

Palestine 1948 (Israel)

Introduction

This report attempts to give an overview of the current situation of the personal status law applied in Sharia courts in Palestine 1948 (Israel).

Nissa wa Aafaq is currently working on a project titled: 'The New Personal Law project', which aims at proposing a draft for a personal status law that will replace the existing personal law – the Ottoman Family Law (1917) – applied in the Shari'a courts in Israel (religious courts for personal status issues). Within its articles, the proposal will incorporate recent developments in personal status in modern Muslim family laws in the Muslim and Arab Worlds, and the sociological and cultural transformation of Muslim society in Israel.

It is worth mentioning that many feminists and heads of organizations among the Palestinian community in Israel have expressed the need for such reform as well as for support for an initiative in this direction.

Equality and Justice are Necessary

The Ottoman Family Law was first enacted in 1917 in the Ottoman Empire, and was endorsed to be implemented in historical Palestine in 1919. This step was considered revolutionary, as it was the first law that assimilated Islamic Family Law into a code. One of its unique qualities is that it is based upon Takhayor (selectivity), which means that it selected rules from all four schools of Law (Madhahib) in Sunni Islam, especially rules that favor women. This code also added rules that are not based on any of the schools of law, in order to improve the status of women.

Polygamy: This law, almost a hundred years later, is no longer revolutionary and does not address all the needs of the modern Muslim family. For example, according to classical Islamic law, a man has the right to marry up to four women and the current Ottoman law does not limit that right. Even though polygamy is against Israeli law, the Shari'a courts in Israel have found ways to circumvent Israeli law and allow men to marry more than one wife.

In addition, **repudiation (unilateral divorce)** is accepted by the Ottoman family law. While a woman's consent to be married is necessary, a man can break the marriage unilaterally and without the woman's consent. The man can use many expressions that are acceptable for divorcing his wife. As a result, even forced divorce or divorce under the influence of alcohol is considered acceptable according to the Ottoman law. This shows the easiness with which the bond of marriage can be broken on the man's side while on the woman's side it is a long, painful and expensive process. From the Islamic legal point of view, repudiation is valid and legal, but according to the criminal law in Israel, the man could be put in jail for up to five years; therefore, a man can legally divorce his wife unilaterally, but would be committing a crime. These are only some examples that project the need for urgent reform.

In many Arab countries, such as Syria and Jordan, the Ottoman Law has been annulled and replaced by modern laws. Many Muslim States limit the right of unilateral divorce. For instance, in the Moroccan family code, there is no divorce outside the court. Additionally, the law does not deal with alimony of children and the Civil and Shari' a

court adopt the classical perception of Islamic family law that does not take into account the increasing involvement of Muslim women in economic activities.

It is worth mentioning that the Muslim community in Israel is not represented by any higher religious body, and does not have a legislative authority like the Druze or the different Christian denominations. Therefore, the Muslim community does not enjoy much religious autonomy. The religious courts are formed by the State, and the Qadis (judges) in these courts are employed according to Israeli civil laws. A new family law would mean that the community would enjoy some sort of autonomy in creating the law to be applied on family issues. The law would stem from grassroots work, rather than Israeli civil laws. Needless to say, the absence of a legislative body has made it impossible to modify the existing law; consequently, the Muslim courts are still applying a law from 1917!! To break this immutability of the law, a new law should be adopted.

The Islamist movement says it is impossible in light of the absence of a higher legislative body to modify the personal status law, and that any change in the law is equal to 'Kufur', as it is viewed as change in the laws the Qur'an itself has set. Also, they claim that Israel should not interfere with the autonomy of the Muslim community laws. In fact the Israeli parliament has interfered in many occasions in the so called autonomy through civil laws that override the religious law and empties it of content in many occasions.

Equality and Justice are possible:

The proposed reform will derive from the Islamic law, through selecting regulations that suit the spirit of the modern times and the unique situation of the Palestinians families in Israel. The reform will research the treasures of the Islamic literature, the judiciary and legislative practices in Arab and Muslim countries and of course the modern feminist interpretations of the Quran and Ahadith, and will select and adapt the most suitable and progressive items.

To convince and try to insure the Muslim community's cooperation, and to convince the community of the need for such reform, we must conduct a serious research and provide alternative knowledge in order to show that this law is based and adopting developments of Islamic Law in other Muslim Countries. The Islamic legal practice, which will be detailed below, is a guarantee of the legitimacy of the project. The more the research is profound, the more legitimacy it will have. Also, In order for this proposal to be powerful there needs to be massive collaboration between researchers, women's human rights organizations, feminist and women's organizations and grassroots. Creating a public basis for this reform is important for granting it more importance and legitimacy as projecting the societal necessity.

One of the tools trying to counter the Islamists' hegemonic claims against any modification of the current law, the group would claim that the current law was actually adopted by the British High Commissioner in Palestine, which is by no means more Muslim than the Israeli Parliament. This reform may in fact be a projection of more autonomy of the Muslim community in Israel, dealing with such a vital issue.

The group believes that after creating an influential front, the influence and the resistance of the Islamists will decrease. The key factor that will have this effect is the thorough research done by the organizations in the Islamic law and the ability to counter any arguments against the often repeated arguments by the Islamists (epistemological claims of who the expert actually is, especially when women claim knowledge and expertise in

this field). So far, many feminist and human rights organizations have avoided working on reform in Islamic law due to the lack of knowledge and womanpower to do this job. We believe that our group has the expertise and the women power to do this task, with the help of other organizations in the field.

Other feminist organizations have worked and succeeded to modify civil laws which affect women, like the family court law through hard work and collaboration which paralyzed any Islamist or conservative resistance. The group believes that the acceptance of the proposed law will be wider and more powerful, as the law will derive from the Islamic law.

Resources:

The following links were taken from the website of the working group for equality in personal status laws (in Arabic):

On polygamy:

<http://www.pstatus.org/?intLanguage=3&chrSystem=item&intPMenu=170&intMenu=170&intMenuType=2&intCategory=264&intItem=1633&intItemType=2&intItemDisplayType=2>

On Child Marriages:

<http://www.pstatus.org/?intLanguage=3&chrSystem=item&intPMenu=170&intMenu=170&intMenuType=2&intCategory=264&intItem=1634&intItemType=2&intItemDisplayType=2>