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**DROITS FONDAMENTAUX**

**An Assessment of the Culture of Equal Opportunities in Mauritius**

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**Abstract:**

*This study attempts to explore the culture of equal opportunities in Mauritius and to assess the effectiveness of our legal framework pertaining to this concept amidst a few selected groups. While much ink has been dropped by our counterparts around the globe on this essential doctrine and its application, there seems to be scarce literature on this topic in Mauritius. This paper shall address this issue*

**Keywords: Economic, social and cultural rights – discrimination – disabilities – ethnicity – gender**

**Résumé:**

*Cette étude entreprend d'explorer la culture de l'égalité des chances à Maurice, et d'évaluer l'efficacité du cadre juridique relatif à ce concept et en ce qui concerne un certain nombre de groupes présélectionnés. Alors que cette doctrine essentielle et sa mise en œuvre ont fait couler beaucoup d'encre chez nos homologues autour du globe, la littérature dédiée à ce sujet semble bien rare à Maurice. Cette étude entend donc aborder ce thème.*

**Mots-clés : Droits économiques, sociaux et culturels – discrimination – handicaps – ethnicité – genre**

This study attempts to explore the culture of equal opportunities in Mauritius and to assess the effectiveness of our legal framework pertaining to this concept amidst a few selected groups. While much ink has been dropped by our counterparts around the globe on this essential doctrine and its application, there seems to be scarce literature on this topic in Mauritius. This paper shall address this issue.

## **I. Literature Review and Normative Framework**

“The structural importance of the principle of equality is visible if one unravels the various strands of the human rights fabric to see how equality is employed to frame and substantiate human rights standards”<sup>1</sup>

- Dinah Shelton

### **A. Literature Review**

This Chapter entails a broad overview of the literature available worldwide and locally on the definition of equal opportunities and culture, the desirability or deep abhorrence of some authors towards this concept, in an attempt to impartially explore the issue at hand. Furthermore, it comprises of the normative framework available in the specific areas being studied.

The doctrine of equal opportunities has kindled much controversy in the scholarly province of law. The assessment of the equal opportunities culture, particularly in the Mauritian context, comprises of scarce literature. Some authors have tried to define such a ‘culture’, while, others have attempted to question the basis of the existence and need for the principle of equal opportunities to subsist or to be incorporated in our laws as well as in our cultures. This issue has divided the academic community into the unwavering supporters of equal opportunities and the ruthless opponents of such a concept.

Shaffick Hamuth<sup>2</sup> (2004) defines the concept of equal opportunities as the ‘fair and equal treatment of individuals’ and proposes the removal of discriminatory structures and practices in all spheres of social and economic life, in his newspaper article. On a different note, equality in rights – as proposed by most democratic charters- means the extension of individual rights to all citizens rather than to just a privileged minority. Equality can never be absolute as there are natural inequalities,

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<sup>1</sup> SHELTON, D., *The Oxford Handbook of International Human Rights Law*, Oxford: Oxford University Press, 2013, p. 437.

<sup>2</sup> HAMUTH, S., ‘A Window on Equal Opportunities’, L’Express, 7 Dec. 2004.

such as the unequal status of a child and an adult and a sane and an insane person. Still, these natural inequalities do not affect the basis of democracy<sup>3</sup>. Equal opportunities mean the blurring and disappearance of obstacles in favour of fairness and democratic principles in society.

The possibility of incorporating the concept of equal opportunities in the Mauritian culture depends on what one views or defines as ‘culture’. The sociologist, Ken Browne<sup>4</sup> has used the most common definition of what constitutes a ‘culture’. He defines culture as the “language, beliefs, values and norms, customs, dress, roles, knowledge and skills and all other things that people learn that make up the ‘way of life’ of any society.” He also notes that there is a debate on what constitutes a shared and learnt way of life and proposes that there are different conceptions and definitions of culture within this broad and general approach. He identifies the existence of the dominant or main culture, the subculture, the folk culture and the high or elite culture. It is to be noted that for social order to prevail, consensus on some values should exist in the different cultures cohabiting in a society.

The contribution of the natural law theorists to the adoption of equal opportunities is of great significance. The ideas propounded by this school of thought have helped understand the idea of equality with regards to rights, such as the right to vote, and the need for ‘universal law’ applicable to all human beings. Likewise, utilitarians, such as Bentham, have stressed the necessity for removing inequalities in the opportunities of development as a condition of democratic development. While it has been acknowledged that legislations cannot ‘do it all’, it still has a vital role to play and given the facilities of material and intellectual development, leaders may emerge from any class, gender, race or nation. These legal thinkers have emphasized on the importance of equal opportunities in a democracy through the application of universal law and the ‘maximisation’ of happiness of the ‘greatest number of human beings’ respectively<sup>5</sup>.

Furthermore, feminists have brought considerable suggestions and proposals on the issue of the promotion of gender equality through laws, socio-economic and cultural changes. Liberal feminists adopt a more ‘relaxed’ view than radical feminists ‘and support the idea that changes in legislations and policies such as maternity leave and equal pay’, amongst others, can bring about a wave of change in society. Black feminists also struggle for gender equality in society but stresses on the need to provide more consideration to the plight of women from ethnic minorities, such as Afro- Caribbean women in some countries, who face even more discrimination than the ‘white women.’ In short, most feminists’ theories emphasise

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<sup>3</sup> FRIEDMAN, W., *Legal Theory*, London: Penguin Books, 1967, p. 416.

<sup>4</sup> BROWNE, K., *Sociology for AS AQA*, 3<sup>rd</sup> edition, Malden: Polity Press, 2008, p. 31.

<sup>5</sup> FRIEDMAN, W., *Legal Theory*, London: Penguin Books, 1967, p. 99.

on the importance and desirability for a change in law and culture pertaining to the issue of gender equality, according to Browne<sup>6</sup>.

On the other side of the coin lie the arguments of staunch opponents of the idea of equal opportunities. Edmund Burke, often considered as one of the greatest opponent of the French Revolution, argued that ‘liberty and rights of man’ are abstract concepts which could be easily abused and used to justify tyranny<sup>7</sup> (Mosher, 1991). Historical jurists do not always favour the idea of equal chances as well. Thomas Maine, for instance, criticized democracy as being one of the most difficult and unstable forms of government<sup>8</sup>. The latter did not readily embrace ‘democratic principles’ such as human’s liberty and equal opportunities.

Similarly, while the doctrine of equality is often accepted amidst the popular masses proposing democratic principles, the same may not be the case for those adopting an elitist or high culture. For instance, Friedman<sup>9</sup> points out that, in 1943, the late Sir William Holdworth criticized and condemned the Reform Act of 1832. This act proposed a more representative election and the extension of voting rights and other rights from the ‘more enlightened’ and privileged classes to all, irrespective of social classes and other stratifications, in United Kingdom. He also ruthlessly rejected the idea of equal educational opportunity in society, thus, rejecting the idea of equal chances in the legal and cultural aspects of society unlike the ideas prevailing in the dominant or mainstream culture.

Nevertheless, some contemporary writers have demonstrated a deep abhorrence for equal opportunities. Cavanaugh<sup>10</sup>, for instance, in his book entitled ‘Against Equality of Opportunity’ proposed that companies should be able to choose between employing ‘black or white’ employees, thus, proposing racial discrimination. He further added that it ‘should not be a matter for the law if a company chose to select only white employees.’ He, also, stated that fearing to employ women below the age of forty was ‘rational’ because they may take time off from work to ‘have babies’. Cavanaugh provided several such arguments and justifications against equal opportunities in a modern and pluralistic society in his heavily criticized book.

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<sup>6</sup> BROWNE, K., *Sociology for AS AQA*, 3<sup>rd</sup> edition, Malden: Polity Press, 2008, p. 23.

<sup>7</sup> MOSHER, A., ‘The Skeptic’s Burke: Reflections on the Revolution in France’, *J Stor Political Theory Journal*, Vol. 19 No.3, August, 1991, pp. 391-418

<sup>8</sup> *Henry Summer Maine Passages from Popular Government 1885 [online]*

Available: <http://www.Panarchy.org/maine/government.1885.html#top> (14 Apr. 2017)

<sup>9</sup> FRIEDMAN, W., *Legal Theory*, London: Penguin Books, 1967, p. 419.

<sup>10</sup> *Kite and Syal (2004) Labour’s black and Asian members demand sacking of Blunkett race adviser [online]*

Available: <http://www.telegraph.co.uk/new/uknews/1457399/Labours-black-and-Asian-members-demand-sacking-of-Blunkett-race-adviser-.html> (14 Apr. 2017)

On a final note, having cast a glance at the definition of equal opportunities and culture as well as the arguments supporting and condemning the application of this principle, an assessment of the equal opportunities' culture seems vital. This paper shall examine the legal framework relating to equal opportunities and shall assess the extent as to which it has trickled down in the Mauritian culture.

