any law reform is needed or not to protect the rights of the disabled persons. The European Union has a history for supporting as well as protecting fundamental rights for

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹The Convention on the Rights of Persons with Disabilities (GA resolution A/RES/61/106)

¹¹⁰ Committee on the Rights of Persons with Disabilities

<<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/QuestionsAnswers.aspx>> accessed 12/11/2020

¹¹¹ Ibid

¹¹²The Convention on the Rights of Persons with Disabilities (GA resolution A/RES/61/106)

¹¹³Council of Europe, Promoting Equality and Non-Discrimination for Persons with Disabilities

<<https://rm.coe.int/168070d7f6>> accessed 13/11/2020

different minority groups.¹¹⁴ Article 13 of the Treaty of the European Communities protects discrimination across all of Europe based on sex, origin, disability and all other factors that are prone to discrimination. In order to furtherly protect the lives of people living with disability, The European Union established a community action program based on assisting disabled people.¹¹⁵

With regards to Maltese legislation, an act with the intention to provide protection to disabled people specifically, was borne in the year 2000.¹¹⁶ This legislation formally known as, The Equal Opportunities (Persons with Disability) Act, was Malta's way to implement the UN Treaty as well as seek to protect persons with any kind of disability.¹¹⁷ This act is compliant with the Directive 2000/78/EC which protects all kinds of discrimination against minority groups.¹¹⁸ Malta not only abides by the regulations but has gone beyond and provided a system for employment and further services to ease the life of any person with a disability.¹¹⁹

Workplace Discrimination Against People with Disabilities

The Maltese legal framework around this topic was borne in 1969.¹²⁰ This legislation formally known as, The Persons with Disability (Employment) Act, was Malta's first attempt to equalise work opportunities for persons with any kind of disability.¹²¹ This act was a step in the right direction, although it is often not enforced or difficult to enforce within the employment sector. Nevertheless, Malta abides with the EU directives namely the EEFD. What is interesting to note however, is the lack of local case law regarding the equality of persons with disabilities at the place of work.¹²² This is probably because of the extensive legal process that might discourage people with disabilities as well as the fear of being victimised by their employers.¹²³

¹¹⁴ Bonello, Marc Andrea "The Human Right of Persons with Disabilities to Non-Discrimination in the Maltese Employment Sector: A Legal Perspective"

<<https://www.um.edu.mt/library/oar/bitstream/123456789/17497/1/15MAHRD003.pdf>> accessed 12/11/2020

¹¹⁵ Council Decision 93/136/EEC of 25 February 1993

¹¹⁶ Chapter 413 - Equal Opportunity (Persons with Disability) Act

¹¹⁷ Ibid

¹¹⁸ Audrey Gatt, Protection of Disabled People Under Maltese and European Law

<<http://aei.pitt.edu/6028/1/20.pdf>> accessed 12/11/2020

¹¹⁹ Audrey Gatt, Protection of Disabled People Under Maltese and European Law

<<http://aei.pitt.edu/6028/1/20.pdf>> accessed 12/11/2020

¹²⁰ Bonello, Marc Andrea "The Human Right of Persons with Disabilities to Non-Discrimination in the Maltese Employment Sector: A Legal Perspective"

<<https://www.um.edu.mt/library/oar/bitstream/123456789/17497/1/15MAHRD003.pdf>> accessed 12/11/2020

¹²¹ Ibid

¹²² Ibid

¹²³ Ibid

Mental Health Discrimination and COVID-19's Impact on a Person's Mental Health

There is an ongoing stigma surrounding mental health as it is often not discussed or seen as important as a physical disability. Discrimination against people with mental health issues is often linked with pre-judgement and negative stereotypes.¹²⁴ People with mental health problems are often regarded as strange or seen as behaving in a bizarre manner, as well as incompetent, and dependent on others.¹²⁵ The most common misperception by the public is that people who suffer from mental health issues are psychotic, violent, and a danger to society.¹²⁶ A contributor to these misunderstandings is the media, which emphasise rare tragic events involving people with mental illnesses, which influence the public's perception.¹²⁷ People suffering from mental illnesses need to be protected by law.¹²⁸ With reference to Maltese Legislation, Malta developed the Mental Health Act in 2012 which mental health was previously regulated by outdated legislation that was enacted in 1976.¹²⁹ This Act was a massive improvement to the previous provisions, as it aims to regulate and uphold the rights of mental health patients.¹³⁰ Malta has definitely made an effort in improving the mental health situation by encouraging the normalisation of mental health, although much more needs to be done.

Mental health has been of broad and current interest during the past months due to the COVID-19 pandemic and led to everyone having to stay inside for a long period of time, with people struggling from mental health issues struggling even greater. The mental health impact of the pandemic will last relatively much longer than the physical health impact.¹³¹ The Richmond Foundation, together with Esprimi, published a survey by gathering information on the general ideas of COVID-19 and its impact on mental health in Malta. The survey showed that around

¹²⁴Ontario Human Rights Commission, Forms of Discrimination based on mental health or addiction disabilities <<http://www.ohrc.on.ca/en/forms-discrimination-based-mental-health-or-addiction-disabilities-fact-sheet>> accessed 13/10/2020

¹²⁵ The London School of Economics and Political Science, Research Note <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.626.7584&rep=rep1&type=pdf>> accessed 13/11/2020

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸George Szmukler, Rowena Daw, Felicity Callard, Mental health law and the UN Convention on the rights of persons with disabilities, International Journal of Law and Psychiatry, Volume 37, Issue 3, 2014, Pages 245-252, ISSN 0160-2527, <<https://doi.org/10.1016/j.ijlp.2013.11.024>>

¹²⁹Zahra, Anthony & Camilleri, Miriam & Cachia, John. (2014). A new Mental Health Act for Malta. International Psychiatry. 11. 67-69. 10.1192/S1749367600004537.

¹³⁰ Ibid

¹³¹ Richmond Foundation, Research on COVID-19 - How it is affecting our Mental Health <https://www.richmond.org.mt/research_covid19/> accessed 13/11/2020

26% of people felt socially isolated and 37% felt unusually tired or experiencing low moods.¹³² It is interesting to note that most people were more worried about their relatives and friends' mental health, rather than their own.¹³³ According to a population-based study all across Europe, around 120,000 people in Malta suffer from a mental disorder,¹³⁴ which is a very high number considering Malta's population. Due to this, Malta has effectively given mental health a priority throughout the years by improving the health care system, creating more awareness through campaigning, mental health first aid courses, and many other factors.

How COVID-19 highlighted Discrimination Against One's Disability

It is quite known that persons with any disability are at a particularly high-risk to COVID-19. Despite this, they have faced discrimination when accessing healthcare services due to the current pandemic, mainly because of lack of information and safe environments, as well as strict healthcare guidelines which make it almost impossible for disabled people to gain access to healthcare services.¹³⁵ These guidelines and protocols further enhance the medical bias that persons have against people with disability. One example is the allocation of limited resources which have a certain criterion to be applied due to the pandemic.¹³⁶ In order to abolish this discrimination during these tough times, countries ought to prohibit the denial of treatment on the basis of discrimination, ensure priority testing for those suffering with a disability, promote more research on COVID-19 and the effects on disabled people, as well as effectively removing barriers to treatments which could be life saving for some patients.¹³⁷

COVID-19 impacted all countries worldwide and all economies. People with disability are often forgotten during these times and are negatively impacted due to this change. Disabled people, due to COVID-19, might not be able to work from home as easily as someone not suffering from a disability due to lack of equipment and support and could easily lose their job.¹³⁸ In addition, COVID-19 could indirectly impact disabled people since it could prohibit

¹³² Ibid

¹³³ Ibid

¹³⁴ World Mental Health Day 2020: Malta launches Campaign - "Move for Mental Health: let's invest!" <<https://www.euro.who.int/en/health-topics/noncommunicable-diseases/mental-health/news/news/2020/10/world-mental-health-day-2020-malta-launches-campaign-move-for-mental-health-lets-invest!>> accessed 13/10/2020

¹³⁵ COVID-19 and the Rights of Persons with Disabilities: Guidance <https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf> accessed 12/11/2020

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Ibid

family members from going to work as they are considered as high risk,¹³⁹ leading to a lack of income affecting the whole household. This money would be typically used for extra costs relating to their health such as equipment, devices, goods, and services.¹⁴⁰ Malta has been one of the few countries who has increased funding for social protection systems to enhance social support services in order to aid people during these times and this includes people with disabilities.¹⁴¹

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ Ibid

What is in The Proposed Equality Bill?

