

# **I S R A E L**

## **Shadow Report**

**by**

**The Ruth and Emanuel Rackman Center  
For the Advancement of the Status of Women**

*With the support of the EU*

**Assessing Israel's progress in implementing the International  
Convention on the Elimination of All Forms of Discrimination  
Against Women (CEDAW), With focus on Article 16**

**For the CEDAW Pre-sessional Working Group (25-29 July 2016)  
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## **About The Ruth and Emanuel Rackman Center For the Advancement of the Status of Women**

The Rackman Center for the Advancement of the Status of Women was founded in 2011 in order to promote the status of women in family law, and to put an end to gender discrimination and inequality in Israeli society. The Center is a legal-social institution that functions within the academic establishment and deals with promoting gender justice in family law in Israel, while remaining committed to Jewish values and to the principles of Israel as a Jewish and democratic state. Situated in the Faculty of Law at Bar-Ilan University, the Rackman Center is found at the heart of the legal and social activity in Israel. It is a place where research meets activism, where the legal world meets the Jewish Law, where promotion of public policy coexists with assistance to individuals in need of legal support, and where litigation is carried out along with the promotion of statutory changes.

In all forms of its activity, political and social alike, the center upholds a synergetic approach of connecting parallel lines of work. This approach is reflected in leading change within the world of Jewish Law and outside of it simultaneously. Existing tools of Jewish law are used, for example, for the creation of equal marriage, and at the same time the center supports the right to every Israeli citizen to choose a wedding ceremony that suits his or her worldview and needs. This synergistic approach is also prominent in the center's collaboration with government offices in order to promote policy changes, while maintaining the option to formulate an independent position when needed. The center's status, as an academic institution operating within a law school, allows for a unique integration between representing women in family law cases and the practice of academic skills in the realms of case analysis, research, offering innovative solutions and consultation with regard to statutory changes.

Since the Rackman Center acts within the scope of family law, this report will focus on Article 16 of the Convention, which deals with equality in marriage and family life.

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## Background

### Israel's reservations to CEDAW.

Israel signed the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter: the "Convention" or "CEDAW") in 1980 and ratified it in 1991, subject to the reservations to Articles 7 (b) and 16 of the Convention. Israel expressed its reservations regarding Article 7 (b) of the Convention which deals with the appointment of women as judges of religious courts, claiming that it is forbidden by the laws of the religious communities in Israel<sup>1</sup>. Israel also expressed reservations in relation to Article 16 of the Convention, to the extent that the laws of personal status - which bind the various religious communities in Israel - are incompatible with the provisions of this section.

In 1998, the CEDAW Committee (hereinafter: the "Committee") expressed its position that reservations to Articles 16 and 2 of the Convention, which constitute the Convention's core clauses, may not be consistent with the aim and purpose of the Convention and therefore are deemed inadmissible and must be removed<sup>2</sup>.

In 2010, as part of the fifth periodic report submitted by Israel to the Committee, Israel repeated its reservations in relation to Article 16 of the Convention (as well as to Article 7).<sup>3</sup> Consequently, focusing on Article 16, the Committee demanded once again that Israel should withdraw its reservations, while expressing its concern that these reservations restrict the implementation of the principle of substantive equality between women and men in all matters relating to marriage and family relations.<sup>4</sup>

Israel's reluctance to remove its' reservations is not merely theoretical. This reluctance has served as an explanation as to why Israel cannot comply with the demands presented to it by the Committee. Thus, for example, the reservation to Article 16 was referred to by Israel as a reason for not being able to introduce an alternative system of marriage and divorce accessible to all, or to accomplish harmonization between religious laws and the Convention and to eliminate clauses that discriminate women. It was also presented as a reason for not training the Rabbinical Court judges with regards to the provisions of the Convention<sup>5</sup>. The conclusion is that Israel's in maintaining its' reservations to the Convention is a real obstacle to the implementation of the principle of substantive equality between women and men in all matters relating to marriage and family relations.

### Implementations of the Committee's recommendations

To this day, Israel submitted to the Committee five reports. The Committee addressed the issue of Marriage and family relations for the first time on its List of issues in respect of the fourth

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<sup>1</sup> It should be mentioned that there are rabbis who allow the appointment of women to serve as judges of religious courts

<sup>2</sup> Report of the Committee on the Elimination of Discrimination against Women (eighteenth and nineteenth sessions), UN Doc. A/53/38/Rev.1, pp. 47-50 (1998)

<sup>3</sup> CEDAW/C/ISR/5 p. 155

<sup>4</sup> CEDAW/C/ISR/CO/5, 5/4/2011 p.2 ,AA/follow up/Israel/56 p.2. CEDAW/C/ISR/Q/5 para 4

<sup>5</sup> CEDAW/C/ISR/CO/5/Add. 1 4 July 2013 p. 3

and fifth reports.<sup>6</sup> The Committee gave its recommendations in this matter in its Concluding observations dated April 2011.<sup>7</sup> None of the Committee's recommendations were implemented by Israel except for the raise of the minimum age of marriage to 18 years.

### **Personal status matters in Israel**

In Israel, Marriage and divorce are conducted according to the personal law which applies to the individual. The personal law applying to Israeli citizens is usually determined in accordance with the religious community to which they belong, and is actually the religious law of this religious community. For example, the personal law of Jews is the Jewish Law (*halacha*), which reflects the Orthodox perception of the Jewish law.

The application of religious law in matters of personal status, as well as in other matters, is a remnant of the British Mandate in Israel, as determined in The Palestine Order in Council, 1922. Applying religious law, as established by the mandatory command, was adopted by the Israeli civil legislation through the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 1953 and the Religious Druze Courts Law, 1962. According to these laws, the religious courts of recognized religions have the exclusive jurisdiction over matters of personal status (marriage and divorce) in Israel. The system of religious courts in Israel consists of Jewish Rabbinical Courts, Muslim Sharia courts, Christian Ecclesiastical courts and Druze Courts. Consequently, all marriage ceremonies in Israel are of a religious nature.

The practical implication of the above said is that there is no option for civil marriage and divorce in the State of Israel.<sup>8</sup> While it is possible to receive state recognition of civil marriages performed abroad (as shown below), couples married this way are still subjected to the jurisdiction of religious law when seeking divorce.

On the Socio-cultural level, the policy of granting exclusive jurisdiction to religious courts in such basic areas of life is problematic, as it is inconsistent with the degree of religiosity of the population. In 2013, for example, 43.4% of Jews defined themselves as secular, 36.6% said they were traditionalists, and only 19.7% defined themselves as religious or ultra-Orthodox.<sup>9</sup> The result is that there is no correlation between the self-definition of Israeli Jews in respect of their religiosity and their attitudes about religion and state, and the obligation imposed by the state on all its citizens to marry solely in a religious ceremony with all its legal ramifications, including the terms and limitations set by the religious laws on marriage and divorce. Furthermore, the prohibition of civil marriage in Israel does not match the majority's opinion either. A survey conducted in 2009 by the Israeli Central

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<sup>6</sup> CEDAW/C/ISR/Q/5 para 37-38

<sup>7</sup> CEDAW/C/ISR/CO/5, 5/4/2011 para 48-49

<sup>8</sup> Except of couples which both spouses have no religion. As of 2010 couples who has no religion can register in at the Civil Marriage Registrar. Couples who belongs to different ethnic communities can divorce at the Family civil courts.

<sup>9</sup> Israel Central Bureau of Statistics, Statistical abstract of Israel 2015, table 7.6 published 10/9/2015

Bureau of Statistics revealed that 62% of the Jewish population agree that civil marriage should be allowed in Israel for those interested.<sup>10</sup>

As stated above, the personal law applicable to Jews in Israel is the *halacha*, reflecting the Orthodox perception of Jewish law. The construction of gender in Jewish law of marriage and divorce, as it is understood and practiced in rabbinical courts in Israel, results in unequivocal inferiority and vulnerability of women. In a nutshell, Jewish law conceives of marriage as a one-sided transaction in which the man betroths the woman and not the opposite. This sanctions inequality and discrimination regarding spousal obligations and rights toward each other during the course of marriage, as well as sanctioning harsh limitations over the process of divorce and inequalities with respect to the detriment of women.<sup>11</sup>

For example, there is a significant gap between the religious requirements of men and women in terms of their need to get a consensual divorce. The Jewish religious law asserts that the husband's consent to the divorce is essential. Without his consent the divorce is invalid. Although the wife must also agree to a divorce in order for it to be valid, in some situations a man can remarry without obtaining a divorce, while a woman does not enjoy the same right. Moreover, if a married woman gives birth to another man's child, this child will be considered a "bastard" (*mamzer*) - a status entailing a number of sanctions, including the inability to marry within the Jewish community, except with other bastards or converts. This is while children fathered by a married man outside the marriage, prior to his divorce, are not stigmatized or limited in any aspect (more details below).