## **B.- An Overview of the Normative Framework of the Relevant Human Rights**

The following sections provide a brief analogy of the different human rights which shall be explored in the present study. While the interdependence and blurring of the traditional categories or generations of human rights into civil and political and economic, social and cultural rights have been acknowledged<sup>11</sup> (United Nations, 2005), this chapter is divided into three parts denoting mainly the three second generation 'categories' of rights for explanatory purposes.

### **1 – An Economic Right: The Right to Work**

The right to work constitutes a core of not solely socio-economic rights, but also fundamental human rights. It stretches beyond the traditional view of being a 'medium to earn a living' to being, as mentioned in the Declaration of Philadelphia, vital for 'material wellbeing and spiritual development' and at its very essence, to the dignity of a human being<sup>12</sup> (Drzewicki in Eide et al., 1995).

The principle of the right to work basically means that an individual should be able to choose employment without interference from the authorities. The State should, nevertheless, ensure freedom to work as well as protection against unemployment. However, access to the labour market is 'worthless' if working conditions are not acceptable. 'Wages and the working environment must rise to a certain level before the right to work has any real meaning' according to Alfredsson and Eide<sup>13</sup>. The latter identified several principles underlying the 'right to work.' Those principles include the freedom of association principle, the just remuneration principle and the equal pay principle.

For the purpose of the present study, it can be noted that the application of the right to work of women is hindered by two obstacles: the fact that economic, social and cultural rights have not yet attained the same recognition as civil and

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<sup>11</sup> UNITED NATIONS, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, Geneva: United Nations Publication, 2005.

<sup>12</sup> EIDE, A. et al., *Economic, Social and Cultural Rights*, Dordrecht: Martinus Nijhoff Publishers, 1995, p. 489.

<sup>13</sup> ALFRESSON G. and EIDE A., *The Universal Declaration of Human Rights: A Common Standard of Achievement*, The Hague: Kluwer Law International, 1999, p. 489.

political rights and, as an additional factor for women, gender discrimination<sup>14</sup> (Tomasevski, in Eide et al. 1995). Women are, often, impeded from exercising their right to work due to their sex, marital status, pregnancy or potential pregnancy and stereotyping of gender roles.

## **2 – A Social Right: The Right to Education**

The UNESCO Convention against Discrimination in Education (1960) defines education as referring to ‘all types and levels of education’, and as including ‘access to education, the standard and quality of education and the conditions under which it is given.’

Education is a vital component for fulfilling other human rights. The enjoyment of several civil and political rights in a society, such as the right to vote, freedom of information, association and expression, depends on a minimum level of education or literacy<sup>15</sup>. The right to education is often classified as being a positive right which requires ‘actions’ to be taken in its fulfilment by the State. The right to education of persons with disabilities may require a greater need for the allocation of resources to meet the specificities of their needs.

## **3 – A Cultural Right: The Right to Take Part in Cultural Life**

Cultural rights are often described as being “slippery and difficult” due to the fact that their content and scope is broad and not clear<sup>16</sup>. There are several rights which fall under the umbrella of cultural rights such as the right to education, the right to participate in cultural life or the freedom for scientific research and creative activity. However, the right to take part in cultural life is considered to be the “broadest of them all” according to Elissavet Stamatopoulou<sup>17</sup>.

To understand the concept of the right to take part in cultural life, one must consider the definition of ‘culture’ as elaborated in the background paper of Stamatopoulou at the 40<sup>th</sup> session of the Committee on Economic, Social and Cultural Rights (2008). The latter believes that it is useful to examine cultural rights at three levels:

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<sup>14</sup> EIDE, A. et al., *Economic, Social and Cultural Rights*, Dordrecht: Martinus Nijhoff Publishers, 1995, p. 273.

<sup>15</sup> ALFREDSSON G. and EIDE A., *The Universal Declaration of Human Rights: A Common Standard of Achievement*, The Hague: Kluwer Law International, 1999, p. 189.

<sup>16</sup> DONDEERS, Y., *The Right to Take Part in Cultural Life (article 15(1) (a) of the Covenant*, Geneva: United Nations, 2008, p. .2

<sup>17</sup> STAMATOPOULOU, E., *The Right to Take Part in Cultural Life (article 15(1) (a) of the Covenant*, Geneva: United Nations, 2008, pp. 3-5.

- a) ‘Culture in its material sense, including but not limited to monuments and artefacts,’
- b) ‘Culture as the process of artistic or scientific creation,’
- c) ‘Culture in its anthropological sense,’ that is, culture ‘as a way of life’.

The author further provides ‘six plus normative elements of cultural rights.’ These elements include ‘non- discrimination and equality, freedom from interference of the enjoyment of cultural right, freedom to choose in what culture (s) and cultural life to participate, freedom of dissemination, freedom to cooperate internationally, right to participate in the definition and preparation of policies on culture and other elements connected to the right to participate in cultural life.’ The right to take part in cultural life has both a collective as well as individual dimension as pointed out by Groni<sup>18</sup>.

Additionally, international human rights instruments and bodies have identified some special characteristics of cultural rights pertaining to ethnic minorities. One of these ‘special characteristics,’ relevant to the present research paper, is that the ‘state and its agent have the obligation to respect the freedom of minorities, both individually and as groups, to fully participate in cultural life and assert their cultural identity’. The principles of non-discrimination and equality must guide the state’s actions. However, equality should not amount to forced assimilation<sup>19</sup>.

## **II.- Legal Framework Pertaining to Equal Opportunities**

*“Setting up the equal opportunities legal framework was a laudable initiative. Yet just preliminaries.”*

-Brian Glover<sup>20</sup> (EOC Report, 2014)

This chapter explores the legal framework governing the principle of equal opportunities in Mauritius. It covers the key legislations and institutions as well as provides an overview of the main international conventions relevant to the present study.

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<sup>18</sup> GRONI, C., *The Right to Take Part in Cultural Life (article 15(1) (a) of the Covenant*, Geneva: United Nations, 2008, p. 8.

<sup>19</sup> STAMATOPOULOU, E., *The Right to Take Part in Cultural Life (article 15(1) (a) of the Covenant*, Geneva: United Nations, 2008, p. 6.

<sup>20</sup> EOC *Equal Opportunities Commission Report 2014*, Port Louis: EOC, 2014.



## A.- The Constitutional Framework

The Constitution of Mauritius is based on the Westminster model and rests on two fundamental tenets which are the rule of law and the principle of separation of powers. Chapter II provides for the fundamental rights and freedoms of the individual. Sections 3 and 16 of the Constitution expressly guarantee protection against discrimination. Section 16(3) of the Constitution defines ‘discriminatory’ treatment as follows:

*“In this section, 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex 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 that are not accorded to persons of another such description ”*

Therefore, it is to be noted that Sections 3 and 16 of the Constitution of Mauritius provide for the protection against discrimination with the intention of promoting more equal treatment. For instance, in the case of ***Tengur v. Ministry of Education 2002 SCJ 298***, the practice of retaining some quotas for admission of students of a particular faith in Roman Catholic Education Authority schools was held to be an unconstitutional and a discriminatory practice. However, Section 16 of the Constitution provides an exhaustive list of the grounds on which one can seek remedy for discrimination. As such, in the case of ***Matadeen v. Pointu 1997 PRV 14***, it was held that there was no discriminatory treatment as the notion of discrimination only applies to the grounds enunciated in section 16 of the Constitution and the matter of the case did not fall within the ambit of that section.

The exhaustive nature of Section 16 of the Constitution may deny remedy to some categories of individuals experiencing unfair discriminatory practices, such as persons with disabilities. The Law Reform Commission<sup>21</sup> (2010) proposes guaranteeing the right of persons with disabilities. This may be done by affording constitutional protection to them by including ‘impairment’ on the exhaustive list of grounds upon which discrimination is prohibited at Section 16 of the Constitution.

Contrastingly, in the case of ***Rose v. Police 1976 MR 81***, it was pointed out that ‘to differentiate does not necessarily mean to discriminate’ as unequal treatment may sometimes foster some form of equality. Similarly, in the case of ***Jaulim v.s Director of Public Prosecution and Others 1976 MR96***, court noted

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<sup>21</sup> LRC, *Issue Paper: Constitutional Protection of Human Rights*, Port Louis: LRC, 2010, p. 6.

that a difference in treatment can be said to be discriminatory only if such a difference cannot be reasonably or objectively justified. The rationale behind the exercise of ‘legitimate differentiation’ was explained in the Indian case of *Kedar Nath v. State of West of Bengal AIR 1953 SC 404* whereby the Supreme Court of India affirmed that it was ‘permissible to apply different measures to different classes of people if the classification is based on an intelligible principle’ having a reasonable goal that the Legislature aims to achieve.

## **B.- National Legislations and Institutions**

### **1 – The Equal Opportunities Act**

The Equal Opportunities Act was voted in 2008 and proclaimed in 2012 in an attempt to promote equal opportunities and to prohibit discrimination. It applies to employment activities and other activities including education, the provision of goods, services or facilities, companies, registered associations amongst others.

