



New Research Project

Title of the Project: The right to Access court and the right to a fair trial in ecclesiastical court in Israel.

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1. Background

Personal status law regime in Israel, is based on the Ottoman Millet system. The millet system officially recognized certain religious communities (Jewish, Muslim, Christian, and Druze) and granted them autonomy over family law issues. This autonomy is exercised through a system of religious courts. Religious courts have exclusive jurisdiction over marriage and divorce in Israel; in other family law matters, such as alimony, child custody, and inheritance, religious courts enjoy concurrent jurisdiction. Alongside religious courts, Israel established a civil system of family courts with parallel jurisdiction over family law (except for marriage and divorce). Both religious courts and civil family courts must apply religious laws of the parties to the dispute, with the exception of a few civil laws applicable to certain family law disputes such as the Spouses Property Relations Law 5733-1973. is inconsistent with basic tenets of liberal democracy and violates basic human rights.

Religious institutions in Israel are inherently patriarchal, since religious personal status laws are often based on antiquated social concepts and religious interpretations that perpetuate the cultural bias against women and their subordination to men.¹ It is not surprising then that the Women's

¹ Hawari, Areen (2018). Women and the Struggle for Change in Personal Status: The Case of Palestinian Women Inside Israel. In (Hawari, Shehadeh & Alemy) *Women's Rights and Personal Status: Strategies of*



Equal Rights Act of 1951, which abolishes legal provision that discriminates against women, states that it does not “affect any legal prohibition or permission relating to marriage or divorce”.²

The personal status law regime in Israel goes beyond recognizing the autonomy of religious courts. It also grants these religious courts of all religious communities “a carte blanche” license to subordinate certain group members, who are potentially subject to intra-group controls by their own group traditions under the auspices of Israel’s accommodationist family law policy.³ This illiberal regime was buttressed by a non-intervention policy the Supreme court, especially when it comes to religious courts pertaining to Palestinian religious communities.⁴

Focusing on Palestinian religious communities in Israel, Karayanni argues that this regime serves as a barrier for changing illiberal and discriminatory practices within the accommodated groups, highlighting that “vulnerable individual members among the Palestinian-Arab community end up being imprisoned in their religious identity with limited ability to maneuver in and around it.”⁵

He further argues that the continuous labeling of the family law regime in Israel as a multicultural endeavor is possible is false and disingenuous, and it masquerades the true nature of this regime. First, this family law regime serves a tool of control since preserves the fragmentation among the Palestinians in Israel lowering the costs of controlling them. It also aims at preserving the Jewish identity of the state through the promotion of endogamy.⁶

the Palestinian Feminist Struggle in Israel. Nazareth: Work Committee for Equality in Personal Status Cases. (in Arabic).

² See Article 5.

³ Shachar, Ayelet. "Group identity and women's rights in family law: the perils of multicultural accommodation." *Journal of Political Philosophy* 6, no. 3 (1998): 285-305.

⁴ Karayanni, Michael. *A Multicultural Entrapment: Religion and State Among the Palestinian-Arabs in Israel*. Cambridge University Press, 2020.

⁵ Id, p. XV.

⁶ Id.



2. The contribution of the research.

While most academic research on religious courts pertaining to Palestinian religious communities in Israel have focused on jurisdictional and substantive issues, such as gender equality, child marriage adoption, custody, polygamy,⁷ and distribution of assets, very few research was carried out on the procedural aspects of personal status law in Israel.

This project is innovative in two respects. First, it is one of the very few studies that focus on ecclesiastical courts; second, it is among the very scares studies that focus on the right to access courts and the right to a fair trial.

The right to fair trial and the guarantees of due process, as recognized by the International Covenant on Civil and political rights, apply to family law disputes. This include the right to equal access to courts; the right to be heard by courts that are competent, independent and impartial; and the right to fair proceedings.⁸

Given the enormous impact of family law on the rights and status of members of Palestinian religious communities in Israel, we believe that it is crucial to study not only substantive issues related to family law, but also the procedural aspects this law. Ecclesiastical courts in particular serve as an interesting case of study given the absolute autonomy that they enjoy, and due to a very unique features of Catholic ecclesiastical courts, whose decisions can be appealed to higher courts located in foreign States.

⁷ Boulos, S., 2019. National Interests Versus Women's Rights: The Case of Polygamy Among the Bedouin Community in Israel. *Women & Criminal Justice*, pp.1-24; Abu Rabia, R. (2011). Redefining polygamy among the Palestinian Bedouins in Israel: Colonialism, patriarchy, and resistance. *American University Journal of Gender, Social Policy & the Law*, 19(2), 459-493.

⁸ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).