As part of the Government's efforts to ensure and maintain a Maltese Society which embraces all minorities and groups, The Equality Bill was drafted with the aim of prohibiting "*discrimination in various spheres of life, to promote equality and prevent discrimination*"¹⁴². This ethos being pushed forward through the bill gives effects to the provisions of multiple directives put forward by the European Council including Council Directives 2000/43/EC, 2000/78/EC, 2002/73EC, 2004/113/EC, 2006/54/EC, and 2004/113/EC. These multiple directives all sought the same purpose of ensuring equality and non-discriminatory practices from different angles namely those pertaining to employment, vocational training and access to goods and services.¹⁴³

Summary of the Bill & Potential Shortcomings

In short, the Bill is proposing to replace the National Commission for the Promotion of Equality with a Human Rights and Equality Commission which will have significantly stronger and more influential powers than the current NCPE. Adding onto the responsibilities, the new Commission will be hearing complaints pertaining to discrimination from the public and must decide whether they should forward the complaint to the newly formed Equality Board whose members will be chosen by the Prime Minister and chaired by either a retired judge/magistrate or an experienced lawyer whilst also including 3 lawyers and a non-legal professional with experience (of at least 5 years) in Human Rights¹⁴⁴.

The core point of contention lies among health care professionals and Church Schools due to a supremacy clause in Article 3 of the Bill which provides that any laws which are contrary to the principle of equal treatment shall be deemed null and void. The only exception to Article 3 is the Constitution of Malta, the European Convention Act and any future Acts of Parliament which would amend the law. The main criticisms stem from Doctors and Pharmacists who fear that they would lose their right for contentious objection as its exercise will be considered to

¹⁴² Equality Bill (Bill No.96) 2020.

¹⁴³ *ibid*

¹⁴⁴ Tim Diacono, 'EXPLAINED: Malta's New Equality Law And How It Could Change Everyday Life' (Lovin Malta, 2020) <<https://lovinmalta.com/longread/explained-maltas-new-equality-law-and-how-it-could-change-everyday-life/>> accessed 13 November 2020.

be discriminatory. This led to a number of Health Care professionals proposing clauses which would serve as a legal safeguard which would permit them to exercise the right of conscientious objection if they feel that the requested service would go against their conscience.

The issue with adding such clauses is that it may lead to a slippery slope, in the sense that it would allow health care professionals to discriminate against certain groups of people requesting treatment, on the basis of their apparent conscience. Also, given that the Equality Law, as per Article 3 is **supreme**, this contentious objection clause would render the supremacy of the entire Bill irrelevant. Another 'sector' concerned on the effects of the Bill is The Church. The Bill itself refers to religious services and distinguishes from other social practices which in a Position Paper, the Church disagreed with¹⁴⁵. Church Schools are claiming that the Bill will prevent employing Catholics due to a challenge that the law may create a scenario where a candidate with less meritorious qualifications is chosen over a more qualified candidate on the basis of their religious belief.

The Equality Bill & Related Issues with regards to the matter of conscientious objection & the Church

The First and Second Articles go on to define the Bill and any terminology within the Bill itself. The Third Article is of particular interest as it establishes supremacy over any other law that is considered to be 'anti-equality with the exception of the Constitution of Malta and The European Convention Act.¹⁴⁶ This would create a scenario where the aforementioned clauses proposed by health care professionals with regards to exercising their right of conscientious objection. Including such a clause would render Article 3 void as a decision which practices principles contrary to equal treatment may be allowed by waving the flag of a supposed conscientious objection. In reality, this scenario would apply for any legal 'safeguard' against the Bill would completely defy the entire purpose and scope.

¹⁴⁵ 'THE EQUALITY BILL AND RELIGIOUS FREEDOM A POSITION PAPER' (Knisja.mt, 2020) <https://knisja.mt/files/article/101_POSITION_PAPER_ON_THE_EQUALITY_BILL_AND_RELIGIOUS_FREEDOM.147853006975.PDF> accessed 13 November 2020.

¹⁴⁶ Equality Bill (Bill No.96) 2020.

Article 4¹⁴⁷ states the protected characteristics under the Bill against discriminatory practices as:

- Age
- Belief
- Creed or religion
- Colour or Ethnic or National Origin or Race
- Disability
- Family responsibilities or pregnancy
- Family or Civil Status
- Gender expression or gender identity
- Genetic Features
- Health status
- Language
- Nationality
- Political Opinion
- Property
- Sex or sex characteristics
- Sexual Orientation
- Social origin

The article seems to provide an **exhaustive list** given the inclusion of the phrase, “*are the protected characteristics*”¹⁴⁸. The list is extensive and attempts to cover as many potentially marginalised groups as possible.

Article 5 lists the instances and bases for discrimination in relation to any of the protected characteristics noted in Article 4. This Article adds on and improves the previous Article 5 under the Equality Act of 2015¹⁴⁹.

- Subarticle (2) discusses the unlawfulness of discrimination both on the basis of a **single ground, i.e. on the basis of one protected characteristic** or on multiple grounds, i.e. on the basis of a combination of two or more of the protected characteristics.
- Subarticle (3) adds onto the preceding article by distinguishing the different **forms** of discrimination, be it direct, indirect, harrassment (including sexual harrassment). This is based

¹⁴⁷ Ibid1

¹⁴⁸ Ibid1

¹⁴⁹ Ibid1

on the proviso that the respective conduct may also constitute as a criminal offence, and thus in that case, be punishable according to the Criminal Code. The subarticle goes onto include more forms of discrimination, including victimisation, failure to provide reasonable accomodation as per this act or any *threatening, abusive or insulting words or behaviour*. Once again, should any of this conduct constitute a criminal offence, this would be punishable in accordance with the Criminal Code.

- Subarticles 4 and 5 continue to add onto occurrences of discrimination through association or based on assumptions and also includes the aiding, abetting and instigation of discrimination as forms of discrimination.

Article 5 of the Bill seems to take a clearer and broader clarification on what constitutes as discrimination, an aspect which was seemingly absent from the Equality Act of 2015. This creates a clearer picture with regards to what and how conduct may be considered to be discriminatory. This Article sets the tone for the succeeding provisions and offers a taste as to how wide the scope of the legislation ought to be.

Article 6 is undoubtedly the most comprehensive provision of the Bill which deals with **exceptions**. Given how wide and broad Article 5 is in determining what may be considered discriminatory, an Article of this nature through Article 6 is essential in determining key occurrences as an exception to the rule. The exceptions are as follows:¹⁵⁰

1. Special protection/benefits/schemes granted to a specific person with regards to one or more of the protected characteristics when such is *reasonable, proportionate and legitimate*¹⁵¹. This idea would also apply to *less favourable treatment*¹⁵² with the exception that this less favourable treatment is not on the basis of colour, ethnic origin or race.
2. Measures of *positive action or reasonable accomodation*¹⁵³ whose purpose is to achieve substantive equality through specific measures which aim to prevent or compensate for disadvantages pertaining to any protected characteristic noted in this Act. This denotes a sense of positive discrimination.
3. Less favourable treatment on the basis of any combination of the protected characteristics which in a specific context this characteristic may *constitute a genuine and determine*

¹⁵⁰ Ibid1

¹⁵¹ Ibid1

¹⁵² Ibid1

¹⁵³ Ibid1

*requirement for the purpose of a legitimate aim*¹⁵⁴ and the application of that requirement must be proportionate to achieving said aim.