The Equal Opportunities Act ensures protection against direct discrimination and indirect discrimination based on the grounds of ‘age, caste, colour, creed, ethnic origin, and impairment, place of origin, political opinion, race, sex and sexual orientation’. The list of grounds provided is exhaustive and, as a result, restrictive. It also prohibits discrimination by victimization. The Act also deals with the issue of sexual harassment in line with Part V.

The Equal Opportunities Act also established the Equal Opportunities Commission and the Equal Opportunities Tribunal under Part VI and Part VII of the act respectively.

The Equal Opportunities Commission was established under the Equal Opportunities Act on the 24th April 2012. The Commission is empowered to carry out investigations following a complaint registered or on its own motion. It attempts to reconcile parties involved in a dispute. The Commission also has the function of promoting awareness of equal opportunities through educational or awareness campaigns and by fostering research. Upon the completion of an investigation whereby an offence has been revealed, the Commission may refer the matter to the Director of Public Prosecution according to Section 27 (4) (b) of the Equal Opportunities Act. Nevertheless, if the case has not been resolved, it may refer it to the Equal Opportunities Tribunal. According to the Human Rights Periodic Report of 2015<sup>22</sup>, 1471 complaints were lodged and 1386 of them were examined by the commission as at the end of December 2015. The work carried out by the Equal Opportunities may be appreciated with reference to a case dealt

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<sup>22</sup> Human rights Periodic Report, 2015, p. 22.

by it whereby it went beyond the ‘traditional compensation for damages’ approach towards education as a tool for promoting equal opportunities. This may be deemed to be a commendable initiative.

*“In June 2012, a Mauritian living abroad lodged a complaint alleging that he had been refused access to a hotel. He averred having been discriminated on, inter alia, his place of origin, that is, because he is a Mauritian and also because of his colour of skin. He believed that had he been a foreigner or had he been a White, he would have been allowed in the hotel. The hotel denied the allegations, but in all good faith nonetheless offered to settle the matter through conciliation with a view to promoting good relations. The hotel offered a free stay to the complainant, which the latter refused. The complainant made a counter offer, requesting the hotel to organize a sensitization campaign on the promotion of the elimination of equal opportunities and non-discrimination, to be carried out by the Commission, which proposal was agreed by both parties”<sup>23</sup>.*

The Equal Opportunities Tribunal is the first instance jurisdiction which determines whether there has been a breach of the Equal Opportunities Act. Its decisions are binding. The tribunal has, hence, the jurisdiction to hear any case referred to it by the Equal Opportunities Commission, to issue an interim order, to make orders and recommendations, amongst others, according to section 35 of the Equal Opportunities Act. Any party not satisfied with the decision of the tribunal may appeal to the Supreme Court. In the case of ***Director of Paradox Night Club v. Mrs. H. Nelson 2016 SCJ 208***, the respondent was denied access to a club due to her disability and the appellant was appealing against the decision of the tribunal which ordered the payment of a sum of money as compensation. The Supreme Court quashed the decision of the tribunal on the ground that it was ‘*erroneous in law*’.

## **2 – Other Relevant Legislations**

In an attempt to promote equality of treatment at the workplace, the legislators have catered for prevention of discrimination in employment and occupation in the Employment Rights Act (ERA, 2008). Section 4 (1) of this act provides that no worker shall be treated in a discriminatory manner by an employer or a prospective employer. Section 4(5) of the ERA defines discrimination as including “*affording different treatment to different workers*” attributable wholly or primarily to “*their respective descriptions by age, race, colour, caste, creed, sex, sexual orientation, HIV status, religion, political opinion, place of origin, national extraction or social origin, which has the effect*

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<sup>23</sup> EOC Report of 2014, p. 28.

*of nullifying or impairing equality of opportunity or treatment in employment or occupation”.*

The Training and Employment of Disabled Persons Act (1996) – henceforth referred to as the TEDP Act – was amended in 2012. It mainly provides for the employment of disabled persons in Mauritius such as by imposing on every employer having a workforce of 35 or more employees, the duty to employ a number of persons with disabilities according to section 13 of the Act. Furthermore, it also provides for the promotion of the establishment of schemes, projects, vocational centers and other institutions involved in the training of disabled persons. The legislations governing the rights of persons with disabilities remain scattered. Nonetheless, the Disability Bill is currently under scrutiny in Parliament.

### **C.- Relevant International Conventions Ratified by Mauritius**

Several international conventions have been ratified by the State of Mauritius. According to Section 2(1) (a) of the Vienna Convention on the Law of Treaties (1969), treaties are written agreements made between states and governed by international law. The following sections entail an overview of the main international conventions ratified by Mauritius and which are relevant to this research paper.

The **Universal Declaration of Human Rights (UDHR)** is often considered as being a landmark instrument in the history of human rights. It was proclaimed in 1948 by the United Nations General Assembly in Paris and broadly distinguishes between two categories of rights namely civil and political rights and economic, social and cultural rights. These two categories of rights are further elaborated in the International Covenant on Civil and Political rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). The need for such instruments was felt after the gloomy scenario filled with human rights violations painted by the World War II<sup>24</sup>. The UDHR does not only endow a range of human rights to individuals but also reiterates the principle of equal opportunity in having access to such rights and prohibits discrimination. For instance, article 1 of the declaration states that all human beings are ‘born free and equal in dignity and rights’ and article 2 prohibits discrimination of treatment with regards to the rights enunciated in the declaration.

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** was adopted in 1966 but came into force in 1976. It covers a range of

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<sup>24</sup> PWESCR, *Human Rights for All: International Covenant on Economic, Social and Cultural Rights*, New Delhi: PWESCR, 2015, p. 5.

'second generation's' rights and stands as a 'lighthouse' in the present study. The right to work (article 6), right to education (articles 13-14) and the right to take part in cultural life and enjoy the benefits of scientific progress (article 15) shall be elaborated on during the course of this paper. The Committee on Economic, Social and Cultural Rights (2010)<sup>25</sup> mentioned, in the concluding observations of the 'almost 13 years late' State report, that it is concerned that Mauritius has not enshrined the ESCR in its Constitution and that this situation has a 'restrictive impact' on the scope of the competencies of institutions safeguarding human rights including the courts and the National Human Rights Commission.

The **Convention on the Elimination of Discrimination against Women (CEDAW)** was adopted in 1979 by the United Nations General Assembly. It addresses the issue of discrimination based on sex and devises a plan of action for States to end such discrimination. As such, by adopting this convention, States commit themselves to, for example, incorporate the principle of equality of women and men in their legal system and abolish all discriminatory laws.

The General Assembly of the United Nations adopted the **International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)** in 1965 in an attempt to eliminate racial discrimination. It defines racial discrimination in article 1(1) as being any form of '*distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*'. The Committee on the CERD (2013)<sup>26</sup> pointed out to the late submission of Mauritius' State Report. It approved the progress made by Mauritius in promoting the safeguard of human rights. However, it urged Mauritius to review its laws on equal opportunities in relations to racial discrimination. It also, regretfully, noted the lack of information, on the part of the State, pertaining to complaints based on racial discrimination and the remedial actions taken hereinafter.

The **Convention on the Rights of Persons with Disabilities (CRPD)** was adopted on 13th December 2006. It entails a broad categorization of persons with disabilities and reaffirms that all persons with disabilities are 'subjects' with rights and not mere objects of charity and social protection. Furthermore, Article 1 of

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<sup>25</sup> COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, Geneva: United Nations, 2010.

<sup>26</sup> COMITÉ POUR L'ÉLIMINATION DE LA DISCRIMINATION RACIALE, *Observations Finales concernant les quinzièmes à dix-neuvièmes rapport périodiques de Maurice, adoptées par le comité à sa quatre-vingt-deuxième session*, Genève : Nations Unies, 2013.

the Optional Protocol to the CRPD establishes the competence of the Committee on the Rights of Persons with Disabilities to consider communication from or on behalf of individuals who claim to be victims of a violation by a state party.

Overall, it can be noted that the principle of equal opportunities and the prohibition of discrimination is afforded constitutional protection in Mauritius. Several legislations have been enacted to further reinforce equal treatment and promote meritocracy, such as the Equal Opportunities Act which is a key legislation for the promotion of equality in Mauritius. Nevertheless, Mauritius has also ratified several international conventions which have at their heart, the promotion of human rights and equality. While the debate pertaining to the existential nature of how far international law is ‘law’ remains a vital issue, the importance of these international conventions in providing a guide and ensuring more accountability of states cannot be overlooked.

### **III.- An Analysis of the Effectiveness of the Application of the Legal Framework in Selected Areas in the Mauritian Context**

*‘Our lives begin to end the day we become silent about things that matter.’*

-Martin Luther King Jr.

This chapter encompasses an analysis of the effectiveness of the legal framework into promoting a culture of equal opportunities or by reflecting this vital principle in some selected areas. It deals principally with economic, social and cultural rights.

#### **A.- An Economic Right: The Right to Work of Women**

The CEDAW formally recognises the influence of culture and tradition on restricting women’s enjoyment of their fundamental human rights. These forces take the form of stereotypes, customs and norms that may be found in the culture of a society. The preamble of the convention emphasises that *‘a change in the traditional role of men as well as women in society and in the family is needed to achieve full equality of men and women’*.

