

## Personal Status in Civil Versus Religious Courts: A Controversial Issue

Areen Hawari\*

Personal status issues are considered among the most private and sensitive issues in all societies. As they concern private and family life, we do not generally wish to address them outside the scope of our homes and families; we often perceive these issues as sacred. However, reality sometimes obliges us to turn to the legal system to resolve family disputes, such as in cases of complicated cohabitation, failure of spouses to fulfill familial responsibilities, and the need to decide on child care and guardianship. Thus, litigation becomes inevitable, and even at times preferable to living in unhealthy relationships, including ones accompanied by violence and psychological, physical, and economic insecurities. In many cases, women suffer more than men in unhealthy relationships, since they tend to be the weaker party within existing social, economic, cultural, and political structures. Resorting to a third party becomes necessary. In doing so, we bestow great value on the legal institution, not merely because the issues are private and sensitive, but because we empower it to regulate our lives within the private sphere, and to determine our individual status and behavior within the public sphere as well. For example, a woman suffering from domestic violence cannot exercise her life in the public sphere with confidence, freedom, and well-being. Similarly, a father who is unjustifiably deprived from seeing his children cannot be fully productive in his work or social activism.

Laws reflect the values of the legislature, which consequently perpetuate these values within the society. As noted, these legislative values define personal status issues, which make the laws central in individuals' lives. This explains the presence of great disagreements over such laws, whether in *al-dakhel* (inside Israel), in the Arab and Muslim societies, or worldwide. The debate over amending personal status laws in the Arab world has reached a boiling point, whereby feminist and human rights activists have taken a major role in enacting these amendments, while absorbing much of the attack as well.

The Moroccan Personal Status Code is among the most successful achievements. Approved in 2006, the Moroccan Personal Status Code raised the marital age to

18, granted women *willaya* (the right to decide who and when to marry), and placed divorce under judiciary supervision. It also acknowledged women's monetary rights to claim their spouses' earned resources.

Egyptian activists have succeeded in enacting the *Kholoa* Law, which granted women the right to attain a divorce without the approval of her husband. Legislative amendments to other laws enable women to travel without their husbands' approval.

It is not a coincidence that personal status issues were raised again immediately following the revolutions in the Arab world, especially in Tunisia and Egypt.<sup>1</sup> In *al-dakhel*, the process of amending the Family Rights Law lasted several years and has raised considerable debate among different community groups regarding its legitimacy and its essence.

The rest of the article will address the amendment to the Family Rights Law, its causes, content, and the debates surrounding it. In conclusion, I will briefly address the issues of debate for changes at present.

Enacted by the Knesset in 2001, following the initiative and efforts of the Committee for Equality in Personal Status, Amendment Number 5 to the Family Courts Law provided the opportunity for Muslims and Christians to choose to conduct litigation in either the Family Court or religious courts over most matters of personal status. However, marriage and divorce cases are exclusively kept within the jurisdiction of Islamic and Christian religious courts, similarly to Rabbinical courts. This amendment granted Muslims and Christians a right already enjoyed by Jewish citizens since the enactment of the Family Courts Law in 1995. Prior to this amendment, Muslims could only approach Sharia courts in most issues of personal status,<sup>2</sup> and Christians could only approach Christian courts in issues of marriage, divorce, and alimony for married woman. The 2001 Fifth Amendment enabled Muslims and Christians to choose either their respective religious courts or Family Court for resolving matters such as alimony, child support, custody, and guardianship.

The debate on the amendment addressed issues of principles and procedures. Those rejecting the bill on grounds of principle argued for preserving religious institutions and preventing the transfer of their authority to civilian courts. As a

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<sup>1</sup> See NGOs statement against nominating Judge Albaja as head of Family Appeals Court, and on Personal Status Program which includes cancelling *Kholoa* Law and termination of mothers' custody at the age of 7 for boys and 10 for girls. See New Woman Foundation: <http://nwrcegypt.org/en/>.

<sup>2</sup> Except for inheritance cases where jurisdiction has been solely with civil courts, unless all stakeholders agree and approach religious courts by written request.

minority living in a Jewish state, Arabs have the right to autonomously oversee their cultural and religious affairs. Nonetheless, cultural autonomy is a collective right that should not supersede or sacrifice individual rights.