4. With regards to entering the Armed Forces of Malta, less favourable treatment is accepted on the grounds of age or disability if such treatment's purpose is of a legitimate aim.
5. Any measures taken either on the workplace, or in any educational environment in relation to persons with disabilities or mental disorders whose scope is to ensure their safety and integration in said environment.
6. In situations where financial risk is identified and considered in relation to banks, financial institutions or insurance, nothing in subarticle 1 of this same article shall be deemed discriminatory. The Bill also considers a similar scenario in insurance services.
7. Less favourable treatment on the basis of belief, creed or religion with regards to accessing the internal workings on a specific entity whose ethos is based on said belief, creed or religion **and** of any religious service which is provided by this entity where such treatment would constitute as a genuine requirement to serve the purpose's legitimate aim.
8. The enforcement of policies provided to teachers within educational establishments the ethos of which is based on a belief/creed/religion and the requirement for the teachers to act *in bona fide* subject to this not interfering with the private life of the teachers and that these policies will constitute as a genuine and determining requirement in which the application of such requirement is proportionate in achieving its aim.
9. Less favourable treatment on the grounds of belief, creed or religion in accessing the teaching of religion in schools, the ethos of which is based on a belief, creed or religion only when the less favourable treatment has a *genuine, legitimate and justified requirement*¹⁵⁵. This however, is provided that the main function of that teacher is the teaching of religion.
10. The display of religious symbols in public places when such symbols are considered to be of a cultural value. This also extends to any religious content to disseminate such belief, creed or religion.
11. The display of political content with the aim of a political campaign or message.
12. Less favourable treatment on the basis of nationality with regards to specific laws and conditions in place which relate to the entry of non-residents who are not Maltese nationals into Malta and any treatment which arises from the legal status of the individual.

One may argue that the issue of conscientious objection may be including in Article 6 taking a similar stance as 6(a) where such an objection must be *reasonable, proportionate and*

¹⁵⁴ Ibid1

¹⁵⁵ Ibid1

*legitimate*¹⁵⁶ and by including a proviso which ensures that the decision, apart from being considered through the health care professional's conscience, is also in the best interest of the patient and the patient's health which is analysed and decided on a case-by-case basis to ensure that the patient's health is taken into full consideration and not subject to a general criteria. This ethos and rationale behind such a recommendation is ensuring that the priority of any medical professional and subsequent decision, **is the interest of the patient's health**. The Chamber of Pharmacist is also calling for conscientious objection to be included in this article.¹⁵⁷

A further proviso may be added to include **mandatory referral** which grants the right for the patient to be referred to another medical professional in the case where the current medical professional dealing with their care decides to exercise this right. This ensures that both the doctor and patient are able to exercise their rights accordingly.

Article 7 deals with the application of the Bill by providing that no person, establishment or entity, both private or public shall make use of discriminatory conduct in relation to:¹⁵⁸

- The Access to Goods & Services
- Advertising
- Banking Services, Insurance Services or other Financial Services
- Educational and Vocational Guidance
- Access to employees' and employers' associations
- Employment
- Employment agency services
- Self-employment and occupation

Once again, this article offers a wide and broad list of applicable scenarios, conduct and entities where discrimination is completely barred and prohibited. The list mirrors that in the previous Equality Act of 2015.

¹⁵⁶ Ibid1

¹⁵⁷ 'Conscientious Objection Must Be Included In Equality Bill, Pharmacists Say - The Malta Independent' (Independent.com.mt, 2020) <<https://www.independent.com.mt/articles/2020-10-08/local-news/Conscientious-objection-must-be-included-in-equality-bill-pharmacists-say-6736227627>> accessed 13 November 2020.

¹⁵⁸ Ibid1

Article 8 deals with the **Access to Goods and Services** and how discrimination in such providers shall include less favourable treatment in:¹⁵⁹

- The supply of goods and services
- The provision of health and medical care and other medical services
- Social services and security
- Police services
- Transport
- Housing
- Sports
- The participation of public events or activities
- Entertainment or recreational activities.

The most contentious issue within this Article is certainly the subarticle pertaining to health and medical care and services. According to the Malta Medical Association¹⁶⁰, they claim that the bill is going beyond its objective and is putting practitioners in difficult situations due to pre-established principles of medical ethics doctors must already follow, which might be interpreted as being in conflict with The Equality Bill. Naturally, these principles mainly pertain to the issue of conscientious objection which MAM feel must be included within the Bill. The reason behind such amendments would be protecting practitioners against potentially having to take decisions on issues like abortion and euthanasia. The Bill as it stands would not allow them to use their conscientious objection.

The Chamber of Pharmacists also expressed their concern at the proposed Bill claiming that it discriminates against the wide community of all health care professionals. Their concern stems from the Supremacy of the Act which would render any laws permitting conscientious objection null and void. The Chamber feel that the Bill *undermines and renders the Oath*¹⁶¹ pharmacists take to base their practice on science and their conscience, which are both reflected in their Code of Ethics, which includes a conscientious objection clause. Articles 7 and 8, according to the Chamber will undermine the autonomy of pharmacists.

¹⁵⁹ Ibid1

¹⁶⁰ 'Equality Bill Causes Problems To Medical Practice, Should Be Amended - MAM - The Malta Independent' (Independent.com.mt, 2020) <<https://www.independent.com.mt/articles/2020-09-10/local-news/Equality-bill-causes-problems-to-medical-practice-should-be-amended-MAM-6736226799>> accessed 13 November 2020.

¹⁶¹ 'Conscientious Objection Must Be Included In Equality Bill, Pharmacists Say - The Malta Independent' (Independent.com.mt, 2020) <<https://www.independent.com.mt/articles/2020-10-08/local-news/Conscientious-objection-must-be-included-in-equality-bill-pharmacists-say-6736227627>> accessed 13 November 2020.

However, Article 8(1)¹⁶² is only applicable to the supply of goods and services which are available to the **general public**. Anything within the private and family sphere is **not** covered through Article 8 of the Equality Bill. The intention for this seems to be unclear. If the aim of the Equality Bill is to foster a culture of inclusion and integration, barring what goes on within the private and family sphere from such a Bill creates a laissez-faire culture within private settings. One might argue that this may give rise to family members justifying discriminatory conduct in the provision of goods and services, on the basis that this is not prohibited by the Equality Act.

Article 9¹⁶³ deals specifically with advertising, prohibiting persons from any form of advertising which promotes discrimination or which may be considered discriminatory, and even reasonably perceived as having the intent to discriminate. The Church, in their position paper, pointed out how what is understood as promotion, is unclear. They argue that the Bill would create a scenario where a form of advertising promoting *traditional marriage* may be disallowed on the basis that it may be perceived as discriminatory against LGBTQI+ Groups and that this will overload adjudicators in determining the intent to discriminate.¹⁶⁴

However, on the other hand one may argue that these provisions must also be interpreted in the spirit of the law and that the intent is to **not** prohibit materials and advertisement of what is considered to be a 'traditional marriage', but these advertisement laws 'purpose is to protect against blatantly discriminatory advertisements which discriminate and disrespect members of the LBGTQI+ Community, by for example, having service providers advertise a product and within that advertisement state that they won't serve or provide the service to LGBTQI+ groups.

To strengthen this argument, one may refer to the list of exceptions in Article 6, namely Article 6(m) which states that *the display of content relating to belief, creed or religion for the purpose of the dissemination of such belief, creed or religion*¹⁶⁵ is an exception to the rule. Thus, it seems to be clear through this sub-article, that should the Church wish to promote 'traditional

¹⁶² Ibid1

¹⁶³ Ibid1

¹⁶⁴ 'THE EQUALITY BILL AND RELIGIOUS FREEDOM A POSITION PAPER' (Knisja.mt, 2020) <https://knisja.mt/files/article/101_POSITION_PAPER_ON_THE_EQUALITY_BILL_AND_RELIGIOUS_FR EEDOM.147853006975.PDF> accessed 13 November 2020.

¹⁶⁵ Ibid1

marriages 'in any form of advertising, this is protected by Article 6(m) as the scope of such display relates to the religion with the intention and purpose to disseminate such a belief.

