

Christian Courts: A Feminist Perspective

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Christian courts in Israel enjoy special legal status and considerable autonomy compared with the other religious courts. While religious courts in Israel are subject to state supervision and/or intervention, regarding procedural functioning, appointment of judges, and other issues, Christian courts in Israel enjoy complete independence regarding appointment of judges, imposing and collecting court fees, managing budgets, and in setting legal procedures. In this article, I present the ways different denominations of Christian religious courts address divorce and separation cases, based on my interviews with eighteen women who have approached these courts. I then discuss some of the consequences stemming from the autonomy enjoyed by Christian courts in Israel.

Divorce is not allowed in Roman Catholic and Malkite Catholic courts. Orthodox courts recognize reasons for divorce and annulment of marriage, although these reasons differ for husbands and wives. In Roman and Malkite Catholic courts, annulment and voiding a marriage can be requested: annulment based on the absence of sexual relations, and voiding based on various legal reasons with the free consent of both spouses. In both procedures the marriage can be annulled and the spouses' status reverts to single. In addition, abandonment may be requested which is a declaratory ruling and does not liberate spouses from marital status.

Analysis of the interviews I conducted with women who approached Orthodox courts shows that the majority of divorce proceedings (66% of procedures) were submitted with the consent and initiation of both spouses. In 40% of the cases the parties changed their denomination from a Catholic to an Orthodox denomination, in order to make divorce possible. Fees collected for divorce proceedings in Orthodox courts range from 3,000 to 6,000 ILS, and in cases where the parties change their denomination, fees can increase to 13,000 ILS due to additional fees for changing denominations.

It is worth noting that these fees are considered high in comparison with fees collected by other religious courts (223 ILS for divorce fees in Islamic and Druze

courts), or when compared with fees collected in Family Affairs Courts (230 to 467 ILS for divorce, and 2,798 ILS, or up to 1% of the amount of assets in cases of property claims). The fees collected by Orthodox courts are extreme in the judicial system and there are no clear procedures for requesting their exemption or reduction—one of the consequences of the lack of state control.

Regarding the duration of proceedings in the Orthodox courts, there is a noticeable difference between cases having the consent and initiation of both spouses and cases without mutual consent. Cases involving mutual consent tend to last for two months with two hearings at most. Cases without this consent last for years (from two to eleven years) with six hearings on average.

When asked about their perspectives of divorce proceedings, litigating women pointed out many issues, including: a perception of a lack of professionalism in the court; an insufficient sense of the “rule of law”; a male-dominated atmosphere; an absence of female presence and a lack of sensitivity to women's issues, especially in cases of domestic violence; and an inability to address emergency situations. Many women pointed out the detrimental requirement for consent from the other party—a spouse lives in “jail” until the other spouse agrees to set her or him free. This situation can cause blackmailing, such as asking the other party to waive financial rights. Due to their socio-economic status, women suffer the most from this state of affairs.

Catholic courts are even less sympathetic to women. They do not come to their aid in abandonment cases, since separation of the spouses may last years before release from marriage is granted. Annulment of marriage can also last years, as there are complex procedures requiring authorization of additional bodies, such as the Appellate Court in annulment cases and the endorsement of the Vatican in cases of dissolution of marriage, which makes proceedings long and complex.

I believe the existing legal situation in these Christian religious courts, reflected in collecting exorbitant fees, prolonged and complex procedures, and the scarcity of chances for dissolving partnership in Catholic marriages, results from the broad autonomy these courts enjoy. Granting the sole and exclusive authority to these courts in marriage and divorce cases obliges spouses to remain in “imposed” marriages, even if they had begun with consent. Limited avenues for dissolving the marital partnership can have considerable economic, psychological, and social consequences on both spouses.

The prevailing situation jeopardizes the individual's fundamental right to choose a spouse with serious effects on Arab women, whether due to social sanctions stemming from cohabitation without marriage, or economic consequences stemming from being forced to waive financial rights. The right to marry and

found a family, and the state's responsibility to ensure the equal rights and responsibilities of both spouses during marriage and in cases of divorce, are guaranteed by international conventions signed by Israel, including the International Covenant on Civil and Political Rights 1966 (ICCPR). The local committee concerned with the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) included in its recommendations issued February 4, 2012 that the state take responsibility to create additional or alternative civil options for marriage and divorce.

I believe the state adopting a role in regulating or supervising religious courts is very important for protecting litigants, especially women. Furthermore, I believe that the issues raised by women and discussed here must be addressed by the Christian courts themselves, and efforts made on their part to solve them.

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