The General Comment No. 18 on the Right to Work<sup>27</sup> also points out to the need of having a comprehensive system to combat gender discrimination and

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<sup>27</sup> COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *The Right to Work: General Comment No.18*, Geneva: United Nations, 2005, p. 25.

ensure more equal opportunities to women. However, the ultimate goal to be achieved in terms of equality of opportunities should be clear. This study shall not focus on equal opportunity as *'the mere representation of women as figureheads'* on the board or in management solely but rather on the creation of equal opportunities for women to have access to top management positions or on the board of directors of companies.

## **1 – Brief Overview of Methodology**

The research methods used were mainly questionnaires consisting of both open ended and closed questions (for a detailed description, please refer to Appendix 1).

The sample consisted of a targeted 20 men and women undertaking leadership roles in companies either through top managerial posts or on the board. Eight of the respondents were males and five of them were females. The response rate was at 65% (13 out of 20). However, it may be noted that the attitude of individuals requested to fill in the questionnaire varied greatly from the *'kind, sympathetic and concerned about women's rights'* attitude to those dismissing women's positions in leadership role as being *'another feminists' trivial concern'*.

## **2 – Analysis**

The right to work includes several elements. Two of these elements relevant to the present study are the access to the labour market and protection against discrimination. These elements are interrelated. The right to have equal opportunities to have access to leadership roles in companies for women is nevertheless influenced by socio-economic and cultural barriers as explained in the following sections.

### **a – The Right to Access to Work**

The socio-cultural phenomenon which restricts woman's access to posts with top responsibilities, often, takes the form of a *'glass ceiling'*. The *'glass ceiling'* is a phrase used to *'describe the phenomena that occur when invisible, artificial barriers prevent individuals from advancing within their own organisations despite their qualifications,'* according to Smith<sup>28</sup>.

In the survey conducted through questionnaires, 9 out of the 13 respondents agreed that they noted the prevalence of a glass ceiling which hinders women's advancement. This glass ceiling may be a result of gender stereotyping and the *'dual burden'* of women as explained in the following sections.

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<sup>28</sup> SMITH, D., *Women at Work*, New Jersey: Prentice Hall, Inc., 2000, p. 11.

### \* Gender stereotyping as a potential source of discrimination

A gender stereotype is a generalised view of the ‘*typical or ideal characteristics of men and women*’. The gender stereotype involves what Connell<sup>29</sup> (in Browne, 2008) called a ‘*hegemonic masculinity and a hegemonic femininity*’. As such, some features are generally associated with ‘*masculinity*’ such as independence, aggression, rationality, risk taking and ambition. Contrastingly, the ‘*hegemonic femininity*’ involves characteristics such as emotional, gentleness and non- aggressive, risk aversion and domesticity.

Gender stereotyping in the culture of a society may be detrimental to women’s access to leadership positions in the workplace. In the survey conducted 54% of respondents agreed that there was a predominantly male dominated culture in their field and 76% claimed that the number of women in ‘*top positions*’ in their field are few as compared to men. This is because the ‘*traditional*’ stereotype or hegemony associated with males, such as ambition and rationality, are much more desirable than the stereotypes attached to femininity which includes emotional behaviours and more responsibilities in terms of childcare and housework. Stereotypes overshadow the fact that women, like men, have different characteristics and do not always fit in the narrow definition of and stereotypes attached to femininity.

In the survey conducted, the 61 % of the respondents conceded that there was indeed a ‘gender stereotype’ portraying men as the main ‘*breadwinner*’ and women in ‘*nurturing roles and as the caregiver*’. Such a stereotype is still prevalent, not only amidst the workers at a lower level of the corporate ladder, but also at the top of the companies. This reinforces the notion that women have a ‘*greater role to play within the home than in a company*’. This belief may be a potential source of discrimination not only during the recruitment and selection exercise for top positions with responsibilities but, also, in the daily interaction of males and females’ colleagues leading to women being portrayed as potentially ‘*the unreliable*’ director or manager. As pointed out by one female manager in the survey, access to top managerial and board level positions may be refused to women as they are perceived as being ‘*less productive and unable to work long hours*’.

Gender stereotypes may also hamper the right to have access to work in some industries or sectors for both men and women. This is because it creates a segregated and inaccurate view of the work that can be undertaken by men and women. For instance, a male director pointed out, in the survey, ‘*the lack of*

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<sup>29</sup> BROWNE, K., *Sociology for AS AQA*, 3<sup>rd</sup> edition, Malden: Polity Press, 2008, p. 63.



visibility of women in leadership roles in the engineering and construction industry in Mauritius'. Similarly, it has been noted that some sectors have become increasingly 'feminised' in the last few decades. These sectors include nursing and teaching and are often 'stereotypical women's work', thus, hindering the prospects of men to have access to work and possibly leadership roles in these areas.

**\* The 'Dual Burden' Faced by Women**

Gender stereotypes project a misrepresentation of gender roles in society. However, it may also point out to some 'dark realities' underlying the culture of a society. This may, for example, be the case of the 'dual burden faced by women'. The dual burden is a concept devised by sociologists to explain the fact that women have dual responsibilities, that is, paid work in the workplace and 'unpaid' work in the home in terms of child care and house chores which are mainly undertaken by women<sup>30</sup>. This cultural phenomenon has been confirmed in the survey conducted through questionnaires as illustrated as follows.

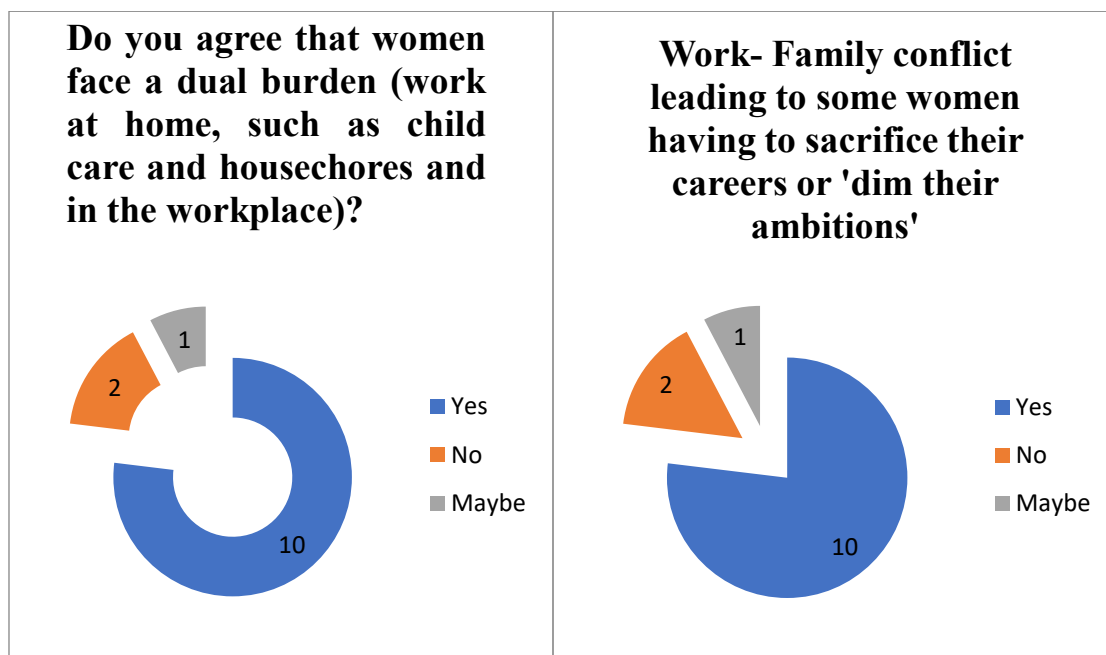


Figure 1: Illustration on the number of respondents admitting that women face the 'dual burden' and that some of them had to forego advancement in their career as result (Data collected from the survey conducted)

<sup>30</sup> BROWNE, K. *Sociology for AS AQA*, 3<sup>rd</sup> edition, Malden: Polity Press, 2008, pp. 124-127.

## **b – Protection from Discrimination**

The prevalence of gender stereotypes and the traditional roles attached to men and women which, often, lead to the unfair thrusting of the ‘*dual burden*’ upon women requires protection from discriminatory practices against women.

In the survey conducted, 11 of the 13 respondents said that they did not face discrimination, so far, in their careers, while, 1 of them admits that she did face such practices. Also, 2 women claimed that they have been victims of intimidation by male colleagues and clients which reflects the attitudes of some men towards women in leadership roles in the Mauritian culture. Nevertheless, 61.5% of them (that is, 8 respondents) agreed that discrimination still persists, but in a subtler form.

## **c – The ‘Equal Pay for Equal Work’ Principle**

The CESCRR endorses the principle of ‘*equal pay for work of equal value*’. This means that the Convention advocates a ‘*system of objective appraisal of the requirements of various types of work without taking the sex of the workers into consideration when determining the pay scales*’ (Kallstrom and Eidei, in Alfredsson and Eide, 1999)<sup>31</sup>.