The Proviso in Article 9 seems to reiterate the rationale in Article 6 by clarifying that any difference in treatment with regards to any advertising related to requirement is allowed, on the condition that such a specific requirement is proportionate to the means of achieving a legitimate aim.¹⁶⁶

Articles 10 and 11 deal with Banks and Financial Services Providers and Insurances, respectively. Both articles completely prohibit the discrimination of any person in the access or provision of any related service. With regards to insurers, should the insurer use a protected characteristic as a determining factor for which a service is offered or withheld, they must present an annual notification to the Commission including a number of details pertaining to the insurer and its service and the rationale of such a decision.¹⁶⁷

Article 12 is also linked to the provision of insurance providers, with a focus on when the use of sex is a factor in calculating the premiums and benefits owed to the individual. This provision states that the use of sex in such a calculation shall not result in any discrepancies of premiums and benefits relating to a person with respect to insurance contracts concluded after the 21st December 2007. This provision, however shall not apply to contracts concluded before the 21st December 2012. Article 13 continues to deal with insurance practices which permits insurers to make use of sex as a risk-rating factor in certain calculations, provided that it doesn't result in discrepancies at an individual level. The Subarticle lists reasons and purposes why sex-related information may be collected.¹⁶⁸

Article 14 deals with Educational and Vocational Guidance and in which instances certain conduct may be deemed discriminatory. This is mostly dealt with in Subarticle (1) through the access to education or any sort of vocational course or guidance and work experience, awards to both students or trainees, the selection and implementation of curricula and the assessment of the skills or knowledge of both students and trainees. It is the duty of the educational establishments to ensure that the curricula and materials used to not propagate discrimination.

¹⁶⁶ Ibid1

¹⁶⁷ Ibid1

¹⁶⁸ Ibid1

They must also ensure that diversity, respect and mutual understanding is embraced and promoted by taking into consideration diversity and the multiple combinations of protected characteristics in the environment. ¹⁶⁹

This is potentially one of the most contentious Articles which has led to the most discourse and disagreement. The Church, in their policy paper expressed concern over this provision, and recommended that the provision is amended to ensure that parents have the right to ensure *such education and teaching in conformity with their own religious and philosophical conviction*¹⁷⁰ on the basis of Article 2 Protocol 1 of the European Convention of Human Rights. The Church argue that Catholic Schools are bound to promote and celebrate the spirit of Christianity in the students' education by *maintaining a Christian ethos*¹⁷¹ within the learning environment. They also argue that the proposed law imposes a responsibility on schools without setting clear and definite boundaries of what is prohibited and permitted. They feel that the law should grant the right to Church Schools to freely teach Catholic ethos within their curricula.

The Church feels that the freedom allowed by the European Union as per the Equality Directives and the proposed Equality Treatment Directive, will be used as an attempt to silence and restrain the freedom of religious organisations who administer such educational institutions. On the basis of Article 40 enshrined in the Constitution and Article 9 of the First Schedule to the European Convention Act, any organisation and workings within the scope of religious freedom encompasses the right to self-determination, to organise their activities, the choice of their employees and providing the religious principles which serves as the core of these institutions **should not be covered by this Bill.** ¹⁷²

Taking a couple of steps back, the Church also propose adding a subarticle in Article 6 for less favourable treatment on the grounds of belief, creed or religion with regards to the content of teaching of any subject, activities, curricula and the admission of students to be covered as an exception on the basis of a *genuine, legitimate and justified requirement*¹⁷³. They also wish to

¹⁶⁹ Ibid1

¹⁷⁰ 'THE EQUALITY BILL AND RELIGIOUS FREEDOM A POSITION PAPER' (Knisja.mt, 2020) <https://knisja.mt/files/article/101_POSITION_PAPER_ON_THE_EQUALITY_BILL_AND_RELIGIOUS_FREEDOM.147853006975.PDF> accessed 13 November 2020.

¹⁷¹ Ibid29

¹⁷² Ibid29

¹⁷³ Ibid29

include the right of conscientious obligation with regards to the choice based on ethical imperatives. However, one must also consider that the aim of such an amendment is to ensure that the Bill does not serve as a justification for the silencing of the Catholic Church and their teachings. However, one may argue that the aim and purpose of the Bill is to embrace inclusion and integration by celebrating equality and anti-discriminatory conduct, as opposed to silencing the teachings of the Catholic Church.

By interpreting the law through its main purpose, one may notice how the Bill aims to achieve a level playing field for all marginalised groups within Maltese society and not to silence institutions with an influence like the Church. It may be precautionary to include clauses to clarify this and to grant educational institutions the freedom to promote their ethos whilst ensuring that the main aims and purposes of the Bill are respected.

Moving onto Article 15, this mainly deals with discrimination against persons in Employment Associations in terms of allowing/disallowing them access and ancillary issues. Article 16, however, deals directly with employment. Article 16 deals with Employment, which more often than not, is a breeding ground for discriminatory practices. The issues start from as early as recruitment where candidates are often discriminated against either on the basis of a corporate policy or ethos, or for financial reasons.¹⁷⁴ For example, it is a common recruitment practice where male candidates are often selected over a female candidate on the basis of avoiding having to cover too many maternity leaves.

Thus, Article 16¹⁷⁵ is clear in its approach to avoid instances like this from taking place by listing instances which would constitute as discrimination namely in the assessment of applications and the conduction of interviews. Subarticle (c) is of immense significance as it addresses the issue of female candidates often being asked on plans pertaining to their private and family life in order to filter out as many paid leaves as possible. In general, the article strives to ensure that all stages of employment, from recruitment to dismissal to pay and working conditions, among others are not subject to discriminatory conduct. Sub-Article (2) continues to strengthen the protection of discrimination at the work place by making applicable

¹⁷⁴ Ibid1

¹⁷⁵ Ibid1

the aforementioned scenarios to **all** levels of the professional hierarchy, including all prospective applicants and trainees, temporary workers and interns and self-employed workers.

Article 17 ensures complete transparency in the meritocratic recruitment practices by giving the right to **applicants prior** to the interview to receive information on the selection criteria. Rejected applicants also have a right to request, from the employer, the criteria upon which the applicant was rejected. A similar right is offered to employees denied access to promotion or training opportunities.¹⁷⁶

The argument of Equal Pay for Equal Work is a contentious issue that has long needed legal clarification. In an attempt to address wage gaps, especially on the basis of gender, Article 18 aims to ensure that all employees who occupy the same level of employment are entitled *the same rate of pay for work of equal value*¹⁷⁷. This is subject to the proviso that any employer, union or worker may agree on different salary scales or annual increments through a collective agreement that differ for workers employed at different times when such a salary has a maximum bracket achieved within specified time frame. Sub-article (b) continues to reiterate the importance of completely prohibiting any form of distinction between different employment classes based on discriminatory treatment which are not in accordance with this Act.

Article 19 and 20 echo the rationale of Article 17, deeming it unlawful to subject a person to discriminatory treatment by refusing to provide services, even within its terms and conditions. Similarly, the rejected applicant has the right to receive the criteria upon which they were not selected. Article 21 deals with Self-Employment and Occupation which aims Article 13 aims at prohibiting discrimination against self-employed workers *in relation to the establishment, equipment or extension of a business or the launching or extension*. Sub-Article (2) extends the protection against discrimination to the Spouses, Civil Union Partners and Cohabitees of these workers who participate in the activities of the self employed worker without being an employee or partner, to receive fair compensation for their contribution

¹⁷⁶ Ibid1

¹⁷⁷ Ibid1

Article 13 aims at prohibiting discrimination against self-employed workers *in relation to the establishment, equipment or extension of a business or the launching or extension*. Article 14 adds onto Article 13 by extending the protection against discrimination to the Spouses of these workers who participate in the activities of the self employed worker without being an employee or partner, to receive fair compensation for their contribution. However, this provision does not apply when a community of acquests or community of the residue under separate administration (CORSA) subsists between the spouses. Thus, this article seems to only apply when the matrimonial regime governing the marriage is that of Separation of Estates.