Supporters of the amendment argued that it is the individual's right to choose the legal system she prefers to adjudicate her case, whether religious or civil, as it is an inherent human right to be preserved by the principles of democracy. The Committee for Equality in Personal Status claimed that rulings issued by religious courts were unfair to women. Others pointed out the importance of change coming from within the Palestinian society, especially on matters concerning values and social behavior, rather than through Israeli legislation, while ignoring the fact that religious courts are subject to oversight by the Israeli Ministry of Religion and the Ministry of Justice. Moreover, Islamic religious court judges are appointed by the Committee for Nomination of Judges, an official committee that consists of representatives from the Israeli government, rather than nominated by the Palestinian society. In addition, the law governing the Sharia Court has an unsacred and secular basis, since it is based on the Ottoman Family Rights Law, and established under the Ottoman Empire. Indeed, as a product of jurisprudence relying primarily on the al-Hanafi school of Islamic Law, its content can be subject to amendments, as has been done in most Arab countries from a jurisprudence perspective.

The Committee for Equality in Personal Status also claimed that non-religious individuals should have the right to choose litigation in civil courts on personal status issues. However, the Family Rights Law demands that the Family Court apply religious provisions just as they are applied in religious courts, granted they do not contradict Israeli laws, in correspondence to the litigant's religious denomination in personal status cases. This provision places Israel's civil laws above religious laws. However, the Committee maintains that the Family Court is more committed to applying civil laws, particularly the Law of Equal Rights for Women of 1951 and the Law of Legal Guardianship of 1962, which provides for both parents sharing equal custody of their children.

Some critics noted that the amendment would replicate those applied to Jewish women and thus reproduce their weaknesses. In the matter of the jurisdiction of courts, if the husband approaches the religious court first, then proceedings will take place in the religious court. Furthermore, it would reproduce the principle of "linking litigation," whereby if a husband files for custody in a religious court, for example, other matters (such as alimony and child support) may be

connected to it.<sup>3</sup> The Committee followed the litigation model for Jews, believing that contradicting this model would be difficult. Nevertheless, through the process towards enactment, the Committee succeeded in canceling the "linking" requirement to resolve all issues within a single court.

Other objections to the law were procedural, such as in noting that proceedings in religious courts are conducted in Arabic. Women may thereby feel less alienated and confused, resulting in faster proceedings and consequently lower legal fees. Considering the aforementioned criticisms, it is clear that the legislative debate cannot be reduced simply to positions of "secular" versus "religious," nor human rights versus conservative. This is not to say that debate along these lines did not occur; there were voices insisting on limiting litigation to Muslim and Christian religious courts since they are considered the preservers of "holiness" and a "national" stronghold. Others object since they consider the Family Court the ultimate expression of "secular" practice.

Eleven years have passed since the amendment which provided women and men the possibility to choose litigation procedures for personal status issues (except for marriage and divorce). Nonetheless, we cannot firmly state that one court or the other is more equitable in terms of its decisions, actions, or women's feeling of fairness, since no reliable research has been conducted on these issues. However, the feedback from many lawyers indicates that the amendment has challenged religious courts to improve their performance and make more equitable decisions. Lawyers and activists in the Committee for Equality in Personal Status point out that the Family Court relies more on the principle of equality, as well as on "the interest of the child" principle, and equal rights for both parents in matters of custody of minor children.

Numerous issues remain to be addressed. Feminist platforms have it taken upon themselves to engage with many of them. Recently, the Committee for Equality in Personal Status succeeded in changing the marital age to 18 years old and ran an important campaign against polygamy. Kayan Feminist Organization supports litigant women in personal status issues, providing papers on personal status such as gender readings to the Christian courts. Moreover, Women and Horizons Organization is conducting research in order to amend certain provisions of the Personal Status Law applicable to Sharia courts, and it launched a campaign several years ago to defend women's right to inheritance.

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<sup>3</sup> This might have especially harmed Christian women if we are to assume a Christian woman would prefer Family Court, since before the amendment Christian women could only approach the civil court in cases of child custody and alimony. According to the "linking litigation" principle, suits are to be adjudicated in the Christian court if the husband approaches it first.

Feminist platforms seem to be carrying the burden. In my opinion, legal, civil society and political parties should all be part of the process to make changes in personal status issues, not only legally, but also socially and culturally. Raising the marital age will not be sufficient protection for young women, since the society lacks readiness to abide by the statute, and anti-polygamy laws will only succeed through firm social attitudes and leaders taking positions against this phenomenon. Religious and civil laws will not defend women's right to inheritance so long as political and religious leaders do not uphold this right and the educational leadership does not instill principles of equality and human dignity in future generations.

**\*Areen Hawari** is a feminist activist and a Ph.D. candidate in Gender Studies at Ben Gurion University.