<b>OCCUPATIONAL GROUP</b>	<b>Average Monthly Income of Male (Rs.)</b>	<b>Average Monthly Income of Female (Rs.)</b>
Managers, Professionals, Technicians and Associate Professionals	40,200	29,100
Clerical Support Workers	22,300	17,800

Table 1: Extract from the Gender Statistics, 2016 (Table 12– Average monthly income (Rs) from employment by occupational group, 2016)

<sup>31</sup> ALFREDSSON G. and EIDE A., *The Universal Declaration of Human Rights: A Common Standard of Achievement*, The Hague: Kluwer Law International, 1999, p 496

As noted in the table, the issue of equal pay principle requires urgent attention in Mauritius. A significant gap between the average income of men and those of women can be noted not only at managerial and professional level but, also, at the clerical level.

### **Concluding remarks**

The progress made by women in leadership roles in our contemporary society seems to be too '*gradual and slow*'. The words of the first female prime minister in the Caribbean Commonwealth of Dominica, 1995<sup>32</sup> (in Smith, 2000) rightly reflects the attitude and perspective that need to be adopted when dealing with issues such as gender discrimination not only in companies but also in society, in general.

*'To me equality is the important thing. I don't want preference. I don't want to be preferred as a woman. But I want it acknowledged that I am a human being who has the capacity to do what I do, and it doesn't matter whether I was born a man or woman. The work will be done that way.'*

-Hon. Eugenia Charles

## **B.- A Social Right: The Right to Education of Children with Physical Disabilities**

### **1 – Brief Overview of Methodology**

The research methods used were mainly face to face and focus group interviews with a pre-set questionnaire consisting of both open ended and closed questions (for a detailed description, please refer to Appendix 1). The sample consisted of 50 students mainly from two different schools, one specializing in educating students with mental, intellectual and some physical disabilities (Centre Pour l'Éducation et le Progrès des Enfants Handicapés), while the other focused on students with hearing impairment (Society for the Welfare of the Deaf). Nineteen students surveyed had a mental and/or an intellectual disability and thirty-one of them were impaired with a physical disability.

### **2 – Analysis**

The CRPD enshrines eight guiding principles which help promote the welfare of individuals with disabilities. The main principles being critically analysed in this research paper are accessibility, full and effective participation and inclusion in society, non-discrimination and equality of opportunity.

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<sup>32</sup> SMITH, D., *Women at Work*, New Jersey: Prentice Hall, Inc., 2000, p. 80.

## a – Access to Education

The right to education involves the removal of barriers to have access to education. These barriers may take the form of tangible factors, such as lack of material resources and unsuitable infrastructures, or intangible factors such as lack of access to further education or unfair prejudice. The following sections shall explore accessibility to material resources, infrastructures and further education.

### \* Access to Material Resources

The survey pointed out to the fact that students with disabilities, often, face difficulties to have access to quality education not only as a result of their inherent disabilities but also as a result of external and material factors such as their social class.

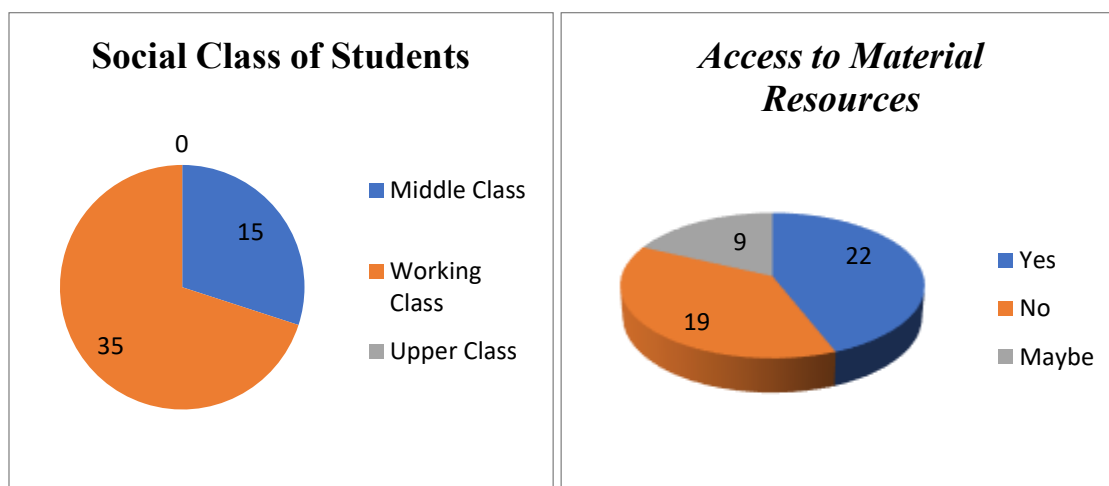


Figure 1& 2: Social classes (assessed in terms of occupation, income and family size) of the 50 respondents of the survey conducted and ease of access to material resources

As shown above, the issue of social class plays a vital role with regards to access to education as 70% of students belong to a working-class background. As pointed out by the longitudinal study conducted by the sociologist, Douglas in his early research of *The Home and the School* in 1964<sup>33</sup> (in Browne, 2008), material factors such as poverty, low wages, poor diet, poor health and housing facilities, amongst others, are major determinants in contributing to educational achievement.

<sup>33</sup> BROWNE, K., *Sociology for AS AQA*, 3<sup>rd</sup> edition, Malden: Polity Press, 2008, p. 360.

The disabled students, as such, face even more material deprivation than the student without any disabilities as a result of their social class and disabilities. For instance, the former also needs additional medical facilities, special learning materials, physiotherapy, to name but a few. Furthermore, another stumbling block faced by several working-class students with disabilities uncovered during the survey is that several of them hailed from ‘*broken*’ families which not only aggravated their financial position but also created a need for psychological support and counselling.

When asked about whether or not, the students easily had access to resources such as books, wheelchairs, hearing aids among others, 22 of them said ‘yes’ (Figure 2). Nevertheless, 96% of them agreed that they needed more resources when asked if they wished to have access to more resources. The students expressed their wishes to have more learning and assistive technologies such as projectors, visual learning devices, more sports and recreational facilities.

### \* Access to Infrastructures

The right to education entails the removal of barriers to access to schools and other educational institutions. Often, physical infrastructures such as roads, the transport system, buildings and schools may impair the ability of some students to have access to these institutions.

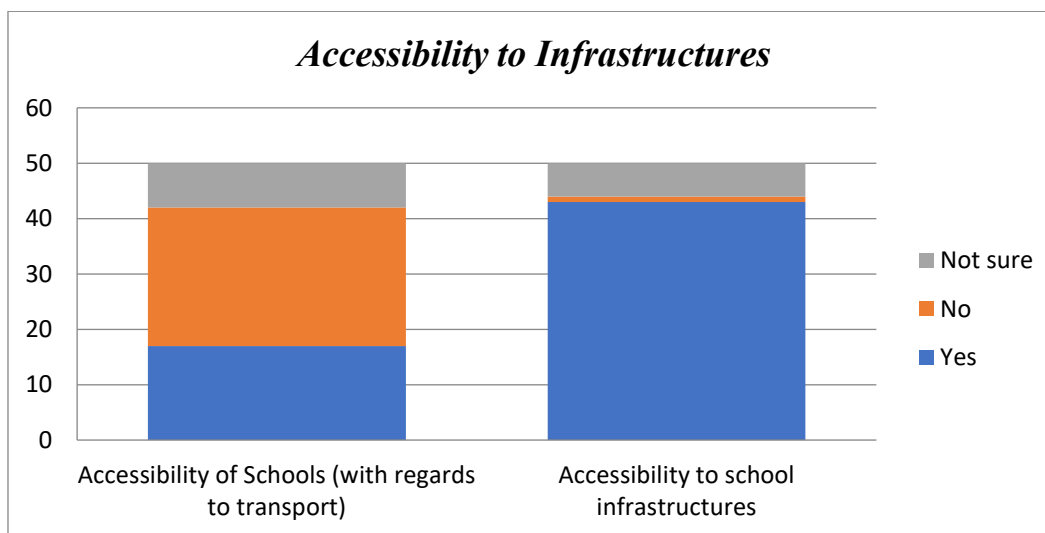


Figure 3: Access to educational institutions in terms of infrastructures

As illustrated in the previous diagram, when asked about how easily accessible (physically) are schools, 43 students (86%) found it more convenient to have access to the school premises as they are adapted to cater for their disabilities. However, 25 students (50%) found it difficult to ‘*reach*’ school mainly due to the lack of infrastructural facilities for people with physical

disabilities such as insufficient wheelchair ramps in public areas, difficulties to identify buses, amongst others. Nevertheless, both schools have made provisions for the transport of students, mainly through private school vans, thus reducing the problem of accessibility to some extent.

**\* Access to Vocational Training and Tertiary Education**

Pursuing further education helps improve the life chances of students by paving the way to more job opportunities. The right to education requires at a basic level the access to primary education and at a later stage- especially for a country aspiring to step in the arena of high-income economies such as Mauritius- access to secondary schooling, vocational and tertiary education.