Article 22 imposes a duty to *whosoever falls within the scope of application of this Act*¹⁷⁸ to take necessary measures to ensure that equal treatment is respected and that measures, policies and provisions consistently adhere to the concept of equality. Article 23 adds onto the previous Article by emphasising this duty in relation to persons responsible for any workplace, educational establishment or vocational training. This Article addresses the social reality that educational and work environment tends to be the breeding grounds of discriminatory conduct and it is integral that extra emphasis is made on persons responsible of such environments. Article 24 continues to echo this sentiment, applying it to employers and service and good providers, to prevent discriminatory conduct through effective measures

Article 25 imposes a duty to embrace the notion of equality within the Public Administration with Article 26 ensuring that anti-discriminatory conduct is being practiced with regards to the Appointment of Public Bodies. Article 27 imposes a duty on The Minister to compile an annual report on the work done by the Public Administration at the end of the calendar year to be tabled and discussed within Parliament and within the Commission of Human Rights and Equality.¹⁷⁹

Article 28 grants the right of action before the Civil Court, First Hall to any person who alleges that another person, association, organisation or legal entity who has committed in that person's regard any act deemed to be unlawful under this Act **or** to order the payment of damages suffered as a direct result. Article 29 grants the right to a person who alleges that another has committed an act of infringement to equal treatment and non-discrimination, may file a

¹⁷⁸ Ibid1

¹⁷⁹ Ibid1

complaint to the Human Rights and Equality Commission to investigate and decide on the case.¹⁸⁰

Any action instituted through Article 28 and 29, is time barred within two years when the act occurred or became known to the victim **or** when the act was continuous and stopped. The Burden of Proof is on the defendant to prove that there was no breach of the principle of equal treatment. The Minister may issue regulations to clarify on any provisions or regulate equality in conformity with the Act. The final articles mainly focus on amending certain laws within The Criminal Codes and other primary legislation.¹⁸¹

¹⁸⁰ Ibid1

¹⁸¹ Ibid1

Discrimination in Everyday Life

Discrimination and Education

*“Of all forms of discrimination, those that occur in education are the most pernicious – because they affect the very essence of the individual and society, namely the forming of the mind – and the most abhorrent – because the victims are first and foremost children”.*¹⁸²

The Universal Declaration of Human Rights holds that every person has the right to education. Article 26(2) of the said Declaration proclaims that education *“shall promote understanding, tolerance and friendship among all nations, racial or religious groups.”*¹⁸³ Such understanding, tolerance and friendship amongst one another implies that there should be no discrimination on the basis of nationality, ethnicity, age, gender, race, economic condition, religion or disability. In fact, discrimination in education is a violation of basic human rights enunciated in the Declaration.

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) is primarily concerned and has constitutionalised its mission in the very first article to *“advance the ideal of equality of educational opportunity without regard to race, sex, or any distinctions, economic or social.”* This mission was manifested on the 14th of December 1960 during the eleventh session of the General Conference when UNESCO adopted the **Convention Against Discrimination in Education**. The Preamble in the Convention refers to article 2 and article 26 of the Declaration of Human Rights and therefore the Declaration served as one of its primary sources.¹⁸⁴ This Convention entered into force on 22nd May 1962 and has since then been ratified by 104 states as the first notable international instrument with a binding force in international law.¹⁸⁵ Malta as member state, ratified this Convention on the 5th of January 1966.

¹⁸² Yves Daudet and Pierre Michael Eisemann, 'Right To Education: Commentary On The Convention Against Discrimination In Education, Adopted On 14 December 1960 By The General Conference Of UNESCO' (United Nations Educational, Scientific and Cultural Organization 2005) <<https://unesdoc.unesco.org/ark:/48223/pf0000141286>> accessed 13 November 2020.

¹⁸³ Universal Declaration of Human Rights 1948.

¹⁸⁴ Ibid 1.

¹⁸⁵ Ibid 1.

UNESCO is currently undergoing a *#righttoeducation* campaign to ensure that the remaining states who have not yet ratified the said Convention, do so with immediate effect. This is being done for two main reasons. Firstly, the Convention is a stand-alone international treaty exclusively dedicated to the right to education and secondly it is the bedrock of the Education 2030 Agenda.¹⁸⁶ The new vision for 2030 is captured by the proposed SDG 4:

“Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.”

Education 2030 Agenda is the outcome of an unfinished agenda established in 2000 when the 6 Education for All goals and the Millennium Development Goals were founded. The Incheon Declaration, which was endorsed in 2015 in Incheon Korea, encapsulates the responsibilities of the educators to the SDG4-Education 2030. The latter is an initiative on a larger scale which will hopefully come into fruition by the stipulated date if states, governments, educators, and all interested parties make a joint effort so that this time around the targets are realised.¹⁸⁷

This more holistic approach to education, ensures that education is inclusive and therefore it is a commitment to eradicate all forms of social exclusion, marginalisation, inequalities, inferior standard of education, and many more. This will be achieved by modifying the present education policies and by giving extra attention to those learners who need it the most so that no one is left behind. The Agenda also emphasises the importance of adopting gender sensitive policies and annihilating any form of gender-based discrimination in schools¹⁸⁸, while pushing for quality life-long learning opportunities for all, irrespective of the setting and level of education. This will entail an enhanced effort to promote access to *“quality technical and vocational education and training and higher education and research.”*¹⁸⁹

Some notable targets for 2030 include that all children irrespective of their gender will have access to free primary and secondary education and all children will be provided with good quality learning at an early stage which is detrimental to their development and to better prepare

¹⁸⁶ 'What You Need To Know About The Convention Against Discrimination In Education' (UNESCO, 2020) <<https://en.unesco.org/news/what-you-need-know-about-convention-against-discrimination-education>> accessed 19 April 2019.

¹⁸⁷ 'Education 2030: Incheon Declaration And Framework For Action For The Implementation Of Sustainable Development Goal 4: Ensure Inclusive And Equitable Quality Education And Promote Lifelong Learning...!' (2016) <<https://unesdoc.unesco.org/ark:/48223/pf0000245656>> accessed 13 November 2020.

¹⁸⁸ Ibid 6.

¹⁸⁹ Ibid 6.

them for primary education. The agenda aims to also eradicate gender disparities and certify equal access to all levels of education and vocational training for all the vulnerable learners including and with special reference to persons with special needs, indigenous peoples and children in vulnerable situations. Another target worth mentioning is the upgrading of educational establishments to foster a safe learning environment that is; “*child, disability and gender sensitive.*”¹⁹⁰

Inclusive Education and Desegregation

Perhaps one of the worst forms of discrimination in education, which unfortunately is still rampant, is school segregation. Segregation is the widespread practice where children end up in separate schooling from their peers due to their race, socio-economic differences, disabilities and/or a diverse ethnic background.

An issue which has resurfaced in recent years, is the influx of children of migrant background in European countries. Instead of being spread out in mainstream schools, they end up receiving their education with other migrant children. By doing this, the education system is doing exactly opposite of what it is supposed to do to counter discrimination, namely inclusivity and integration to mainstream education.¹⁹¹ Furthermore, it is absolutely unacceptable that a child with disabilities is denied access to education in mainstream schools or although receiving their education in the same school, cannot partake in the same activities as his/her peers.

In fact, desegregation of public schools was at the top of the agenda of the Civil Rights Movement across the United States. High profile cases such as **Brown v. Board of Education**¹⁹² decided in November 1951 and the more recent case **Sonnie Wellington Hereford vs Huntsville Board of Education**¹⁹³ are both attestations of the joint effort of

¹⁹⁰ Ibid 6.

¹⁹¹ Commissioner for Human Rights, 'Fighting School Segregation In Europe Through Inclusive Education: A Position Paper' (Council of Europe 2017) <<https://rm.coe.int/fighting-school-segregation-in-europe-through-inclusive-education-a-position-paper/168073fb65>> accessed 13 November 2020. page 9

¹⁹² 'School Segregation And Integration Articles And Essays | Civil Rights History Project | Digital Collections | Library Of Congress' (The Library of Congress) <<https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/school-segregation-and-integration/>> accessed 13 November 2020.

¹⁹³ IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA NORTHEASTERN DIVISION (2015) <<https://www.justice.gov/sites/default/files/crt/legacy/2015/07/13/huntsvilleconsentorder.pdf>> accessed 13 November 2020.

school educators and stakeholders to address the issue of racial discrimination in education by promoting diversity in schools and providing a positive inclusive climate in educational institutions for both students and educators.

Meanwhile in Europe, school segregation also bereaves many children from sound and acceptable standard of education specially Roma children, migrant children, children with disabilities, and other children of a sensitive social and cultural background.

Efforts have been made at both national and European level to try and combat segregation by imposing anti-discriminatory legislation and policies. However, despite the adoption of crucial measures that can act as a turning point for all those children being discriminated against, this has not always proven to be successful when it came to the actual enforcement of these same measures. The reason of such deviation from national and local authorities from their effective enforcement, can derive from various stakeholders namely the people working in the educational establishments as well as various households who are against desegregation.