Another example of a fundamental difference between men and women is the circumstances in which the rabbinical courts rule for obligatory divorce. One incident of a woman's infidelity is enough to establish a case for obligatory divorce, whereas a man's conduct justifies a divorce only if he had a long-term relationship with another woman, and in some instances even that is not considered a good enough reason for divorce.<sup>12</sup>

### **The race for jurisdiction**

As noted above, the State of Israel granted the religious courts exclusive jurisdiction over matters of marriage and divorce. However, there are many issues to be settled beyond the divorce itself, such as the division of property, alimony, child support, child custody, child education, etc. According to Israeli law, the Civil Court (Family Law Court) has jurisdiction parallel to the rabbinical courts over these issues. Practically, this means that filing a lawsuit at one court prevents the other from addressing the issue.

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<sup>10</sup> Israel Central Bureau of Statistics, Press Release, Social Survey 2009: The Jewish population: the place of religion in the public life of Israel 012/2011, Published 17.1.2011,

<sup>11</sup> Halperin-Kaddari, Ruth. 2000. "Gender Construction under Halachic Marriage and Divorce Laws," *Talpiot*, Vol. 22, pp. 451-464 (Hebrew).

<sup>12</sup> above

The choice of forum is likely to have critical significance for the debating parties, since the legal tools used by the courts and religious tribunals, as well as rules of procedure, rules of evidence and the worldview of the presiding judges in the two instances are unequivocally different. This has a direct impact on the courts' ruling. While the religious courts apply the religious law and rule accordingly, civil courts may decide on certain matters according to the territorial civil law. In addition, the rabbinical courts are forums dominated by men only. Most of the judges there come from the religious orthodox sect, and some of them consider themselves bound to the religious law alone, even when they are required to apply the territorial civil law.

Thus, for example, whereas civil law asserts that any property accumulated during the marriage is joint property of the two partners, some judges within the religious tribunals divide the property according to the formal title, which is often registered in the name of the husband. Rabbinical courts are likely to reject property suit or alimony suit by a woman who was proven to be infidel, while no similar sanction applies to a man. It is important to note that no matter which forum discusses the issues relating to divorce, the right to divorce and the divorce itself are subject to the religious law alone and to the exclusive jurisdiction of the rabbinical courts.

As a result of the above, each one of the divorcing parties rushes to be the first to file a suit in the legal forum perceived by it as the more favorable regarding his or her case. This process is called The Race for Jurisdiction, and it is problematic in many respects. Among other things, it prevents the opportunity to settle the dispute using alternative methods. Lawyers are obliged to recommend that their client file a suit as soon as possible, in order to avoid the other party's choice of forum, and this naturally escalates the conflict to a point of no return. In addition, filing suits regarding the related issues in the religious courts is often used in order to establish an artificial barrier between the woman and the civil court, thus pressuring women to give up rights they are entitled to under the general law for the sake of obtaining the divorce itself. The jurisdiction race creates lengthy litigation over the very question of jurisdiction, which increase the load on the judicial system and bears economic and psychological consequences for the couple and their children.

It should be noted that at the end of 2014 the Litigation Settlement for Family Disputes (an early settlement of the conflict) Law, 2014, was enacted, and it will come into effect in July 2016. This law was originally intended to prevent the jurisdiction race described above, but in fact it creates a new form of jurisdiction race that poses additional difficulties. The law requires that couples who want to divorce should apply for a conflict resolution and attend meetings in Family Support Units appointed by the courts, where they will be acquainted with the benefits of settling the dispute outside the court, in order to convince them to choose this procedure. The party who files the application obtains the right to choose the forum, if the alternative conflict resolution path fails. Such request can be filed without the aid of an attorney. The result is a shift of the jurisdiction race from the phase of actual law suit to the phase of applying for a conflict resolution. The new law actually makes it easier for the rabbinical courts to gain jurisdiction, and gives them new jurisdiction over settling dispute.

Expanding the jurisdiction of the rabbinical court, which applies substantive laws that discriminate women, is bound to have a grave effect on them. Attending a mediation procedure with the fear that if it fails, the hearing will be conducted by the Rabbinical Court, severely shifts the balance of power between spouses, to the detriment of the wife.

## **The superiority of the man during the divorce proceedings**

### **The problem of the *Agunot and Mesoravot Gett* (hereinafter: "The Agunah Problem")**

As stated above, according to Jewish religious law, both spouses need to give their consent to the divorce. Since the Jewish religious law is the applicable law when dealing with divorce of Jews in Israel, the result is that today there is hardly a way to dissolve marriages of Jews in Israel without the consent of both spouses.

Although mutual consent is required, and a woman too can refuse to divorce and thus prevent the dissolution of marriage, the man's situation is still more advantageous. While a man deprived of a consented divorce can carry on with his life uninterruptedly and even marry again (in exceptional cases), a woman devoid of the right to divorce faces severe sanctions. If she gives birth to another man's child, this child will be considered a "bastard" (a *mamzer*)- a status entailing a number of sanctions, including the inability to marry within the Jewish community, except with other bastards or converts. This is while children fathered by a married man outside the marriage, prior to his divorce, are not stigmatized.

In Hebrew there are two conceptual terms to describe a situation in which a woman cannot get a divorce from her husband and therefore cannot remarry: a woman whose husband cannot be found (in cases where he went missing or fled the country and his place of residence is unknown), or is not qualified according to the Jewish Law to grant a divorce (when declared insane or in a coma) is called *Agunah* (*Agunut* in plural) . A woman whose husband refuses to grant her a divorce is called *Mesorevet Get* (*Mesoravot Get* in plural).

The *Agunah* Problem, rooted in the inherently structured inequality in marriage and divorce according to the Jewish Law, has been condemned by many rabbis throughout the generations. The fact that Jewish law has been adopted by Israeli law, and is interpreted today by rabbinical courts whose perspective is Orthodox in nature, has made the phenomenon of *Agunot* and *Mesoravot Get* much more common and aggravated.

### **Possible solutions to the *Agunah* Problem and a description of the current legal status**

Although there are some solutions to the problem within the religious law, the rabbinical tribunal courts rarely use them and often avoid them intentionally. For example, marriage can be declared null and void retroactively in the event of a fault in the marriage ceremony, or when a fundamental defect related to the husband flaws the woman's consent to marry him. However, the courts do not use this solution. In exceptional cases the rabbinical courts have the power to even force the husband to grant a divorce, but they rarely do so, because a divorce should be given "freely and voluntarily" - and if there is any doubt it was thus given, it may be considered invalid.

With regards to cases in which the Court sees fit to compel the husband to divorce, the Rabbinical Courts Law (enforcement of divorce judgments), 1995 (hereinafter: "the Sanctions Act"), extended the rabbinical courts' power and gave them civil enforcement powers. This law allows the court to impose various sanctions on the refusing spouse, such as different types of restraining orders, revocation of driver's license, restricting limitations of one's bank account, stay of exit order, imprisonment and more. According to data

collected by Rackman Center in relation to the degree of implementation of the Sanctions Act<sup>13</sup>, it is evident that The Sanctions Act is currently not applied or implemented by the rabbinical courts in a manner that properly addresses the issue of *Agunot* and *Mesoravot Get* in Israel. As stated in the report issued by Rackman Center, the rabbinical courts do not make sufficient use the Sanctions Law and barely impose restraining orders on recalcitrant husbands, compared to the number of decisions given for granting a divorce. In 2015, for example, the Sanctions Law was used to impose sanctions only against forty seven recalcitrant husbands,<sup>14</sup> a relatively small number that does not reflect the phenomena as a whole.

Two grave and far-reaching trends have developed in recent years in the rulings of the rabbinical courts. The first is the legitimization of posing conditions for the provision of a divorce. Certain judges have adopted a Jewish Law standard that gives legitimacy to almost any condition or discretion that the husband sets in provisions of granting a divorce. Typically, the conditions have to do with monetary issues, such as a husband's demand that ruling in finance issues will be transferred from a Family Court to a Rabbinical court, or a demand that the woman waive payments already ruled in her favor in a civil court, or payments she is entitled to by law. According to this stringent approach, even when the Court sees fit to compell the husband to divorce, if he then sets conditions on granting a divorce, he is considered as one who is interested in granting a divorce by his own will (within the scope of: "I agree, but") and the obligation is revoked. From that moment on, the woman herself is considered to be a recalcitrant party, and the judges tend to pressure the woman - "for her own good" - to oblige to the set terms and conditions, so that she will be granted a divorce.

