

Eleven Years Since the Amendment to the Family Rights Law: Achievements and Challenges

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In 2001, the Knesset passed amendment No. 5 to the Family Courts Law (1995), under which Muslim and Christian litigants were provided with the option to approach Family Courts on issues related to personal status (except in cases of marriage and divorce, which remain under the exclusive jurisdiction of the different religious courts). Prior to the amendment, litigants were able to approach only religious courts for issues pertaining to personal status. The amendment is the result of a six-year struggle led by feminist and human rights organizations through their participation in the "Committee for Equality in Personal Status," which aims to improve Arab women's state in areas related to their personal status. The committee relies on the experience of many lawyers, who through their work have seen how religious courts adversely affect women's rights by adhering to stereotyped gender roles and the patriarchal structure of the society.

The Nakba affected Palestinians' status in the state, in particular women's status. Consequent to economic hardships and the political, national, and cultural marginalization experienced by Palestinians in Israel, culture has turned into an end in itself, whereby its preservation symbolizes defense of the homeland. Women have become a symbol of nation, land, and culture. Culture, with its religious values, beliefs, norms, customs, and family tradition, has become a tool for dominance: it justifies and legitimizes social norms, including in aspects related to women's status and role.¹ This situation has rendered any attempt to make changes in personal status laws subject to broad and complex debate due to potential national, cultural, religious, and civil ramifications.

Personal status laws regulate spousal and familial relations such as marriage, divorce, child custody, alimony, division of property, and the like. These laws reinforce national, religious, and cultural identity, and can serve as tools for preserving cultural uniqueness and autonomy.² Thus, the aforementioned amendment stimulated considerable debate among the state's religious, human

¹ Ghanem, H. (2005), *Attitudes Towards the Status and Rights of Palestinian Women in Israel*, Issued by Women Against Violence Organization (WAVO) (Arabic).

² Note that Sharia courts in Israel are subject to Israeli laws and the judiciary system.

rights, political, and feminist circles, which lasted throughout the drafting period of the amendment, from 1995 until its passage in 2001.

In my opinion, the occurrence of the debate is not surprising, but to be expected within a society that has suffered occupation and marginalization of its cultural and linguistic features, as well as other facets of collective and personal identity. The society perceives any change in its patriarchal structure as a threat to its continuity, especially if these changes concern women, as they are perceived to be the primary conveyers of identity, heritage, and culture. The initiative to provide Arab citizens the option of civil courts for personal status issues can be considered a challenge: it alters the societal and legal discourse prevailing among Palestinians in the state concerning their status in general, and Palestinian women's status and rights in particular.

Undoubtedly, the amendment has had serious implications on gender and legal discourse, which subsequently has affected societal practices. There is a dire need to initiate alternative social discourse based on human and women's rights charters, one that emphasizes the necessity to guarantee equality, freedom of choice, and freedom of faith. Through its tireless activity, the Committee for Equality in Personal Status has been emphasizing these principles.

Aimed at providing Arabs, particularly women, with the option to pursue litigation in either civil courts or religious courts, the amendment highlighted the plight of women under the existing personal status laws and constituted a challenge for religious courts to improve their functioning. In addition, it assisted in articulating critical and sensitive issues which were not previously debated politically or socially, especially from feminist and human rights perspectives, in order to create alternative frameworks. Some of the more notable advances include: raising the marital age from 17 to 18 (recently achieved);³ fighting polygamy; launching mass campaigns on issues that were long considered "taboo" (since they are closely associated with religious laws and are socially rooted); proposing reforms to the Sharia Court, such as the nomination of female judges and arbitrators; reforming dowry processes; abolishing marital obedience (of a wife to her husband); and advancing other reforms related to inheritance.

On the other hand, it should be noted that despite the contribution of the amendment in stimulating debate and creating alternatives for dealing with sensitive social issues, one cannot claim that civil courts' rulings are more just than those of Sharia courts towards Muslim women. A relatively short period of time has passed since the amendment was enacted, hence any conclusive statement regarding its efficacy for women would be inaccurate and uninformed.

³ See the working group for equality in personal status issues: <http://pstatus.org/en/>

To date, no comparative research has been conducted in this area, and lawyers' anecdotally-based positions differ.

Kayan's data indicates differences in rulings in custody cases between Sharia Courts and Family Affairs Courts: Family Affairs Courts tend to grant guardianship to women, and their proceedings are usually shorter.⁴ Conversely, there is a relative advantage for women in Sharia Courts in alimony cases, especially as concerns the duration of proceedings and accessibility. However, civil courts have awarded higher amounts, which indicates a partial application of equality within civil courts, and which have begun applying principles of the civil code, even though patriarchal terms are still in use: *noshoz* (deviation), *ihtibas* (keeping woman at home), and *taa'a* (obedience).⁵

In addition, family courts still pose several barriers for Muslim litigants: accessibility (they are usually not located in Arab neighborhoods); financial burdens (fees and expenses are higher in family courts than in Sharia Courts); Arab women's sense of "alienation," especially due to the use of Hebrew in the court; the national and gender identity of the judges; and the court's extensive bureaucracy. It lies within the state's and the court administration's responsibility to ensure the courts' accessibility by Arab litigants, particularly women.

Finally, it is still too early to judge the experience of women in civil courts. Nonetheless, providing a democratic choice is an achievement in itself that must be maintained and further developed to ensure de facto equality. There is no doubt that bringing women's issues from the private to the public sphere, and through it criticisms of the patriarchal societal structure, has the potential to strengthen Palestinians' social resilience within the state, since patriarchal practices weaken society and constrain the advancement of social justice for the individual.

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⁴ A summary of the legal department activity 2006-2010, "Legal Advocacy in Personal Status," Kayan Organization can be found at: <http://www.kayan.org.il/ar/inner.php?ID=196>

⁵ Batshoun, Shirene (2010), Wife's Alimony and the Principle of Equality between Men and Women, Al-Siwar publication, Vol. 37 (Arabic).