The Council of Europe's Commissioner for Human Rights puts forward a list of recommendations to combat discrimination in education and provide equal treatment to all students. One such recommendation is the need for countries across Europe to amend existing laws that still provide for loopholes in the law, that allow inequalities to persist and segregation to continue to prevail. Therefore, international conventions and European anti-discriminatory laws and regulations are not sufficient enough. The right to inclusive education needs to be expressed in national laws, while important concepts and principles should be spelled out so that appropriate sanctioning can be imposed in any instances of school segregation.¹⁹⁴

COVID-19 and Discrimination in Education in both Local and International Context

In this day and age, one cannot rule out the unprecedented human crisis brought about by the spread of COVID-19 which has added challenges to pre-existing ones. While COVID-19 has been referred to as an equaliser and a great social leveller¹⁹⁵, some are more equal than others.

¹⁹⁴ Ibid 11.

¹⁹⁵ Kathleen Heycock and Amy Wren, 'Coronavirus: "Some Are More Equal Than Others" – The Diversity Implications Of Coronavirus On Employment Practices' (Farrer.co.uk, 2020) <<https://www.farrer.co.uk/news-and-insights/blogs/coronavirus-some-are-more-equal-than-others--the-diversity-implications-of-coronavirus-on-employment-practices/>> accessed 13 November 2020.

This latter statement applies also in the field of education as some learners have been more heavily impacted than others. This led to the UNESDOC to convene a virtual Extraordinary Session of the Global Education Meeting (2020GEM) on the 22nd of October 2020 in an attempt to contain the negative impacts caused by COVID-19 in the education sector with a special attention to all the vulnerable groups.

Whereas before, families had their minds at rest knowing their children were receiving proper education at school, the situation completely changed when students switched to remote learning. Families who were not able to oversee their children's education due to work commitments or else there was not enough physical space for both children and parents to learn and work remotely, suffered the most.¹⁹⁶

As in the case of states across the globe, Malta is also having its fair share of added pressure to ensure that education during these precarious times does not take a step backwards. The risk of increased inequalities between schools and students during the pandemic calls for extra caution and empathy from all stakeholders involved when it comes to the students. This is of primary importance so that no one is left behind and to avoid the risk of a 'lost generation' of students.¹⁹⁷ Whilst social-distancing measures are important, the underlying issue of inequalities and increased susceptibility to discrimination of disadvantaged students has reached new levels.

Whilst one must applaud all the educators who have been tapping into innovative ways to provide students with educational material such as pre-recorded lectures in order to supplement their education, this was not ideal for those households who are computer illiterate or do not afford computer hardware technology. Some parents have taken the initiative to send their children to private lessons to recover lost ground of the past few months to supplement their studies. However, not all families can afford this 'educational venture' which therefore establishes a divide between low-income earners and medium to high-income earners. This situation creates a socio-economic gap between students as children coming from more financially stable households will have a higher standard of education and therefore return back

¹⁹⁶ 'How Covid-19 Exacerbates Inequality' [2020] The Economist <<https://www.economist.com/britain/2020/03/26/how-covid-19-exacerbates-inequality>> accessed 13 November 2020.

¹⁹⁷ The Sunday Times of Malta, 'Risk Of 'Lost Generation' Of Students, NGO Warns' (2020). > accessed 13 November 2020

to school a few steps ahead of their peers. As already mentioned, COVID-19 has created a divide between students and even between schools (state, church and private schools). Therefore, government officials must step in to close these inequality gaps that have been created due to remote education by financing disadvantaged students with the equipment necessary to keep up with the rest of the students.¹⁹⁸

Furthermore, since schools have re-opened it is understandable that some parents might refrain from sending their children to school because they do not feel well. However, the children's absence must always be reasonably justified so that they receive the same education as their peers and most importantly by maintaining strong communication between the educators and parents at all times. All schools and the administration of such schools have to get used to this new normality and even start considering blended learning post-COVID by evolving the education programme to consist of a mix between online learning and physical intervention.

Workplace Discrimination

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment... Everyone, without any discrimination, has the right to equal pay for equal work...” -Universal Declaration of Human Rights

European Union Law on Tackling Discrimination

It is interesting to point out that the first EU legislation on discrimination was in relation to employment. *“Equal work for equal pay”* which is today enshrined in the Universal Declaration of Human Rights, as was also found in the EEC Treaty. The first Equality Directives, namely the **Equal Pay Directive of 1975** and the **Equal Treatment Directive of 1976**, prohibiting discrimination on the basis of gender in access to employment, conditions at work and vocational training and promotion, came into practice due to the competence afforded to the EU throughout the EEC Treaty.

¹⁹⁸ Ibid 16.

Worth noting is **Foster v British Gas PLC** where a group of women working at British Gas argued that they were being discriminated against on grounds of sex and therefore in breach of the Equal Treatment Directive of 1976. The reason being, that they were forced to retire at the age of 60 whilst their male colleagues continued to work until they reached the age of 65. Since directives have vertical effect, it was up to the plaintiff to prove that British Gas PLC was an organ of the state.¹⁹⁹

Expansion of discriminatory grounds namely on grounds of sex, racial or ethnic origin, religion, disability, age or sexual orientation were introduced after the Treaty of Amsterdam of 1997 (article 13). Recently, when Lisbon Treaty came into force, further progress has been made as the **Charter of Fundamental Rights of the European Union** became legally binding.²⁰⁰ In relation to workplace discrimination, the European Union set up two important directives in 2000; **Directive 2000/78/EC** or the **Employment Equality Directive** (sexual orientation, religious belief, age and disability) and **Directive 2000/43/EC** or **Racial Equality Directive** (on the basis of race or ethnicity in the context of employment).²⁰¹

Gender Discrimination at the Place of Work

Article 14 of the **Maltese Constitution**, safeguards the equal rights of men and women and “*in particular aims at ensuring that women workers enjoy equal rights and the same wages for the same work as men.*”²⁰² Moreover, **The Equality for Men and Women Act**²⁰³, defines discrimination as “*based on sex or because of family responsibilities, sexual orientation...and includes the treatment of a person in a less favourable manner than another person is...*”

Harassment at the Workplace

All workplaces should offer a safe and comfortable working environment for their employees whereby they can carry on with their responsibilities free from interruptions and unwelcome

¹⁹⁹ 'Case C-188/89 Foster V British Gas [1990] – Webstroke Law' (Webstroke.co.uk, 2020) <<https://webstroke.co.uk/law/case-c-18889-foster-v-british-gas-1990>> accessed 13 November 2020.

²⁰⁰ 'Handbook on European Non-Discrimination Law' (2010) <<https://fra.europa.eu/en/publication/2018/handbook-european-non-discrimination-law-2018-edition>> accessed 13 November 2020.

²⁰¹ Ibid 19.

²⁰² Constitution of Malta, Article 14

²⁰³ The Equality for Men and Women Act, Chapter 456 Laws of Malta

behaviour. Harassment is a form of employment discrimination in the workplace and usually takes place when individuals make unaccommodating requests that leave a “*disturbing, threatening, non-productive effect*” on the receiver.²⁰⁴

The Employment and Industrial Relations Act²⁰⁵, distinguishes between general harassment and sexual harassment. Article 29(1) of the EIRA describes general harassment as being a situation whereby an employer or employee is subject to “*any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, which in respect of that person is **based on sexual discrimination** and which could reasonably be regarded as offensive, humiliating or intimidating to such person.*” Article 29(2) of the EIRA then goes into a specific type of harassment and this occurs whenever the victim is subjected to material, spoken words or gestures that create a humiliating and uncomfortable working environment. This type of harassment is frequently known as sexual harassment.