The second and more severe trend we witness since 2008 is the practice of retroactive divorce cancellation. Today, the rabbinical courts reserve the right to revoke a woman's divorce retroactively, if she violates one of the clauses of the divorce agreement which she signed when the divorce was declared - even if the alleged accusation took place long after the divorce arrangement was signed, and even when the husband had already remarried. In this situation a woman could find herself sort-of married once again to her ex-husband, and unable to marry another man.

### **Attempts to increase enforcement against recalcitrant husbands**

In July 2015 the Government decided, as part of the government coalition agreements, to move the rabbinical courts from the Ministry of Justice to the Ministry of Religious Services. This decision was met by a deep concern on the part of women's activism organizations regarding the infringement on women's rights. Their concern was based on the fact that after the transition occurred, the activity of the Rabbinical Tribunals would be regulated and

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<sup>13</sup> Halperin-Kaddari R, Adelstein-Zekback T., Pi Project: Supervision Enforcement and Implementation of Family Law in Israel; Report No. 1 ,The Rabbinical Courts Law (implementation of Divorce Judgments), 1995,The Ruth and Emanuel Rackman Center, Bar Ilan University.

<sup>14</sup> Annual report of the rabbinical courts administration - summary of 2015

supervised by a government office headed by an Orthodox minister, rather than by an external body that is unrelated to the rabbinical establishment. As part of this decision, and with the intention to reduce the concerns, an attempt was made to promote a proposal that would increase the enforcement against recalcitrant husbands and make it more efficient.

The core of the proposal to increase enforcement against those who refuse to grant a divorce was in relation to the Sanctions Act. The Sanctions Act allows the courts to impose sanctions on recalcitrant husbands, but the procedural burden lies on the shoulders of women. The woman is the one who is supposed to appeal to the rabbinical court and request the imposing of sanctions against her recalcitrant husband, despite the existence of a court ruling compelling him to do so. In the said proposal, drafted by Rackman Center, the government was requested to transfer this procedural burden from the woman to the courts, in a way that if the husband fails to comply with the ruling, the Court is to receive a computerized alert about it and impose the necessary sanctions against him. The transfer of this burden is highly significant, because a woman in divorce proceedings doesn't always have the financial or emotional ability and to initiate proceedings against her husband. However, this proposal did not evolve into a decision due to the resistance of the Religious Services Ministry, and to date the situation remains as it was.

### **The implications of the *Aguna* Problem on divorcing women in Israel**

The plight of the *Agunot* is indeed the most extreme expression of women's inferiority under Jewish family law. But not only women who end up as *Agunah* or *Mesorevet-get* are affected. Giving the husband the power to refuse a divorce and "bargain" it leads to the abuse of this superior power against many divorcing women. Some of them are actually extorted by their husbands and forced to renounce their legal rights and make financial concessions in exchange for a divorce.<sup>15</sup>

While to date there has been no systematic empirical study on the consequences of this power imbalance in divorce agreements in Israel, there is substantial anecdotal evidence in testimonies submitted to women's organizations about pressure and extortion exercised by husbands, as well as references to the abuse of the husband's power in legal literature and in legal decisions.<sup>16</sup> The only empirical data available concerning the extent to which women are vulnerable to pressures relating to the divorce procedure can be found in a survey commissioned by Rackman Center in June 2004. The survey, held in a sample group of the adult Jewish female population, revealed that **one third of the women who had been involved in divorce proceedings claimed that they had been subject to pressures exercised by their husbands, who threatened to withhold the divorce**. Furthermore, 7% of them are still married, having given up on their wish to divorce, due to this dynamic of extortion and

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<sup>15</sup>. As mentioned above, women too can refuse a divorce, but their extortion power is limited. It is assumed that some of the recalcitrant wives simply refuse the husband's demand that they would give up their legal rights in exchange for a divorce [See: Halperin-Kaddari R., *The Missing Women's Enigma: The Scope of the Get Refusals Predicament in Israel*, **Being A Jewish Woman** (Vol.5, Tovah Cohen ed.) (2009) 83-95]

<sup>16</sup> Rosen-Zvi, Ariel. 1990. *Israeli Family Law: The Sacred and the Secular*. Tel Aviv University Press, Tel Aviv. (Hebrew).

the risk of remaining an *Agunah* or *Mesorevet-Get*.<sup>17</sup> Moreover, of the 916 women surveyed, close to 40% said they personally knew women against whom the divorce papers had been used as a means to extort concessions.<sup>18</sup>

**Recommendations:**

- It is recommended to increase the courts' practice of their powers according to the Sanctions Act to apply sanctions against recalcitrant husbands who refuse to divorce.
- It is recommended to transfer the procedural burden for the implementation of the Sanctions Act from the women to the rabbinical courts. If the husband doesn't grant his wife a divorce within two months after the ruling is given, the court should activate the sanctions without requiring the wife's involvement in the procedure.
- It is recommended to establish a system within the courts that would oversee and monitor the restriction orders given, and the degree of implementation of the sanctions law.
- It is recommended to publish the Rabbinical Courts' decisions, in order to increase criticism and prevent legitimization of divorce extortions.

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<sup>17</sup> Halperin-Kaddari, Ruth. 2009. "The Missing Women's Enigma: The Scope of the Get Refusals Predicament in Israel", *Kolech - Being A Jewish Woman*, 5, pp. 83-95

<sup>18</sup> The telephone survey of 916 adult Jewish women was conducted by Geocartograph, a prominent survey institute in Israel. This survey has not yet been published. A copy of the survey can be obtained from the Rackman Center, [rackman@mail.biu.ac.il](mailto:rackman@mail.biu.ac.il).

## Minimum Marital Age

### Extent of the phenomenon in Israel

According to reports made to the authorities, 4,000 minors get married in Israel every year. In 2013, for example, 4,127 minors married in Israel, of whom 3,618 (88%) were female. 35% of the minors were Jewish, 63% were Muslim and 3% were Christian and Druze.<sup>19</sup> These figures do not necessarily reflect the full scope of this phenomenon, since not all those who marry in violation of the law inform the population registry about their marriage. Even those who do update their personal status usually do so only after they turn 18, or after the couple has children and years have passed since the date of marriage.

The reasons for marriage under the minimum age in Israel are rooted in social, religious and cultural norms of certain groups, and in economic and personal circumstances of the minors and their families. Thus, in some circles the social and religious norms maintain that women should marry as early as possible. In these circles, the female minors are pressured by their families into marriage even against their will. Some communities impose a strict taboo over intimate relationships outside a legal or religious official arrangement. The marriage of a minor daughter is in these cases a means of protecting the dignity and status of the minor and her family. Economic and social circumstances also constitute a cause for minors' marriage - in large families of a low socioeconomic status, the marriage of a minor daughter helps ease the economic burden. There are also minor girls who marry in order to escape the distress at home.<sup>20</sup>

### Raising the minimum marriage age in 2013

The Marriage Age Law-1950, enacted in 1950 (hereinafter: "The Marriage Age Law") sets the minimum age for marriage. In the initial version of the law, the minimum marriage age for women was 17, except in special cases. The law did not limit the age at which a marriage application could be filed, so practically a minor's marriage could be requested at any age. In addition, the law stated that pregnancy is a proper justification for granting a minor with a marriage permit.

In 2013, a historic step – partly influenced by the Committee's recommendations<sup>21</sup> - was taken and the Marriage Age Law was amended to the effect that minimum marriage age was set at 18 years. The amendment also added four important components to the law:

- The age of 16 was set to be the youngest possible age for submitting marriage permit applications (until the amendment it was possible to apply for a marriage permit at any age).
- It was decided that pregnancy will no longer be considered a unique circumstance that justifies underage marriage.

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<sup>19</sup> Israel Central Bureau of Statistics, Statistical abstract of Israel 2015, table 3.7 published 10/9/2015

<sup>20</sup> Halperin-Kaddari R, Blutner A, Pi Project: Supervision Enforcement and Implementation of Family Law in Israel; Report No. 2 ,The Marriage age Law -1950, The Ruth and Emanuel Rackman Center, Bar Ilan University.