When asked about whether the students shall attend vocational training after their primary and secondary schools, 62% responded positively, 27.1% said ‘no’ and 10.4% were ‘not sure’. While this represented a quite gloomy picture of the aspirations of the students, the response as to whether or not they were considering attending a university and the reasons influencing their choices were by far surprising, if not, appalling.

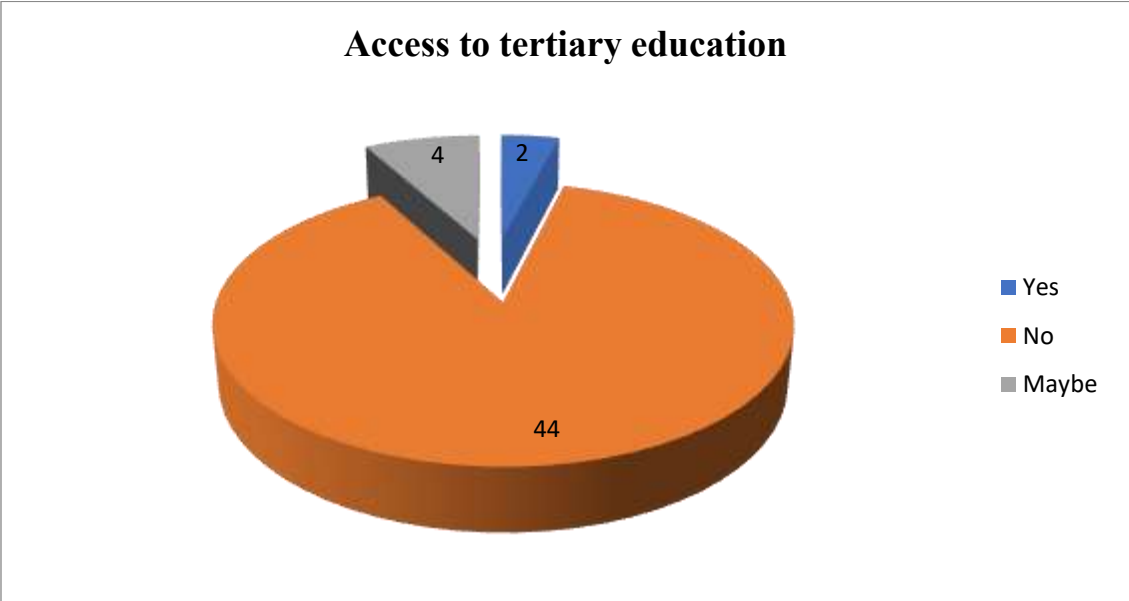


Figure 4: Number of students wishing to undertake further education at a university

Forty-four (88%) respondents mentioned that they were not considering attending a university after their secondary education. Several reasons were provided as listed in the following table. Lack of awareness and difficulties to adapt were the main reasons given.

<b>Reasons given by students for not attending a university</b>
Not aware of what does a ‘university consist of’?
Difficult to adapt and learn
No facilities for interpreters for deaf students
Not relevant to what I want to do in the future
Prejudiced or perceived as being ‘dumb’ by other people
Lack of professional courses available for disabled persons
Hail from a ‘broken family’ and wish to join the job market soon

Table 1: List compiled during focus group interviews undertaken in the survey

There seems to be a preference for manual jobs amidst the students. Several factors may account for this mainly the lack of awareness and the social background of the students, to some extent. While at first glance it seems that the preference for manual jobs may be a ‘convenient’ option for them, a darker implication may underlie this trend. The lack of students with disabilities in white collar jobs may perpetuate the ‘stigma or prejudice’ of them ‘not being capable’ to perform such tasks. Also, it may keep them trapped in the vicious cycle of poverty and limited opportunities.

## **b – Inclusion**

Inclusion is a vital element for the integration of individuals with disabilities in society. It allows them to step out of the microcosm and into the macrocosm of society. The education system is a crucial socialisation institution which facilitates such a transition. In the survey of 50 students, 76% of them agreed that they felt ‘*excluded or isolated*’ from other children in mainstream schools. While at first glance, mainstream education for disabled students may seem to be a much desirable and functional solution, a deeper analysis reveals that it should not be used as blanket policy.

A distinction has to be made between students with physical disabilities and mental disabilities. While more willingness and capacity to adapt may be noted amongst the students with physical disabilities throughout the interaction undertaken during the focus group interviews, the same may not be the case for students with mental disabilities. Students with autism and epilepsy may find it even more difficult to adapt and learn in mainstream schools.

Additionally, several students with disabilities complained about the attitudes of some students without disabilities from mainstream schools towards them. Teasing and bullying seem to be an issue in some cases. One student from

the SWD was repulsed by the unpleasant teasing by students without disabilities from mainstream secondary schools he came across in public buses and called them *'bann Mauriciens sauvages'*. Two explanations may account for this situation: firstly, the longstanding *'tradition'* of segregated schooling seems to have created an *'us and them'* culture and inculcated a narrow perception of what is viewed as *'normal'* in society. Secondly, lack of awareness of the different disabilities and capacities of disabled students may also account for such an issue.

**c – Non- discrimination and equality of opportunity**

When asked about whether or not the students felt discriminated against in terms of access to educational facilities, 36 respondents replied *'yes'*, 12 of them answered *'no'* and the rest could not understand the concept. However, when asked if they should be provided with more equal opportunities at school and society, in general, 45 of them (90%) answered positively and none said *'no'*.

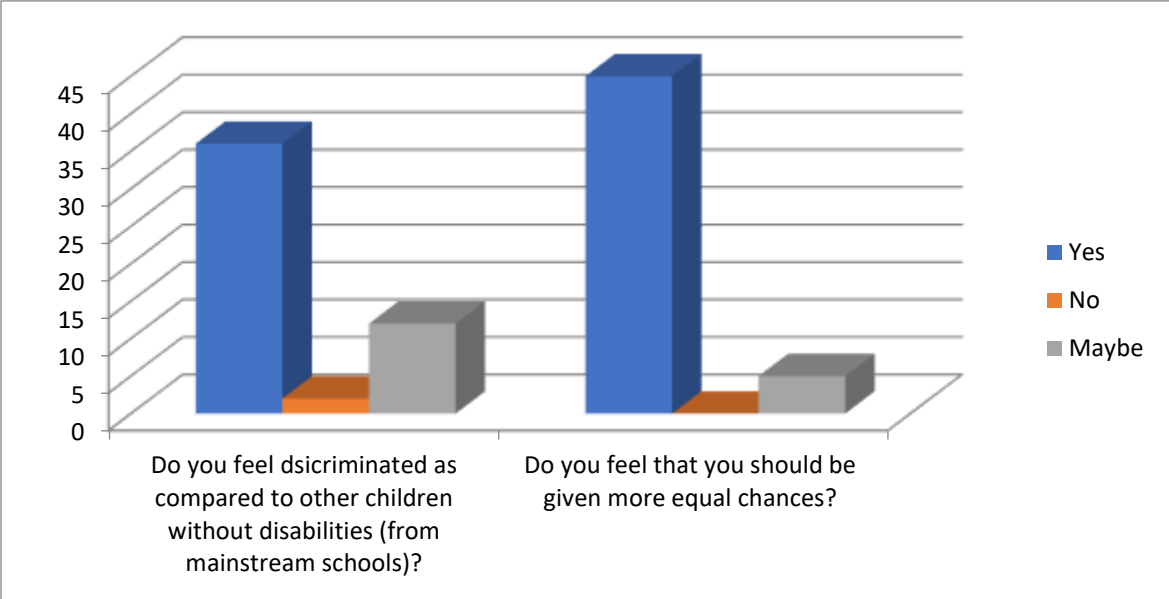


Figure 5: Perception on discrimination and equal opportunities by students with disabilities

There seem to be a major concern and general acknowledgement among the students with disabilities in *'special schools'* that they need to be treated more equally and should be given access to equal opportunities.



## **Concluding remarks**

Overall, it may be noted that students with disabilities face several unequal treatments especially with regards to access to further education. While this seems to necessitate a change in legislations, it does also point out to the need for a change of mindset towards disabled persons. There seems to be an urgent change in perception towards the adoption of a perspective which does not overshadow their capacities by their disabilities and regard them as mere objects of charity by the state but, rather, as individuals having rights.

## **C.- A Cultural Right: The Right to Take Part in Cultural Life of Different Ethnic Groups**

### **1 – Brief Overview of Methodology**

The research method used was 100 questionnaires administered online and face to face in an attempt to reach a greater number of respondents with different backgrounds. The questionnaires comprised of mostly closed questions (for a detailed description, please refer to Appendix 1).

The target population was 100 and the response rate was 76%. A greater reluctance was noted amongst individuals above the age of 40 years' old who seemed to be, as one lady pointed out when asked to fill in the questionnaire, '*not interested in the issue of equal opportunities anymore*'. This '*disenchantment*' unfortunately seems to be a result of the recent political situations in Mauritius.

