

Towards Amending Personal Status Law in Sharia Courts

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Women and Horizons Organization was able to break the wall of silence regarding personal status law applied in Sharia courts in Israel since 1917 without any significant changes to this day.¹ Muslims in Israel are still governed by Ottoman law, imposed on us as if it were sacred, even though it was formulated by religious scholars who are humans like the rest of us. Not to mention that Sharia courts present themselves as faithful trustees of the law, restricting it mostly to the al-Hanafi school and overlooking the needs of current times and reality, which substantiate changes pursuant to the principle that the law corresponds to the times.

The Ottoman Family Rights Law needs amendment of its essence, as well as changes in terminology to suit developments taking place in the society, with reference to human rights and in particular to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child. Women and Horizons Organization considers their application an urgent need, and is currently working on developing legislative proposals. Amending the law could elevate women's status within the society and enhance their role in public and private spaces in all areas, suiting recent developments related to modern Muslim families, in addition to social, economic, and cultural transformations in the Arab Palestinian community in Israel.

The suggested amendments to personal status laws applied in the Sharia Court are based on religious scholarship. While they are considered new on the local level among the Arab Palestinians in *al-dakhel* (inside Israel) and may lead to some controversy, they are not new compared to what has been happening in the Arab world, where serious changes and amendments have taken place, including preventions or restrictions placed on polygamy and the choosing or

¹ This article addresses the laws applied in Sharia courts only, while noting that in most cases of personal status, except in marriage and divorce, there are many litigation options, for instance, the Civil Court adjudicates in inheritance cases unless all stakeholders agree to approach the Sharia Court. In other cases of personal status, i.e., child custody and alimony, the litigant may chose the Sharia Court or Civil Court, according to Amendment Number 5 to the Family Courts Law passed in 2001 following the recommendation of the Committee for Equality in Personal Status.

elimination of the requirement of a guardian to consent to marriage (traditionally, the bride's father).

As noted, these laws rely on the four schools of Islamic jurisprudence and these schools rely on individual scholars who interpret the Quran and Sunnah from the very distant past. We need jurisprudence to suit the current reality and the status of women, respecting their human dignity and equal treatment before the law without discrimination based on gender, through new readings and diversifying reference to the different schools. It is time to build on international charters and conventions to amend statutes that relate to women as minors, regardless of their age, placed under male custodianship.

Personal status refers to the sum of natural or familial characteristics distinguishing a person from others that have significance under the law, i.e., male or female; married, widowed, or divorced; legitimate birth; legally competent or a minor; and incompetent due to insanity or another legal reason. Personal status laws form sets of rules, provisions, and principles regulating relations among individuals according to their kinship, including provisions on engagement and marriage, dowry, alimony, divorce, custody, inheritance, and trusteeship. They also establish rights and duties arising from such relationships at different stages, derived from provisions of the Islamic Sharia schools and interpretations addressing new circumstances. The Family Rights Law and other personal status laws address issues of marriage and divorce, their implications, inheritance issues, wills, and so forth.

Personal status laws play an important role within the family, with significant influence on women and children. The laws concern men and women together since they regulate family relations before and during marriage and in cases of divorce. However, they are more associated with women since women are considered the weaker party in personal relations, and a place where they are denied rights due to prejudice, oppression, and inequality. Their status is reflected in the use of legal terms offensive to women, such as *akid nikah* (conjugal contract) and "obedience." These terms refer only to legitimizing the sexual relationship with no reference to building a family. While a conjugal contract gives legitimacy to marriage in general, obedience is limited to women obeying men, even though we know that the time of slavery is over.

Over the past two years, Women and Horizons Organization has conducted research on personal status laws as applied in Sharia courts in Israel. Dr. Mousa Abu Ramadan is leading the study, assisted by Dr. Ashraf Abu Zarqa and the author of this article. The study aims to examine the extent to which the laws correspond to principles of dignity and equality, and at building several openings for amendments from enlightened religious perspectives to suit real situations

and incorporate human rights. Based on the results, the organization has drafted several legislative provisions and is currently advocating for its reforms, including: minimum age for marriage, guardianship in marriages, and preventing or restricting polygamy. The research and its findings will be published soon. Women and Horizon Organization will also work to advocate that these provisions be enacted into law by the Knesset. Women and Horizon Organization has already started the process of collaboration of members of Knesset, clerics and judges in Sharia courts, and has organized two workshops attended by judges from the West Bank, as well as MKs, feminist activists, and lawyers.

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