<sup>21</sup> CEDAW/C/ISR/CO/5 p.12

- The state authorities are now required to provide an annual report to the Israeli parliament about the application and enforcement of the Marriage Age law.
- The legal treatment of offenses under the Marriage Age law has been transferred from the police to the state attorney office.

These amendments are a real progress and represent the State's intolerance towards underage marriage. Nevertheless, the implementation of the law in Israel meets great difficulties, and it seems necessary to invest resources and make efforts in order to make the law effective.

The law states that marriages conducted in violation of the law constitute the grounds for filing a request to dissolve the marriage, and that those who conducted the marriage or supported it are liable to the penalty of a fine or up to two years in prison. In practice there are almost no requests for the dissolution of such marriages, and no indictments against those violating the law.

### **Religious law as a barrier to the implementation and enforcement of the law**

As stated above, all matters of marriage and divorce in Israel are subject to the religious law, and every citizen is subject to the religious court system of his or her religious community. Religious laws (Jewish, Muslims and Christians) do recognize the marriages of underage girls, and this recognition is one of the major obstacles to the effective enforcement of underage marriage prohibition in Israel. While constituting a criminal offence, marriage conducted illegally remain valid and binding according to religious law.

It should be noted that although religious law allows underage marriage, both the Rabbinical judges in the Rabbinical courts the Muslim judges in the Sharia courts were instructed that any case raising the suspicion of illegal underage marriage should be referred to the police and to the State Attorney.

### **Failure to enforce the minimum age of marriage in Israel**

The Marriage Age Law has set a clear norm prohibiting marriage under the age of 18 without permission. There is also a clear directive of the Attorney General that criminal proceedings should be taken against anyone participating in the arrangement of underage marriage.<sup>22</sup> That being said, data has shown that the number of investigations and indictments in these matters is incredibly low and insignificant, in comparison with the number of cases known to the authorities.

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<sup>22</sup>Attorney General Guidelines, Prosecution policy: Juvenile marriage and statutory rape. Guideline No 4.1101 (51.054) 1/12/1985. Update 3/7/2001.

The Rackman Center examined the enforcement and application of the Marriage Age Law and published its findings in a report in 2014.<sup>23</sup> The data in this report shows that out of all of the underage marriages that occur each year, the number of cases in which a marriage permit is requested is trivial. Thus, in 2015 only 65 applications were submitted to the Family Court,<sup>24</sup> suggesting that in most cases known to the authorities, marriages are held illegally and without permits.<sup>25</sup>

The two main authorities responsible for dealing with underage marriage are the Ministry of Interior - through the Population Authority, where married couples request to register, and the Israeli Police, where complaints about minors' marriage are received.

The procedure for the Ministry of Interior Population Authority in respect of underage marriages states that when a clerk is requested to register the marriage of a minor who has not produced a marriage permit, he or she must report the case to the police. According to the records of the Ministry of Interior, in 2014 there were 416 such cases turned over to the Israeli police,<sup>26</sup> yet the number of cases opened and indictments filed was significantly lower. This is apparently due to the lack of sufficient evidence and a substantial difficulty to pinpoint the factors responsible for these marriages.

In the Israeli police department there is a special procedure for dealing with offenses related to the marriage of underage girls, and complaints regarding this matter are prioritized. Every district has a representative responsible for handling offenses of underage marriage, and a national referent was appointed in order to coordinate the issue. Figures provided by the Israeli police on the number of complaints and investigations files opened in relation to the Marriage Age Law show that in 2015 there were 74 such cases, twice as much as the year before. Of the 74 cases 57 are still under investigation, four have been transferred to the State Attorney's office and one case was closed for lack of evidence.<sup>27</sup> It seems that the police in this regard has improved, but one can still see that the number of cases opened each year is very small compared to the number of minors who are getting married.

It should be noted again that within the amendment to the Marriage Age Law, handling cases of illegal marriage age was transferred from the police department to the state attorney office, a measure indicating the importance ascribed by the legislature to the enforcement of the law. That being said, the state attorney's data shows that during the two years that have passed since the issue of underage marriage was transferred to the state

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<sup>23</sup>Halperin-Kaddari R. Blutner A. Pi Project: Supervision Enforcement and Implementation of Family Law in Israel; Report No. 2, The Marriage age Law -1950, The Ruth and Emanuel Rackman Center, Bar Ilan University.

<sup>24</sup> Protocol of meeting No. 36 of the Committee on the Statues of Women and Gender Equality, 20th Knesset (24/11/2015).

<sup>25</sup> It is to be mentioned that in 2013 the Marriage and Divorce Order (registration) was amended and it was set that the one who do not register marriage or divorce Liable to imprisonment for two years. This amendment was made in order to try and prevent cases of lack of reporting in respect of marriage held privately.

<sup>26</sup> Protocol of meeting No. 36 of the Committee on the Statues of Women and Gender Equality, 20th Knesset (24/11/2015).

<sup>27</sup> There.

attorney's office, not a single indictment has been filed. Only 15 cases were opened during this period, and all except one were closed, apparently in light of evidentiary difficulties.<sup>28</sup>

The data detailed above suggests a huge gap between the actual number of cases of underage marriages and the number reported to the authorities. Moreover, reported cases do not reach the indictment phase. The scope of the underage marriage phenomenon, compared with the low number of indictments submitted annually clearly indicates that the Marriage Age Act is not enforced in Israel, and it seems that not enough efforts are being made in order to enforce it.

**Recommendations:**

We believe that reduction of the number of underage marriages in Israel can be achieved through a combination of stricter enforcement and preventive activities carried out by authorities dealing with minors at risk of premature marriage. Our practical recommendations are the following:

- To instruct the Marriage Registrar by law to report any suspicion of underage marriage to the police, especially in cases where the registration is done retrospectively, within the legal age limit.
- To determine that the Israeli Police should initiate investigations regarding underage marriage.
- To create a National Plan aimed at the prevention of underage marriages, which will include increased enforcement and educational programs.

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<sup>28</sup>There

## Civil marriage in Israel

Since matters of marriage and divorce are handled exclusively by the religious courts of the religious communities, there is no legal option to marry in Israel in a civil ceremony recognized by the state. As a result, couples who do not wish to marry in a religious ceremony or are not allowed to do so because of religious restrictions cannot marry in Israel.

One possible solution for Israeli citizens who do not want to or cannot marry in Israel is to marry abroad in a civil ceremony. Naturally, this solution involves considerable financial costs, making it irrelevant for some of those interested in it. When couples marry in a civil ceremony abroad, Israel is obligated - under international treaties and under the court's decision<sup>29</sup> - to register them as married in the Population Registry of the Ministry of Interior. They are considered married for all intents and purposes in terms of status and civil rights.

Each year, from 2000 to 2010, about 10% -12% of the residents of Israel who married, were married in a civil ceremony abroad. In 2011, 10,079 people were married abroad out of 51,271 people registered as married in the same year.<sup>30</sup> It should be noted that some marriages held abroad are civil marriages and some are religious marriages conducted abroad (the Population Registry in Israel does not distinguish between these two types of marriages). It should also be noted that some couples who marry abroad do so for reasons of conscience or because of their desire to conduct a non-religious ceremony, but in most cases it is done because the couple could not marry in a religious marriage due to some sort of religious restriction, or because the spouses belong to different religions<sup>31</sup>.

Although Israel recognizes marriages conducted abroad, it does not allow the couples to divorce in a civil procedure within its domain (in case both spouses belong to the same religion). A couple married abroad and registered as married in Israel is required to divorce in the religious courts of Israel, according to the spouses' religion. This means civil marriage does not guarantee that a Jewish woman married to a Jewish man will not become a *Mesorevet Get*, even though she chose to marry in a civil ceremony.

### **Recommendations:**

To enact a law allowing civil marriage in Israel and ensuring all citizens complete freedom of choice between civil marriage and religious marriage.

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<sup>29</sup> HCJ 143/62 Funk Shlezinger v. Internal Affairs Minister, 17(1)PD 225

<sup>30</sup> Population and Immigration Authority 30.1.2013 Davidian M., Freedom of Information Act Officer, Israel Central Bureau of Statistics, Statistical abstract of Israel 2013 (64) p.183

<sup>31</sup> Halperin-Kaddari R. Horovitz K. Sharvit L. (editors) 2014 **Women and Family in Israel statistical Bi-annual Report**. The Ruth and Emanuel Rackman Center, Bar-Ilan University, p.36.