In order to counter extinguish work harassment, companies should adopt strong anti-harassment policies in the workplace and any ancillary activity related to that particular place of work. It is also important that such policies include protection against harassment on all social media sites and chat groups. If anti-harassment policies do not solve such ordeals and mediation between employer and employee is to no avail, the worker can always lodge a complaint within four months of the alleged breach to the Industrial Tribunal. Article 28 of the EIRA safeguards those persons who have taken steps to address harassment to the relevant lawful authorities, or have taken part in proceedings at the Tribunal. Apart from lodging a complaint to the Tribunal, the victim can also resort to any other court of law.²⁰⁶

Pregnancy Discrimination

Pregnancy discrimination is perhaps one of the most blatant types of discrimination at the workplace as it disincentivizes women to either not procreate or else not enter the labour market

²⁰⁴ Ibid 22.

²⁰⁵ The Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta

²⁰⁶ Dr Charlene Gauci, 'Harassment at The Place Of Work' (Mifsud and Mifsud Advocates, 2020)

<<http://www.mifsudadvocates.com.mt/harassment-at-the-place-of-work>> accessed 13 November 2020.

altogether. Pregnancy discrimination starts off as early as in the hiring stage as employers find it burdensome to provide additional time off.²⁰⁷

Pregnancy discrimination may occur either on a direct or indirect basis. Direct discrimination may include outright dismissal, reduced working hours or duties, or less pay. On the other hand, indirect discrimination, which is much more common nowadays, is much more difficult to identify. It occurs when the employer imposes a rule or a condition to every employee which appears to be equal to all but in reality, disadvantages pregnant employees.²⁰⁸

Workplace Stereotypes of Working Mothers

The long-standing belief that mothers are the primary care-givers, and males are the main income producers is still with us to this very day. Therefore, it seems that working mothers suffer from double prejudice as they have to fill two central roles; as a mother and as a worker. Social psychological studies have shown that outside the workplace, working mothers are rated as self-seeking and forbidding.²⁰⁹ Therefore, such public scrutiny and public judgement weighs down female workers as they feel judged trying to juggle their work and family life.

Striking a Balance between work life and family life

This type of discrimination calls for a balance between work and family life, while counterbalancing the employers' and employees' attitudes as well as promote burden sharing between life and work. The **EU Work-Life Balance Directive**, which entered into force on 1st August 2019, addresses the issue of women's underrepresentation in the labour market as well as aims at providing a better balance for parents whether they have a traditional or non-traditional family environment. This Directive is to be transposed in three years' time by all Member States including Malta. Some notable measures that are being proposed include; paternal leave which would at least be compensated at the level of sick pay and the extension of flexible

²⁰⁷ Maria Anthea Bonnici, 'Discrimination In Employment Connected With Maternity' (In partial fulfillment of the degree of LLD, University of Malta 2012). > accessed 12 November

²⁰⁸ Ibid 27.

²⁰⁹ (Brescoll & Uhlmann, 2005).

working arrangements to working parents and carers of children until they reach eight years old.²¹⁰

Unlike several other EU member states which provide for parental and paternal leave, Malta, the only paid parental leave is maternity leave. Therefore, this Directive will hopefully be a game-changer for Malta, as it will challenge gender roles and impliedly address the issue of gender discrimination at the work place by shifting the attitudes for the better when it comes to taking time off work.

COVID-19 and Discrimination at the Workplace

As Torsten Bell of the Resolution Foundation puts it, “*The virus doesn’t discriminate between people but the accompanying economic shock certainly does.*”²¹¹ The Maltese government has implemented a series of fiscal incentives and spending measures amounting to €520 million between the months of March and June (4 percent of GDP) to limit the human and economic impact of COVID-19.

Employers who make or have made decisions to terminate the employment of employees due to COVID-19 on the basis of age, sexual orientation, pregnancy and maternity, race, religion or belief etc, is a contribution to direct discrimination. Other instances of discrimination would include choosing who returns to the office and who requests to stay at home. Therefore, if an employer decides that a female employee should work at the office because of fear of disruption from her children that would constitute direct discrimination. It can also be the case that an employer directly discriminates on the basis of age if he does not allow employees over the age of 60 to work at the office because of greater potential risk.

Indirect discrimination due to COVID-19 can occur also at the workplace, when an employer applies a policy to everyone without taking into consideration the particular circumstances of each and every person. A particular instance would be if an employer makes several workers redundant on the basis of their sales performance. If these employees did not fare well as much

²¹⁰ 'EU Work-Life Balance Directive Enters into Force' (Ec.europa.eu, 2020) <<https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9438>> accessed 13 November 2020.

²¹¹ Ibid 15.

as the others due to maternal leave or because they have previously contracted the virus, they would have been indirectly discriminated against.

Redundancies or physical work restrictions due to COVID-19 can be easily averted with effective communication and objective justifications and reasoning behind the employers' decisions.

Digital Discrimination

Along with this new era of cyber communication, it comes to no surprise that a form of digital discrimination has also developed, affecting anyone within a minority having access to the online world. Thus, discrimination online and hate speech in particular, is a concurring issue of great concern. According to experts, the increase of anti-Muslim, antisemitic, racist and homophobic hate speech in public is inherently connected to these forms of oppression merging unhindered from online platforms. Public hate speech is merely considered a fraction of the so-called 'explosion' of hate speech which has developed online. According to extensive research carried out by the European Union Agency for Fundamental Rights (FRA), cognizance from the point of view of professionals suggest that the involvement of online networks, such as YouTube and Instagram, aided in providing a platform for further expanding and glorifying the various forms of discriminatory hate speech. The professionals involved within this research included representatives of public prosecutor's offices, representatives of criminal courts, the police and non-governmental organisations.

These highly opinionated interpretations portrayed by the interviewees in this research, directly corresponds to the information obtained from surveys conducted by FRA. For instance, a survey discussing discrimination and hate crime against those who practice the Jewish faith in EU Member States showed that antisemitism on the internet was a noteworthy concern for the majority of correspondents. Such online hate speech would include antisemitic comments made in discussion forums and on social media platforms. The survey report concluded that social media; "could do more to highlight and respond to abusive behaviour by focusing on the responsibilities of perpetrators, and by outlining where online comment becomes threatening and abusive behaviour under the terms of the law and has little to do with the fundamental right of freedom of expression." Another FRA survey, regarding violence against women, found that one in every ten women had faced at least one of the two forms of cyberharassment –

inappropriate advances on social networking websites, or unwanted sexually explicit emails or text messages – since the age of 15, and one in every twenty women had experienced either or both forms of harassment during the 12 months before the survey.

In addition to this, judiciary officials were also interviewed as the police came to an agreement that victims of hate speech and digital discrimination in question, sometimes feel that those opinions expressed on the internet are instinctively of lesser urgency and therefore do not have to be accounted for as much as physical speech ‘in real life’ does. Experts referred to cases wherein defendants explained insulting language on the internet was used to simply spite their opponent, as if they were present in a virtual world beyond all consequences. Results have shown; many people feel a sense of freedom to make racist jokes on the internet. It was also noted that internet users sometimes fail to remember, neglect or somewhat avoid the fact that they are acting within a public domain²¹².

Illegal hate speech is defined under the ‘Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law’ as the public incitement to violence or hatred directed to groups or individuals on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin.

In order to diminish and prevent hate speech online we must firstly recognise the difference between freedom of speech and hate speech, as this is a common mistake made by many. Users of social media platforms should be educated on how to create and promote peaceful societies by being made aware of cultural, social and political rights of groups as well as individuals, and the responsibilities that come alongside press freedom. In addition, conflict sensitive reporting is to be encouraged, as this would encourage a lack of unnecessary bias in writing and therefore lessen the spread of misinformation²¹³.