### **2 – Analysis**

The population of the Republic of Mauritius '*stood at 1,265,309 at the end of 2017*' according to Statistics Mauritius. The multiculturalism aspect of the Mauritian society requires delving into the demographic composition of the different ethnic groups in Mauritius. However, in an attempt to explore this composition through statistics as a starting point, it was noted that the last records of the different ethnic communities in Mauritius, in the Populations Digest (2016), date back to 1972. As mentioned in the census, '*no data on community was collected in 1983, 1990, 2000 and 2011*'.

Hence, the records of 1972 have been used as reference. The main ethnic groups in Mauritius are classified into the Indo Mauritians (often, further stratified into Hindu and Muslim), the General Population (which includes the Franco Mauritian) and the Sino Mauritian.

<b>Total Population as at 1972</b>	<b>850,968</b>
<b>Hindu</b>	428,345
<b>Muslim</b>	137,171
<b>General Population</b>	261,079
<b>Sino Mauritian</b>	24,373

Table 2: Extract from the ‘Population enumerated at each census by community and sex’ table (Table 1.4(b)) from the Digest of Demographic Statistics of 2016

In 2003, the Committee on the Elimination of Racial Discrimination<sup>34</sup> raised the question as to ‘*why Creole and European populations are not identified as separate minority groups*’ instead of falling under the umbrella term of ‘*general population*’? This classification – which was established in 1968 – was deemed to be an inaccurate representation of the current situation in Mauritius.

The Committee also pointed out that the reasons given for ceasing to record the ethnic origins of the different communities in Mauritius as ‘*Indo Mauritians, Sino Mauritians and the General population*’ by the representatives of the state was that such classification was ‘*potentially divisive*’. It has been replaced by a stratification based on religion in censuses (OHCHR, 2003)<sup>35</sup>. Therefore, it is to be wondered whether or not by eliminating the classification based on ethnicity and replacing it with a ‘*supposedly less divisive*’ classification based on religion, the State of Mauritius is stifling the importance of ethnicity as a source of identity? After all, eliminating the visibility of ethnicity in statistics does not lead to its disappearance in the Mauritian culture. However, it reduces its significance and visibility at the heart of policies, rendering it difficult for institutions and individuals to analyse and tackle the issue of discrimination based on ethnicity.

Nevertheless, as the issue of ethnic groups’ classifications and statistics in Mauritius remains outdated and the authorities seem complacent, or rather silent, in addressing this issue, the sample surveyed through the questionnaires can, thus,

<sup>34</sup> OCHR (2003) Committee on Elimination of Racial Discrimination considers Report of Mauritius [online]

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<http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13105&LangID=E>

<sup>35</sup> OCHR (2003) Committee on Elimination of Racial Discrimination considers Report of Mauritius [online]

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<http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13105&LangID=E>

be deemed to be representing the different ethnic groups in Mauritius based on the 1972's (last census based on ethnicity) classification of ethnic communities.

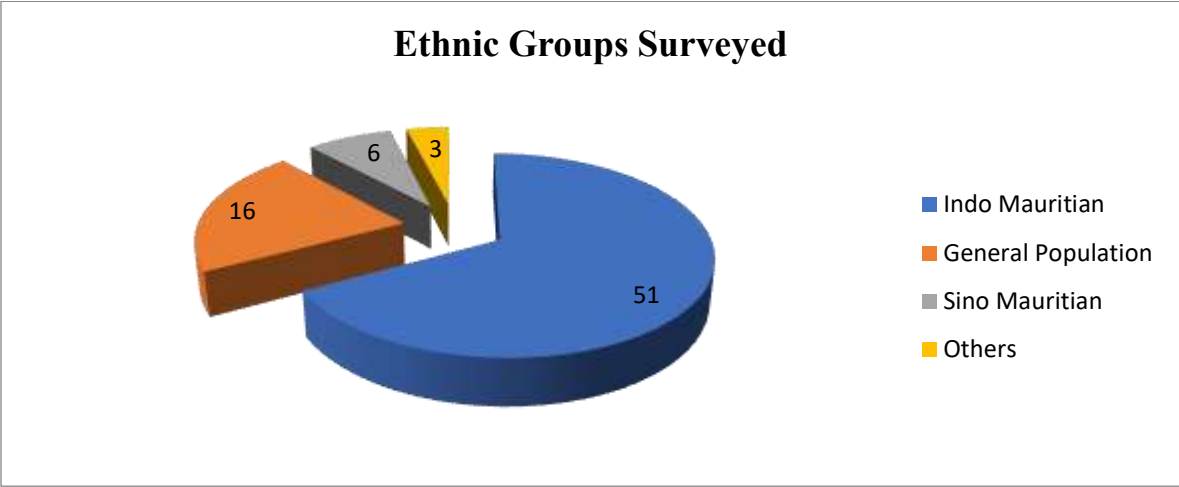


Figure 6: Stratification of the ethnic groups of the 76 respondents in the survey conducted through the dissemination of questionnaires

The respondents mostly belonged to the Indo Mauritian community, followed by the General Population, the Sino Mauritian and ‘others’ (not sure about their ethnic origins) as illustrated in the previous diagram.

When asked about whether ‘they are aware of the Equal Opportunities and the Equal Opportunities Commission’, 50% of the respondents replied that they were not. The right to take part in the cultural life remains an even more ‘foreign’ concept with only 30% of the respondents having ‘heard about’ it.

The right to take part in cultural life includes the right to have access to one’s language and artistic creations<sup>36</sup>. As such, 43% of the respondents stated that they have adequate access to their language in public spheres of life, such as before the official and judicial authorities, 25% of them were not sure while 31% replied ‘no’. One possible explanation for this may be that most of the respondents who replied ‘no’ were administered the questionnaires personally and had difficulties to understand English, except the basic words used. This may be a result of their educational background. Hence, this shows the need for the usage of their mother tongue, ‘Mauritian Creole,’ in the public spheres of life.

The respondents in the survey affirmed that they have access to literary works and artistic works related to their origin ‘to some extent. Nonetheless, 65% of them responded that they wished to have access to more resources so that they can participate better in the cultural life.

<sup>36</sup> STAMATOPOULOU, E., *The Right to Take Part in Cultural Life (article 15(1) (a) of the Covenant*, Geneva: United Nations, 2008, pp. 4-5.

The survey highlighted the plight of the Sino Mauritians' rights to take part in the cultural life. All of the 6 respondents claimed that they felt 'discriminated in their rights to take part in cultural life' in Mauritius as compared to other ethnic groups and wished to have access to more resources in terms of artistic creations, amongst others. Another minority group which the study aimed to explore was the 'Creole community'. However, given the fact that this ethnic group is included in the 'General Population' category (which also included the Franco Mauritian) made it difficult to reach valid conclusions.

### **Concluding remarks**

Ethnicity is a vital component of the multicultural Mauritian society. As a result, sweeping the issue of ethnicity under the carpet is not a plausible solution and may in the long-term lead to misunderstandings and unfairness or perceived unfairness. Hence, it is to be noted that there remains much to be done in this context. An accurate representation of the different ethnic groups in our contemporary society would be a good starting point and shall allow researchers to make more valid conclusions and fruitful recommendations.

## **IV.- Recommendations**

The following sections constitute of general recommendations and specific recommendations made based on the present legal framework, international organisations' reports and the analysis of the findings of the surveys conducted in the three areas explored.

### **A.- General Recommendations**

The constitutionalisation of some economic, social and cultural rights remains a vital issue with regards to the future of the safeguard of human rights in Mauritius. The supremacy of the Constitution in our jurisdiction shall afford a greater protection to these human rights than the protection provided by national laws. It will not only ensure that any law enacted inconsistent with the provisions of the Constitution shall be rendered null and void, but also, mean that future governments will not '*tamper*' these rights based on their '*whims and caprices*' or political inclinations.

Also, given the increasing blurring of the categorisation of human rights into civil and political and economic, social and cultural rights<sup>37</sup>, the constitutionalisation of these rights will be more compatible with the notion of all equality of all human rights. It may subsequently breathe in some dynamism in our ‘50 years old Constitution’. The Committee on Economic, Social and Cultural Rights (2010) also recommends enshrining ESCR in our Constitution<sup>38</sup>.

The LRC (2010)<sup>39</sup> recommends affording constitutional protection to the following socio-economic rights, relevant to the present study: the right to education, the right to language and culture and the right to freedom of trade, occupation and profession.

## **B.- Recommendations with regards to the Right to Work of Women**

### **1 – Legal Changes**

Changes in legislations relating to working conditions were the most ‘popular’ recommendations made by respondents in the survey conducted through questionnaires. There seems to be a growing consensus that laws regulating working conditions, such as leaves and working hours, may help women cater for their dual burden of housework and ‘paid work’. However, one director of a company rightly pointed out in the questionnaire that this may have a possible counter effect, by dissuading employers to assign leadership roles to women.