## Bigamy and Polygamy

### The applicable law

According to the Jewish Law and the Sharia Law, a man can marry more than one wife. While Jewish law was amended a thousand years ago to prohibit polygamy, if the marriages actually take place, they are still legally valid. In the Sharia law, however, there are some opinions supporting the idea that a man is allowed to be married to up to four wives at a time. As a result, the Sharia courts affirm marriage of a man to several women.

In order to fight polygamy, it has been determined in Israel that polygamy is a criminal offense. According to Article 176 of the Penal Code - 1977, polygamy is a criminal offense, and a man who marries more than one woman faces up to five years in prison. The law also stipulates a prison sentence of six months for those who arrange illegal marriages. However, there are exemptions in the law, as it subjects itself to the religious law. The Penal Code states that in Jewish marriage, a man will not be convicted of polygamy if the marriage was permitted by the Rabbinical Court. The latter has discretion to overcome wife's refusal or inability to divorce (while no equivalent exists in similar cases of husbands' refusals or inability to divorce). Polygamous marriages of non-Jews in Israel is allowed only in two instances: when the spouse is unable, due to mental illness, to agree to the dissolution of marriage, or when the spouse is missing under circumstances that raise reasonable fear for his or her life, and he could not be traced for at least seven years. In this context of the above said it should be noted that although the Rabbinical Courts give such permits only in rare cases, particularly in cases where the woman is not eligible to obtain a divorce, there are still approximately 14 permits issued per year.<sup>32</sup>

### The extent of this phenomenon and its enforcement

According to the National Insurance Institute data, in 2012 there were 968 women who received income support with the status of a second (or more) wife within an extended family. The years 2010-2011 show similar figures.<sup>33</sup>

Despite the above data, the police opens an average of 37 cases a year with charges of polygamy. During 2013-2015 the police opened 112 cases involving polygamy. The vast majority of the cases opened are related to Muslims.<sup>34</sup> According to police reports, during 2010-2012 50.3% of the cases were closed, mostly due to the lack of evidence or lack of public interest. The number of closed cases has decreased, though, compared with previous years, and there has been a rise in the number of cases transferred to the State Attorney or to the police, and in the number of cases tried in court.<sup>35</sup>

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<sup>32</sup> Letter from the rabbinical courts administration, July 2009.

<sup>33</sup> The Knesset – Research and information center 8.10.2013 Polygamy among the Bedouin population in Israel. S. Spector Ben-Ari.

<sup>34</sup> A letter from Israel Police, Freedom of Information Commissioner, 14.4.2016

<sup>35</sup> The Knesset – Research and information center 8.10.2013 Polygamy among the Bedouin population in Israel. S. Spector Ben-Ari.

The data indicates that the actual number of polygamy cases is higher than the number of complaints submitted every year, and higher than the number recorded in the Population Registrar. It also shows there has been some improvement (insufficient, though) in the police's response to the offense of polygamy.

It should be noted that most of the plural marriages in Israel are held within the Bedouin society. Researchers estimate that about 30% of the marriages in Israel's Bedouin society are polygamous, and many argue that the rate has even increased over the last decade. This phenomenon is common among the educated and among young men, who support Polygamy even more than older men.<sup>36</sup> Israeli police figures show that there is little enforcement of the polygamy prohibition within this population, and that enforcement is carried out mostly in non-Bedouin Arab populations. Israeli police has no special policy towards different Arab sectors, but according to the police it is a complex phenomenon which is not perceived by the society in which it exists as a criminal offense, and therefore few cases are reported. Thus, cooperation with the police is limited and consequently there are few investigations and a significant difficulty with collecting evidence.<sup>37</sup>

**Recommendations:**

- To restrict by means of legislation the appointment of polygamous men to positions in the civil service.
- To increase enforcement through indictments and prosecutions.
- To raise the awareness of Muslim women to the option of adding a marriage provision in pre-nuptial agreements that prevents the husband from marrying another woman.
- To raise awareness to the problematic nature of polygamy through the Ministry of Education.

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<sup>36</sup> There, page 2.

<sup>37</sup> There, page 4-5.

## Tender Years Presumption

### The Schnitt Committee

Custody of children in Israel is regulated by the Legal Capacity and Guardianship Law - 1962, in which Article 25 states that in the absence of an agreement between the parents regarding the custody of the child, the court may determine the physical custody "provided that children up to the age of six shall be with their mother, as long as there are no unusual circumstances to determine otherwise." This provision, known as the "Tender Years Presumption", determines that in most cases the best interest of a child up to the age of six is to be in his mother's physical custody, but the presumption can be contradicted and deviated from in specific cases.<sup>38</sup> Legal custody (lately referred to as parental responsibility) is always equally shared between both parents, regardless of the physical custody.

In 2005, the Minister of Justice established a public committee that was requested to examine the existing rules for sharing and dividing parental responsibility when the parents live apart, whether it be for reasons of separation and divorce or because the parents never lived together from the onset. The committee was also requested to examine the question of parental responsibility. The committee members were representatives of the Family Court, the religious courts, the Ministries of Justice and Social Affairs and the Bar Association, professional and academics, and it was headed by Prof. Dan Schnitt (hereinafter: "The Schnitt Committee").

In April 2008, the Schnitt Committee published an interim report recommending the removal of both the concept of custody and the Tender Years Presumption. In 2011, the Schnitt Committee submitted its concluding observations. The Committee recommended to abolish the Tender Years Presumption and leave each ruling according to the best interest of the child principle, with no guiding presumption at all. The best interest of the child shall be determined according to various parameters such as the child's needs and wishes, the parental qualities of each parent, the extent to which each parent cared for the child in the past, and the parents' willingness and ability to enable a relationship between the child and the other parent. Additionally, the Committee recommended the abolition of the "custodial parent" construct, and the complete change of the custody law terminology currently in effect.

In January 2012, the Minister of Justice stated that he adopts the Schnitt Committee's recommendations and intends to submit them as a new legislative bill, and in September 2012 the Ministry of Justice indeed published the Memorandum of Parent and Children Law- 2012, which adopted the Committee's recommendations.

The Schnitt Committee's recommendations and the memorandum have not become a binding law in Israel, but their publication did in fact create a change that dramatically diminished the status of the Tender Years Presumption among Judges. This is also reflected

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<sup>38</sup> In Israel, unlike other countries, guardianship of children is of both parents, and in case they do not live together they may agree on who will be the child's guardian. Guardianship can be determined regardless of the question of custody.

in welfare-evaluations given by experts and social workers who issue to the courts in order to determine which one of the parents will be given physical custody of the children.

### **The implications of the Schnitt Committee's findings**

Following the recommendations of the Schnitt Committee, and regardless of the fact that the law had not yet changed, the number of custody disputes in Israel has dramatically increased, particularly where one of the parents demands joint custody. Also, as noted above, there has been a rise in the number of cases in which social workers recommend joint physical custody. The numerous welfare evaluations prepared by social workers regarding custody disputes are a clear indicator of this trend. According to the National Council for the Child's data, as provided by the Ministry of Welfare, 3570 welfare reports were submitted in 2005, and 130 of them (4%) recommended joint custody. In 2013, however, approximately 5376 reports were submitted, 798 of which (15%) recommended joint custody.<sup>39</sup>

Family courts on their behalf began to rule in favor of joint physical custody even when the parental conflicts are great and there are serious communication problems between parents, amounting sometimes to total disconnection<sup>40</sup> – and this is contrary to the previously prevailing perception of the court, that joint custody is only possible where there is mutual agreement and possible cooperation between the parties.

The rising number of joint physical custody requests does not reflect the current social reality in Israel, where women are still by-far the primary caretakers of their children.<sup>41</sup>

Along with joint custody rulings, Family Courts have significantly decreased the amounts of child support payments in cases of joint custody. The actual sums determined differ from one judge to the other. At the one extreme we can find a ruling that revokes child support payments by the father completely (100%),<sup>42</sup> and at the other end we find a ruling that reduces child support payments by 25% only, due to limited visitation rights.<sup>43</sup>

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<sup>39</sup> Israel National Council for the Child, research and development center, Children in Israel annual 2015, p. 82.