²¹² FRA - European Union Agency for Fundamental Rights, ‘Ensuring justice for hate crime victims: professional perspectives’ (FRA, 27 April 2016) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justicehate_crime-victims_en.pdf accessed 9 November 2020

²¹³ Poni Alice JameKolok, ‘5 ways to counter hate speech in the Media through Ethics and Self-regulation’ < <https://en.unesco.org/5-ways-to-counter-hate-speech> > accessed 9 November 2020

COVID-19 Stigmas

Discrimination takes place in different settings and numerous legislations and measures have to be implemented in order to address these issues. Nevertheless, the concept of social stigmas in relation to the COVID-19 pandemic do not cease to exist. Social stigma in relation to physical and mental health may be described as the negative association between a person or a group of people who share certain characteristics due to a specific disease. As we have seen along the growth and outbreak of the current global pandemic, we have encountered individuals being discriminated against by means of stereotyping or experiencing a loss of status due to a perceived link to the disease. In addition to the new virus, it appears that it was not the only pandemic that circulated across the globe. A pandemic of discriminatory practices has evolved alongside this, and it is highly imperative that we as a community work together in order to put an end to both diseases.²¹⁴

The current COVID-19 outbreak has provoked certain social stigmas and oppressive behaviours towards individuals coming from particular ethnic backgrounds and to anyone who has been rumoured to have been in contact with the virus. To the many individuals who value security, it is almost a reflex action to create a defence system around anything which is ‘alien’, such as the newly popular pandemic. This is because when we do not recognise something and see it as foreign, our first instinct is to reject it in order to avoid any harm it may instigate. For this reason, a community of people who views COVID-19 as foreign and previously unknown would immediately fear it. Nevertheless, it is also fairly easy to assign blame onto ‘others’, i.e. targeting those who are presumed to have been in contact with the virus and avoiding them. We humans instinctively act in this manner so as to create a tangible perception of the virus – such as these stigmatised individuals – and feel secure in rejecting them. Whilst it is merely human nature that there are elements of confusion and fear in times like these, harmful stereotypes are also being created in retrospect. Any stigma is a threat to social cohesion as it has the ability to compromise it. This could be the cause of fuelling social isolation of communities, which might contribute to a scenario in which the virus is more likely to spread. Therefore, rather than controlling the virus by rejecting anyone who contracts it, this can result

²¹⁴ UNESCO, ‘COVID-19-related discrimination and stigma: a global phenomenon?’ (UNESCO, 25 May 2020) <<https://en.unesco.org/news/covid-19-related-discrimination-and-stigma-global-phenomenon>> accessed 9 November 2020

in more severe health problems and difficulties controlling the outbreak. Discriminating against those affected by COVID-19 can drive others to hide or consider hiding their illness, avoiding seeking healthcare, as well as discourage anyone from adopting healthy behaviours and preventive measures all in order to not be discriminated against.

It is imperative that we learn how to address social stigma. In order to do so, we must build trust towards reliable health services and advice, by doing so we are preventing the spread of misinformation and therefore taking all precautions necessary in order to familiarise ourselves with healthy preventive measures, whilst also recognising the stories of individuals who have been victimised public stigmatization. As we strive for a just world in which there is respect for human dignity and cultural diversity, we must be able to understand the disease itself and show empathy with those whom the virus has affected in order to adopt effective and practical measures to keep ourselves and those around us as safe as possible. How we phrase our words regarding COVID-19 directly influences the way people would react to the virus, and therefore such a newly relevant topic is to be discussed in an open and honest environment.

One must keep in mind that words matter. A specific jargon of words in relation to the coronavirus disease (such as replacing the term “lockdown” with “isolation”) may leave a negative impact and/or fuel a demeaning attitude. Words have the ability to perpetuate already existing negative stereotypes, strengthening false associations between the disease and other factors, by reaching the extent of dehumanising those who contracted the virus. Trustworthy healthcare organisations such as World Health Organisation (WHO) suggest using a ‘people first’ jargon that both empowers and respects people in all the diverse channels of communication, including media platforms. Rightly so, words seen in the media have a tendency to influence popular language and therefore it is that much more important to be cautious of the words that we use. It is possible that negative reporting may influence how people are suspected to have the new coronavirus and how patients and families are perceived. In fact, there are already many concrete examples of inclusive terminology in relation to epidemics and pandemics such as the HIV and TB.

A specific demeaning jargon to avoid in order to combat the unnecessarily stigmatised virus, would be that of linking the disease to particular ethnicities or locations. The fact of the case is that the official name for the disease was deliberately chosen to avoid stigmatisation - the “co”

stands for Corona, “vi” for virus and “d” for disease, 19 is because the disease emerged in 2019. Moreover, people who have contracted the disease do not suddenly change their genus to “victims”, “cases” or “suspected cases”, but remain people. In using dehumanising or criminalising terminology, one creates the impression that those with the disease are less human than the rest of us or have done something wrong respectively, by feeding stigma and potentially fuelling wider reluctance to seek treatment, and undermining empathy. It is vital to speak accurately about the risks of COVID-19 and to reference reliable sources, scientific data, and the latest health officials’ advice. Sharing unconfirmed rumours may be just as harmful as spreading the actual virus, for this only adds to the confusion. Let us not forget to speak fairly and realistically and emphasise the effectiveness of treatment and prevention measures.

To put it plainly, key influencers, communities, media, and the government play a crucial role in preventing and preferably putting an end to stigma relating to people from China and Asia in general. It is up to us as members of our own communities to never intend to cause any harm when communicating on social media and other platforms, always showing our support when possible. Stigma has the potential to be heightened by insufficient knowledge about how COVID-19 is treated and transmitted, and how to prevent infection. In response, prioritise the collection, dissemination and consolidation of accurate information (specific to the country or community in question) about affected areas, vulnerability to COVID-19, treatment options, and where to access health care and information. Simple language is to be used, rather than clinical terms, in order to omit any unnecessary confusion and to keep available sources user friendly.

An outstanding act of kindness that is worth taking note of is the appreciation towards healthcare workers who have undoubtedly been stigmatised outside their work life for being, quite frankly, frontliners amidst all the chaos. Community volunteers also play a mighty role when it comes to reducing stigma within said communities. We must not forget different ethnic groups in order to safeguard the inclusive environment we want to build. Diverse communities should be portrayed when speaking of the virus’s impact on their daily lives²¹⁵. Like any other

²¹⁵ World Health Organisation (WHO), ‘A guide to preventing and addressing social stigma associated with COVID-19’ (WHO, 24 February 2020) < https://www.who.int/publications/m/item/a-guide-to-preventing-and-addressing-social-stigma-associated-with-covid19?gclid=Cj0KCQjw28T8BRDbARIsAEOMBeymvsMoS3xQsFTcEyan3fdIjm9ByKNtwmUBCJIY9vcRqPSnWV15hGAaAjheEALw_wcB > accessed 10 November 2020

form of stigma, such a reaction towards those who have contracted the virus shall be at risk of negatively impacting them as well as their caregivers, families, friends and communities. This implies that individuals who have not contracted the virus may also suffer from stigma, immediately confirming the unnecessary awe circulating around contracting the virus in the first place.

Conclusion

The year of 2020 was the year of forest fires, a global pandemic, millions protesting across the globe for the 'Black Lives Matter' movement, and the US presidential election. If one were to sum up the year of 2020 in just one word, that word would be - hopeful. In the months of March, April and May, countries including Malta, faced a national lockdown, unable to partake in their normal routine of going to work, attending school or even visiting their loved ones. However, so many individuals remained hopeful that someday, after those many weeks and months staying isolated at home, while so many innocent lives give in to the virus, we can return back to normality where we can hug our loved ones safely. The whole world was uneasy when in the month of June, another life was lost to police brutality in the US. The riots, the fires, the rampant sounds of people coming together as they could not take the injustice any longer. We all held our breaths during these times, as George Floyd took his last one. However late we all were to educating ourselves, we are all hopeful that this pandemic of racism and intolerance will end also someday.

Men, women, and children of all colour, ethnicity, religions come together, as no citizen is 'free' when another is tied by the shackles of discrimination and unfair treatment. We hope for equal pay for equal work, for respect to individuals undergoing a physical impairment or mental health issue, to accept all religions and religious beliefs, to protect all forms of sexualities as they are human beings too, to end all forms of police brutality everywhere, for people of all ages to be respected equally, and most importantly we hope for justice for all.

We can no longer remain passive, bystanders to the events happening around us, just watching or reading all the disheartening news, enough is enough. We take a stand, as how Rosa Parks refused to stand up from her seat on the bus, as the Suffragettes risked everything to protest for women's rights, as Martin Luther King and Malcolm X led a wave of change in the horrifying times of racial segregation in the US, how Marsha P. Johnson was the first activist for trans rights, as trans rights are human rights, and so many other individuals who had enough of what they were witnessing and took the first step. So, bring out your placards, write down your message, we are hopeful for an equal and peaceful future, let's get to work.

“Don't be afraid to stand for what is right.”

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