Nevertheless, laws – having a normative role in society – may be used to generate a ‘change in perspective of the traditional roles assigned to women’. For example, legislations may acknowledge the potential role of men as caring for children by providing more possibilities for leaves or longer paternity leave, instead of simply thrusting childcare responsibilities mainly upon women. This may diminish the segregation of the roles that men and women adopt within the family and, simultaneously, promote a more ‘equal view of gender roles adopted by men and women’ amidst employers leading to less prejudice and stereotypes in the workplace<sup>40</sup>.

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<sup>37</sup> UNITED NATIONS, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, Geneva: United Nations Publication, 2005.

<sup>38</sup> COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, Geneva: United Nations, 2010.

<sup>39</sup> LRC, *Issue Paper: Constitutional Protection of Human Rights*, Port Louis: LRC, 2010.

<sup>40</sup> WILLIAMS, F., *Social Policy: A Critical Introduction*, Cambridge: Blackwell Publishers, 1989.

Positive discrimination means giving disadvantaged groups more favourable treatment than others to make up for the disadvantages they face<sup>41</sup>. The issue of exercising positive discrimination to compensate for women's dual burden and minority position in top leadership positions in companies has kindled much debate over the years. Nevertheless, in a judgment delivered by the European Court of Justice in the case of *Marschall v. Land Nordrhein Westfalen 1998 IRLR 39*, it was held that positive discrimination, with regards to promotion and access to a job, could occur. Nonetheless, a male candidate should not be excluded from the outset and both male and female candidates should be equally qualified for the post in question. Such practices may be used in the short term to improve women's chances of acceding to leadership roles in the corporate sector.

## **2 – Non-Legal Changes**

Additionally, educational programmes promoting soft skills should be encouraged in schools and tertiary institutions. In the survey conducted through questionnaires, 20% of the respondents suggested that lack of confidence may be one reason to explain why fewer women propel themselves in the limelight to grab promotions and other opportunities. Hence, two of them recommended that campaigns on women's empowerment and on soft skills should be carried out. The schools' curriculum may be reviewed as well, in order to avoid socialising young girls into accepting the stereotypes and 'traditional' roles assigned to women.

## **C.- Recommendations with regards to the Right to Education of Children with Disabilities**

### **1 – Legal Changes**

The LRC<sup>42</sup> (2010) proposes that the right to education should be included in the Constitution of Mauritius and that the rights of persons with disabilities should be guaranteed by affording constitutional protection to them. This may be done primarily by including 'impairment' or 'disability' on the exhaustive list of grounds upon which discrimination is prohibited at Section 16 of the Constitution.

The Committee on the CRPD (2015) drew the attention of the authorities to the need to consider the derogatory language used against persons with disabilities 'throughout laws, policies and discourse'. It highlighted the need to reconsider the use of definitions used in the TEDP Act and the EOA which reflects

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<sup>41</sup> BROWNE, K., *Sociology for AS AQA*, 3<sup>rd</sup> edition, Malden: Polity Press, 2008, p. 506.

<sup>42</sup> LRC, *Issue Paper: Constitutional Protection of Human Rights*, Port Louis, 2010, pp. 4-6.

the medical approach to disability inconsistent with the CRPD. It is, therefore, recommended that the necessary amendments are made to the legislations.

In an attempt to encourage more students to pursue further education and have access to the labour market, some more specific changes should be brought in the law. For instance, when carrying out the social survey, one teacher mentioned that some employers are more likely to discriminate upon persons with disabilities and do not abide to the legal requirement of employing a certain percentage of disabled persons (as provided by the TEDP ACT). They claim that they ‘*prefer to pay the fine of MUR 20,000*’. This shows that the fine imposed upon such violation does not act as a deterrent. As such, it is recommended that the law is amended to include more severe sanctions for non-compliance and discriminatory practices against individuals with disabilities.

## **2 – Non-Legal Changes**

Mainstream education, especially for children with physical disabilities, should be encouraged. While this may at first sight be a legal change, a more flexible ‘individual approach’ is recommended. For instance, the managers of educational institutions and NGOs may adopt an individual case by case basis in determining the suitability of students in being integrated in mainstream schools as inclusion cannot be used as a ‘blanket policy’ (please refer to chapter 4). Public spaces should also be made more accessible -by local authorities and companies- to persons with disabilities by including ramp walks, signposting and markings to name but a few, in buildings. This may help promote accessibility, throughout the country, and integration. It may also help mitigate the ‘us and them’ culture and prejudiced perspective adopted towards students with disabilities.

## **D.- Recommendations with regards to the Right to Culture of different ethnic groups**

### **1 – Legal Changes**

As a starting point, there seems to be a need to review and reconsider implementing a classification of the different ethnic groups in Mauritius. The Committee on the CERD<sup>43</sup> (2013) recommended, at paragraph 17 of its concluding observations, the reconsideration of the collection of data based on ethnicity. It further iterates that such a step shall help devise better policies to tackle the issue of discrimination based on ethnicity in Mauritius. The fact that religion and ethnicity are interrelated does not mean that there has been a process

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<sup>43</sup> COMITÉ POUR L'ÉLIMINATION DE LA DISCRIMINATION RACIALE, *Observations Finales concernant les quinzièmes à dix-neuvièmes rapport périodiques de Maurice, adoptées par le comité à sa quatre-vingt-deuxième session*, Genève : Nations Unies, 2013.

of ‘osmosis’ between the two concepts. The interconnectedness and distinction have been explained in the British case of *Mandla v. Dowell Lee 1983 ICR 385* whereby Court recognised the ‘Sikhs’ as being an ethnic group because they have ‘a historical background, traditions and culture’ of their own. The visibility of the categories of ethnic groups on official statistics may help different institutions to deal with discrimination based on ethnicity. It may also aid in devising more effective legislations to tackle this issue.

## 2 – Non Legal Changes

The Committee on the CERD (2013) also highlighted an unfortunate set of practice and mindset imbibed in the Mauritian culture. It deplores the existence of ‘a hierarchy along skin colour, ancestry, caste and racial lines (...) whereby groups are perceived as or feel superior or inferior to others.’ It further advises that the ‘recommendations made by the Truth and Justice Commission’ relating to creating a ‘less racist and elitist’ society are implemented. These recommendations include allocating more resources for this purpose and conducting awareness campaigns.

## V.- Conclusion

*‘This culture of equality is not an inborn attitude. It is more of a skill that needs to be awakened, developed and exercised as an art of mastering our actions.’*

- Danisha Sornum (2014)<sup>44</sup>

The theoretical, normative and legal framework governing human rights and equal opportunities have been explored in the preceding chapters. The extent as to which the different legislations have seeped into the culture of the Mauritian society and the gaps that need to be filled in three areas have been identified. However, it is to be noted that this research paper has been limited to the study of these three specific areas.

Overall, it may be noted that several legislations tackling human rights and the principle of equal opportunities have sprouted up in Mauritius in the last few years. While, they do seem to confer some positive effects on the lives of individuals, the root of the problem remains twofold: the complacency and lack of transparency on the part of the State, in some cases, and the mindset of

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<sup>44</sup> EOC, *Equal Opportunities Commission Report 2014*, Port Louis: EOC, 2014.



individuals. There, thus, remains much to be done, especially in the case of the rights of individuals with disabilities and the rights and recognition of the different ethnic groups in Mauritius.

At the dusk of the 50 years of the independence of Mauritius, we find ourselves oscillating over the edge of a society whereby equality and meritocracy shall prevail or a society fraught with inequality, racism and an elitist culture. The victory of the culture of equality of opportunities depends largely on the steps to be taken by the State and the inhabitants of Mauritius, in general. Maybe, we can conclude at the end of the present study by saying that in the fight for equality, this golden jubilee marks just the beginning.

## Appendix

	<b>TARGET POPULATION SAMPLE</b>	<b>MAIN RESEARCH METHODS USED</b>	<b>AIMS AND OBJECTIVES</b>
<b>Right to Work of Women</b>	20 men and women in top leadership roles (as directors and managers) in companies	<ul style="list-style-type: none"> <li>• Questionnaires (online and postal)</li> <li>• Official Statistics</li> </ul>	<ul style="list-style-type: none"> <li>• Assess the extent to which women have access to leadership roles in companies</li> </ul>
<b>Right to Education of Children with Disabilities</b>	50 Students with mental and physical disabilities from two 'special schools'	<ul style="list-style-type: none"> <li>• Focus Group Interviews</li> <li>• Face to Face Interviews with a preset questionnaire</li> </ul>	<ul style="list-style-type: none"> <li>• Analyse and evaluate the right to education of students with disabilities in line with the CRPD main guiding principles</li> </ul>
<b>Right to Take Part in Cultural Life of Different Ethnic Groups</b>	100 individuals of different ethnic backgrounds	<ul style="list-style-type: none"> <li>• Questionnaires: Online and self-administered</li> <li>• Official Statistics</li> </ul>	<ul style="list-style-type: none"> <li>• Assess the extent to which different ethnic groups, partake in the cultural life in Mauritius</li> </ul>

Table 1: Sample size, research methods and aims of the surveys carried out