<sup>40</sup> See: FamC 26751/09 N.L. v. A.L. (11.1.13), FamC 1701/05 G.H v. G.D. (12.2.08) and FamC 16291-10-09 R.S. v. N.Y. (3.4.13) but this judgment was revoked in a later discussion, FamC 56895-05-12 N.Y. v. R.Y. (26.10.14) This ruling contradicts the District Court's ruling regarding the essential conditions for joint custody: nearby residences, good communication between the parents etc. see FamA (TA) 55785-02-12 (20.9.12) K.S v. A.S. Nevo Legal Database (By subscription, in Hebrew) It should be noted that in situations of grave conflict between the parents, joint custody arrangements were found to be the worse for children, see Haker D., Halperin-Kaddari R., Decision rules in custody disputes - on the dangers of the Parent likelihood illusion in gendered reality, Law and Governance 2013, p. 152-153, and McIntosh, J. E., Smyth, B., & Keleher, M. (2010). Parenting arrangements post-separation: Patterns and outcomes, Pt. II: Relationships between overnight care patterns and psycho-emotional development in infants and young children. North Carlton, Australia: Family Transitions.

<sup>41</sup> Herbst A., Kaplan A., self-processing of data from scientific research made by B.Y. and Lucil Cohen Institute within an International Project examining the division of labor in the family .International Social Survey Program (ISSP) , 2012

<sup>42</sup> FamC (Rishon Lezion) 16785-09-12 S.R (Minor) v. D.R (11.12.2013) 16785-09-12 Nevo Legal Database (By subscription, in Hebrew)(Isr.). An appeal was filed.

<sup>43</sup> FamA (Hi) 318/05 Anonymous v. Anonymous (30.1.2006), Nevo Legal Database (By subscription, in Hebrew)(Isr.)

Since the amount of child support that a husband should pay his children has a direct effect on his economic situation, it seems that some fathers have begun to use custody suits as a tool for reducing the amount of child support they are required to pay (the more time a father spends with his children, the less child support he has to pay), and not out of a genuine desire to raise the child, or as a tool to extort economic concessions from women.

The concern is that when a father's joint custody suit does not reflect the will and commitment to take an equal part in raising the children, and is rather based on economic interests alone, the father will not fulfill his part in the planned parenting program, and the mother will ultimately remain the primary caregiver - yet the amount of child support will be reduced.

The data mentioned above should be read together with the fact that in Israel, as well as in other industrialized countries, the poverty rate among single-parent families headed by women is significantly higher than among families of a single father parent, and that the average standard of living of women and children after a divorce drops by dozens of percent, while the average standard of living of men after divorce rises over time.

In addition, divorce issues in Israel are governed by the religious law, which is characterized by severe discrimination against women. The system of marriage and divorce in Israel structures the legal inferiority of women, along with the economic inferiority of women in Israeli society. Even before the Tender Years Presumption is abolished, Muslim women are under a constant threat of losing custody of their children if they are found to have established a new relationship. Jewish women are completely dependent on their husbands in order to end the marriage relationship, and therefore extortion and demands for economic concessions in exchange for a divorce are a common thing. That being the situation, abolishing the Tender Years Presumption opens the door for further extortion: threats of custody battles and demands for concessions of women's lawful rights in exchange for a divorce.<sup>44</sup>

**Recommendations:**

- Before making a decision about custody, a judge must take into account allegations of domestic violence.
- The Tender Years Presumption should not be abolished without setting an alternative that would ensure stability and certainty, prevent lengthy procedures that are harmful to women and children, and prevent extortion of women.

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<sup>44</sup> Haker D., Halperin-Kaddari R., Decision rules in custody disputes - on the dangers of the Parent likelihood illusion in gendered reality, *Law and Governance* 2013, p. 160-161.

## **The infringement on women's access to courts in personal status matters**

### **Legal Aid in cases of child support and child custody**

Legal Aid Law - 1972 and the regulations thereunder state that the Legal Aid Department in the Ministry of Justice will provide legal services to those who cannot afford the costs of such services. Assistance is provided in areas detailed in the regulations, to any individual or family of three at the most whose income is up to 67% of the average income in Israel, which is about 1,455 EUR (starting from the fourth person in the household, the percentage rises at 6% per person), and that has good chances of success in the legal procedure.

Until recently, the Legal Aid Department would consider the economic status of the minor and not that of the parent who filed the application for legal aid, so legal aid was given to practically every woman who had applied for it, in matters concerning child custody or support. Recently, as a result of a petition filed against the Department,<sup>45</sup> alleging that its interpretation of the law creates gender discrimination against men, the Legal Aid Department announced it is changing its policy: in matters of personal status concerning the rights of minors, the financial eligibility of the parent who applied for legal aid will be examined irrespective of the question of who the custodian is, except for exceptional cases.

In April 2016 the Legal Aid Department published the guidelines for examining the financial eligibility of a minor. According to these guidelines, separate representation of a juvenile becomes the general rule, while legal aid to minors via their parents will only be granted if the best interest of the minor is at serious risk. There is a closed list of such exceptions: temporary relief (a protection order and stay of exit order), a procedure aimed at preventing mental damage or immediate physical harm to a minor, a procedure employed for providing or avoiding psychological, psychiatric or medical assistance to the minor, a procedure in favor of the minors with special needs, and paternity suit which constitutes a prerequisite for regulating the status of a minor in Israel and for child support suits from abroad.

### **The problems with the new policy of the Legal Aid Department**

The new policy of the Legal Aid Department impedes women's access to the courts in matters of personal status relating to children and creates an artificial parent-child rivalry that, in extreme cases, may even lead to the endangerment of minors. It may also prolong procedures unnecessarily, bring about waste of resources and escalate family feuds, as described in detail below.

In the current social reality in Israel, women are still the primary caretakers of children<sup>46</sup> and the majority of child support suits are filed by women. In 2012, the greatest portion of legal

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<sup>45</sup> HCJ 8176/13 (Isr.)

<sup>46</sup> Herbst A., Kaplan A., self-processing of data from scientific research made by B.Y. and Lucil Cohen Institute within an International Project examining the division of labor in the family .International Social Survey Program (ISSP) , 2012

aid granted in matters of family law was in child support and alimony suits (9,040 cases, of which 6,963 entailed representation of women), followed quite far behind by divorce suits (6,310 cases, of which 4,722 entailed representation of women) and finally, custody suits (4,534 cases, of which 3,387 entailed representation of women).<sup>47</sup>

Making the eligibility criteria for legal aid in child support suits more difficult to obtain and reducing the population entitled to it would cause direct economic damage to women and their children. Setting the maximum salary line at 6,253 NIS (approximately 1,442 Euros), regardless of the question of custody, leaves many women who raise their children while earning a low salary with no right for legal aid when they file child support suits on behalf of their children. A woman with no external funds or savings cannot afford to conduct an expensive legal procedure, when she has no guarantee as to its duration, the amount to be received or the date of the actual child support payments. It should be noted that conducting legal proceedings in Israel requires considerable financial resources: payments cannot be made retroactively, and attorney's fees cannot be determined according to the amount obtained. The result is clear: fewer women will exhaust the right of their children to receive child support from their father, their economic situation will further worsen and the fundamental inequality between women and men will prevail.

The guidelines of the Legal Aid Department put the minor at the center of the conflict and require that he or she conducts a legal procedure. Representing a minor in respect of personal status matters creates an artificial rivalry between the minor and his or her parents. This rivalry may damage the minor-parents relationship and may also, in extreme cases of domestic violence, endanger the minor.

Moreover, the list of exceptions allowing to file a lawsuit through a parent is an incomplete list, leaving the most common issues relating to minors unattended. These strict eligibility requirements will cause direct damage to children and infringe their rights, including the right to live in dignity and in proper conditions. Alternatively, the list of exceptions will force any request into the form of "danger", "serious injury" and so forth, just in order to make the list. This behavior could escalate and intensify family conflicts, resulting in more – and lengthy – proceedings.

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<sup>47</sup> Halperin-Kaddari R. Horovitz K. Sharvit L. (editors) 2014 **Women and Family in Israel statistical Bi-annual Report**. The Ruth and Emanuel Rackman Center, Bar-Ilan University, p. 109-113.

**Recommendations:**

- To reconsider the policy change of the Legal Aid Department and to find a way to preserve women's access to legal assistance and to ensure that the best interests of their children will not be harmed.

### **Violence of Men's Organizations**

In Israel, as in many other countries, there is a rise in men's organizations supporting the rights of divorced fathers and aiming at raising the public awareness of the alleged infringement of their rights in divorce proceedings. There is no dispute that men also suffer during divorce proceedings, and that it is important to have a balanced public discourse representing the views of all parties. However, men's organizations have recently gone beyond legitimate public debate and are acting in violent and even criminal ways.

In recent years, as part of the debate in Israel over child custody and the abolition of the Tender Years Presumption, the nature of activity in these organizations has changed. Beyond the legitimate discussion conducted by these organizations through the media and academia, in demonstrations of divorced parents and by means of lobbying in the Israeli parliament and its committees, these organizations began to act in illegitimate ways - which include threats, harassment, incitement, persecution, wild cyber slander campaigns, international law suits and appeals to the U.N. The main victims of this illegitimate activity are civil servants and officials in the legal and judicial system, judges of the Family Court, welfare workers, legal experts and academics who've expressed a position contrary to the position of these organizations.

The illegitimate activity of men's organizations created an atmosphere in which the opponents to these organizations are afraid to express their opinion on the matter, whether at court or in the media, or are overly careful when expressing their view on these issues, out of fear for their safety and their livelihoods. The result is that the public and legal debate regarding matters of men and women's rights in divorce proceedings became a violent debate conducted in an atmosphere of terror and fear, negatively affecting the ability of women to fight for their legitimate rights and for making their voice heard.

So far, all complaints to the police regarding cyber attacks and other forms of violence had gone un-investigated, and the authorities seem either indifferent or helpless vis-à-vis this

**Recommendations:**

- Investigate allegations of violence of men's organizations and prosecute appropriate cases.

phenomenon.

## Asylum Seekers

### Background

Refugees and asylum seekers are facing difficulties of migration, along with the unique difficulties of being refugees. Like other immigrants, they need to adjust to their new environment and bridge cultural gaps, including changes in gender constructions and undermining of traditional roles leading to changes in the balance of power in the family. But in their case there are also remains of physical and mental trauma, with lasting memories of persecution. In the absence of status or access to state services among asylum seeking in Israel, these difficulties are further aggravated and create a severe economic and social distress.

In October 2015 there were over 7,000 female asylum seekers in Israel (out of a total of 44,599 asylum seekers), of which about 6,000 are Eritreans. According to data provided by the Population and Immigration Authority, 3,340 female asylum seekers are registered as mothers, however no data shows how many of them are single mothers.<sup>48</sup> Since asylum seekers are not registered as residents of Israel, they do not receive the support of social security and social services, and in essence they get no assistance from the Israeli authorities.

### Inability to claim child support

A study conducted by ASSAF Aid Organization for Refugees and Asylum Seekers in Israel (hereinafter: "ASSAF") on single parent asylum seekers, based on 80 interviews with single parent asylum seekers and published in March 2016,<sup>49</sup> shows that the majority of interviewees (72%) do not receive financial or any other form of support from their former spouse. The interviewees who do receive support reported it is quite random and could amount to few hundred shekels only.

According to the Legal Aid Act - 1972, asylum seekers wishing to sue their former partners in matters related to a legal dispute (child support, division of property, obtaining custody of the children) are eligible to receive free legal assistance from the Legal Aid Department in the Justice Ministry, since the assistance is not contingent upon civil status. In practice, however, the Justice Ministry's position is that legal aid should be given to residents of Israel only, and therefore asylum seekers are not entitled to it. In addition, asylum seekers are not entitled government funded alimony according the Law of Alimony (Guarantee of payment) - 1972, since entitlement is contingent on Israeli residency.

### Difficulties with access to courts

Asylum seekers face many obstacles that make their access to courts in Israel very difficult, if not entirely impossible. A case handled by the Rackman Center, in which the center

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<sup>48</sup> Population and Immigration Authority (October 2015) data in respect of foreign in Israel, edition 3/2015

<sup>49</sup> ASSAF Aid Organization for Refugees and Asylum Seekers in Israel, **Abandoned, asylum seekers single mothers in Israel**, Report, March 2016.

represented an asylum seeker in a child support suit, demonstrated the following difficulties:

- A language problem – asylum seekers do not speak Hebrew or English and therefore find it difficult to employ Israeli lawyers in filing suits.
- Some of the asylum seekers fear that if they sue in courts, their spouse (the defendant) will complain to the immigration police about them being illegal aliens.
- There are procedural difficulties in filing suits. For example, in order to file a claim in the Family Courts in Israel, an affidavit is necessary on behalf of the plaintiff. In many cases, the asylum seeker has no identification documents that would allow verification of the affidavit. Another problem is the need to declare the income in order to claim child support. Since asylum seekers do not declare their income to the authorities, and do not receive a pay slip, they do not possess documents that attest to their income.

**Recommendations:**

- The minister in charge should do everything necessary to establish a system that will grant asylum seekers access to legal aid.

## **Exclusion of women in the religious establishment and the public sphere**

### **Exclusion of women in Israel - General**

The phenomenon of women's exclusion in the public sphere, i.e. the removal of women from the public sphere, is an anomaly that has expanded in Israel in recent years, both in terms of its scope and the variety of life areas it affects. Thus besides the relatively old phenomenon of gender segregation on buses used by the Orthodox community, in certain towns segregation is also practiced in health clinics, street pavements, and even in cemeteries. Sometimes women are prevented from eulogizing in cemeteries or from participating in certain radio broadcasts. Other aspects of this phenomenon include refraining from advertising images of women on billboards in public spaces, an attempt to designate separate sidewalks for men and women, and more.<sup>50</sup>

It is customary to view the separation between men and women within various aspects of the public sphere as an expression of the desire of certain religious communities to conduct their traditional way of life in the general public sphere as well, like they do privately and within their communities. However, this segregation is not based on relevant differences between men and women and therefore it infringes upon women's basic rights to human dignity and equality, and violates the constitutional right of all citizens to freedom of religion in Israel.

A committee set up by the Ministry of Justice in 2013 studied the phenomenon of the exclusion of women in the public sphere in Israel, and concluded that despite the need to exercise tolerance and pluralism toward various communities in a democratic regime, and despite the wish to grant religious freedom to these communities, separation between men and women in public services where there is no relevant difference justifying it cannot be allowed, and the public authorities must prevent it or put a stop to it. Such separation infringes upon the basic right of women to dignity and equality. Furthermore, a democratic government cannot allow into the public sphere a system of values that deprives women of equal participation in civil life<sup>51</sup>. Despite the adoption of the panel's recommendations by the Attorney General in 2013, this anomaly of exclusion continues to thrive in the public sphere in Israel. Thus, for example, a few weeks before the publication of this report, women were prevented from singing at the official Holocaust Memorial Day ceremony held in Bar-Ilan University, for fear of hurting the feelings of the participants.

### **The exclusion of women from the religious establishment in Israel**

The exclusion of women from the public sphere in Israel is reflected more strongly in the religious establishment, where officials are mostly Orthodox or religious Jews. Women cannot serve as judges and legal assistants in Rabbinical Courts, or hold administrative positions therein. The fact that 50% of the court applicants are women, and that many of them are secular women obliged to use its services, leaves no room for the argument that

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<sup>50</sup> From the report of the team examining the exclusion of women in the public sphere, Ministry of Justice, submitted to the Attorney General on 7.3.2013.

<sup>51</sup> There.

the Court is the private realm of one certain community. The dimensions, status and influence of this institution require that it implements gender equality and contemporary standards. Another exclusion of women occurs in the ultra-Orthodox political parties, which prevent women from being candidates on their lists. As a result, women cannot be elected to parliament on behalf of those parties.

In the context of women's representation in public establishments in Israel, it should be noted that explicit legislation mandating adequate representation of women does exist, yet it is almost never enforced, especially not in the religious establishment. Moreover, the very same law which determines women's right to adequate representation, i.e. Women's Equal Rights Law, 1951, states it does not apply on the appointment to religious positions according to the religious law, including the appointment of rabbis and judicial positions in rabbinical courts.

To follow is a brief review the exclusion of women within the religious establishment in Israel:

### **Appointment of Women as Judges in Rabbinical Courts**

Israel Rabbinical Courts consist of male judges only. According to the Law of Rabbinical Judges - 1955 (hereinafter: "The Rabbinical Judges Act"), the rabbinical judges must be ordained rabbis. Although it is easier for women to become certified rabbis than to be appointed as judges, according to Jewish law, women are not authorized to be rabbis in the Orthodox sector, and therefore the appointment of women as rabbinical judges is not a viable option. That being said, the restriction is obviously not a mere technical matter. According to the common approach in Jewish law, women cannot serve as rabbinical judges (although there are rabbis who think differently). In 2006 several women organizations filed a petition to the Supreme Court,<sup>52</sup> asking the Commission of the appointment of Rabbis to explain why women won't be appointed as rabbinical judges. The petition was denied because the court chose not to intervene in this matter. The result is that today there are no women presiding as judges in rabbinical courts.

### **Appointment of women as directors of the rabbinical courts**

Never was a woman appointed as a director of the rabbinical courts in Israel. The Rabbinical Judges Act stipulates that the director of the rabbinical courts will be a rabbinical judge or a person qualified to be elected as a town rabbi. According to the interpretation of this section to date, only men are eligible to be appointed as rabbinical judges or as town rabbis. Therefore, in practice, only men's nomination was considered to date. Several petitions were submitted over the years, requesting explanation as to why won't a woman be nominated to be the director of the rabbinical courts, and attempts were made to amend the law so as to enable the appointment of a woman for the job, but to this day all of these attempts have failed.

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<sup>52</sup> HCJ 8756/06 MAVOY SATUM Association v. Appointing Rabbinical Judges Commission (2008), Takdin Legal Database 2008(2) 2762 ,(by subscription, in Hebrew) (Isr.)

It should be noted that in January 2016, in a petition filed in respect of the appointment of a woman to the administrative position of director-general of the rabbinical courts, the Supreme Court gave an interim ruling that the law should be interpreted as allowing the appointment of a woman for the job. This was also the State's position in the petition.<sup>53</sup> Let us hope that this resolution will help to bring about the desired change.

### **Appointment of legal assistants to rabbinical judges in the rabbinical courts**

There are no women serving as legal assistants to rabbinical judges. The appointment of legal assistants to rabbinical judges in Israel is made through tenders published by the management of the rabbinical courts. For many years, the tenders were open to men only, but since 2008 - and as a result of a claim filed against the rabbinical courts<sup>54</sup> - tenders are opened to women as well. In practice, this step did not change the situation, since no woman has ever won these tenders, although several women have entered them over the years. In 2015 Rackman Center filed a petition in which the court was required to order the management of the rabbinical courts to hold a tender reserved for women candidates only, for the position of legal assistants.<sup>55</sup> This petition has not yet been heard.

### **Lack of representation of women in Orthodox political parties**

Orthodox women are totally absent from the political leadership, both on the national and the municipal level, as religious parties do not allow women to be members of a party and do not pose women in their list of candidates to local authorities and to parliament. Orthodox women trying to get elected independently, and not through an orthodox party, encounter threats and intimidation campaigns aimed at making them remove their candidacy.

There have been several attempts made over the years to change this situation, but to no avail. In 2013 an application was filed to the Election Committee to disqualify some political parties running for election, on the basis of those parties' internal regulations - which discriminate against women - but the request was denied. In the same year another petition was filed in order to prevent financing of election expenses and current expenses from factions which do not allow membership of women. This petition was also rejected<sup>56</sup>. In 2015, another petition was filed against the Registrar of political parties and against one of the religious parties, in which the court was required to invalidate the party's internal regulations, which do not allow women to apply for membership in the party.<sup>57</sup> This petition has not yet been heard.

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<sup>53</sup> HCJ 8213/14 Jewish State Movement v. Minister of Religious Services, Nevo Legal Database 2008(2)2762, (by subscription, in Hebrew)(Isr.)

<sup>54</sup> CDR (Jer) 2007/08 Women Justice Center Association v the rabbinical courts administration. ), Nevo Legal Database ,(by subscription, in Hebrew) (Isr.)

<sup>55</sup> PH 28552-11-15 (Jer) Dayan v. Civil Service Commission (Isr.)

<sup>56</sup> HCJ 7717/13 Kollian v. Minister of Finance (2013), Nevo Legal Database ,(by subscription, in Hebrew) (Isr.)

<sup>57</sup> HCJ 1823/15 Ben-Potrat v. Registrar of Political Parties. (Isr.)

Beyond the legal struggle described above, several groups of women from ultra-Orthodox communities have begun to act in recent years in order to change the situation. In 2012 a protest movement called "no voice no vote" was established. This movement called the orthodox public to refrain from voting for parties that exclude women. Another unsuccessful attempt was setting up a party of Orthodox women headed by Ms. Ruth Kollian. The Party, which tried to run in the 2015 elections, has been completely ignored by the orthodox press, which refused to publish its very existence, and did not allow any of its election propaganda either<sup>58</sup>. At the end of the day this party did not pass the threshold.

It should be noted that in 2014, the Israeli parliament approved the Local Authorities Law (Elections Financing) (Amendment No. 12) – 2014, which provides greater election financing to local authorities factions that have a high rate of women's representation. The law will take effect in the next elections to local authorities in Israel in 2018.

**Recommendations:**

- The State should enact laws stating clearly and unequivocally that the exclusion of women from parties or functions in governmental authorities, including from religious judicial instances, is not acceptable.
- When the separation is a result of the actions of private entities, operating under franchise or license from the State or from other public authorities, the public authority should employ all legal means at its disposal as a supervisor to cease any form of segregation and differentiation constituting a discrimination.
- The government offices have set goals in terms of appointing women, and stated that failure to meet these goals will result in the decrease of budgets. The State must enforce these directives, and when necessary - decrease the budgets of offices which do not appoint women in accordance to the set goals.

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<sup>58</sup> See CC (CT) 25435-03-15 Kollian v. YETEDOT T.S.M.V. Publishing and Publications Ltd.(2015) Nevo Legal Database ,(by subscription, in Hebrew) (Isr.).

## Women's conversion to Judaism

### Religious requirements for conversion and its implications for women

Israel is a state of immigrants who have chosen to bind their fate to it. A significant group of immigrants from a range of countries including western countries, Ethiopia and the former Soviet Union who immigrated by virtue of the Law of Return - 1950, have their Judaism in doubt, according to the Orthodox interpretation of Jewish Law. The Law of Return - 1950 guarantees the right to immigration to those who can prove Jewish ancestry, but this criteria does not meet with Orthodox Jewish religious standards. Thus, these immigrants are socially integrated into the Israeli society, speak Hebrew and serve in the army and yet when it comes to family matters, which are marriage and divorce, they are not considered Jews, and cannot marry other Jews in Israel. To complete their absorption and become equal citizens in Israel, many of them must undergo a conversion process. The Institution responsible for it is the Chief Rabbinate, performing it by the orthodox religious rules only.

The conversion process is one whereby a non-Jew enters into the Jewish covenant. The process is quite long and requires patience and intensive studies of new rituals and customs. The final stage of the conversion process is the convert's *Tvilah* (immersion) in the waters of the Mikveh (ritual bath) in the presence of the Mikveh attendant who supervises the immersion and afterwards, in front of three rabbis who comprise a Beit Din (Rabbinic Conversion Court). The convert's exit from the Mikveh signifies the moment that she or he becomes a full-fledged Jew. According to the Jewish religious law, the immersion in the Mikveh must be performed while naked and the entire body submerged under the water; any obstruction between body and water is forbidden. The necessity of the rabbis' presence during the immersion creates a difficulty for female converts. Thus, after their initial immersion performed in front of a Balanit (female Mikveh attendant), the female converts dress in a loose robe which will enable the penetration of water but still maintain their modesty, supposedly.

***"I stepped forward and down the steps, into the Mikveh until the water covered my body and my nightgown began to rise up. I struggled with the nightgown because I didn't want the rabbis to see me naked. [...] The rabbis were constantly standing above, examining, watching and incessantly mumbling."*** - A Mikveh experience told by Orit Zuretz, an Israeli politician, who underwent a conversion process at the age of 6 with her mother. Her testimony is a part of "A tale of a woman and a robe- Ritual immersion of Female Converts" a project/book by Raz Samira and Nurit Jacobs-Yinon, that seeks to raise the awareness to the female converts struggle.

The problem is that even if the rabbis cannot see even a single part of the woman's body, the situation in which a woman immerses in the Mikveh in their sight remains immodest and disrespectful of both the women and the rabbinic judges.

The immersion ritual which is meant to be the entry to their new Jewish life is often experienced by women as intrusive and violating their basic rights to dignity and privacy. In addition, giving the chief rabbinate monopoly on conversions, this measure is also a violation of their personal autonomy.

Jewish law is not monolithic, and there are different approaches regarding who is required to witness the immersion. For instance, there are precedents according to which women immersing in front of female attendants who were appointed by rabbinate and then accepting upon themselves Jewish observance in front the rabbinical court. Giving the existence of another solution, it is only right to embrace it to insure that the entry into the Jewish nation is done with utmost respect to constitutional rights.

**Recommendations:**

- Review the formal immersion process for female converts and consider adopting the interpretation that allows for female supervision alone, without the presence of male rabbis in the *Mikveh* itself.