

Gender, State and Religion: Palestinian Feminist Politics¹

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Abstract: Religion-based personal status laws and religious courts are an intrinsic component of the Jewish character of the State of Israel. The association between one's religious affiliation and the law governing one's personal status issues is longstanding. However, the significance and dynamics of this association cannot be analyzed in isolation from the context of the identity of the state, or the identity of the local subjects in terms of their nationality, religious affiliation, and gender. In the case of Palestinian citizens of Israel, the personal state laws that govern them bear the imprint of the state's hierarchical and discriminatory citizenship regime. This article examines the struggles of Palestinian feminist activists, citizens of Israel, in their attempts to improve their personal status issues, which began in the 1990s and were led by secular as well as religious Palestinian feminists. In doing so, it reveals the complexity of feminist politics at the juncture of religion, gender and colonialism. It identifies similarities and differences in feminist discourses and activities, while delineating the boundaries of these politics. It argues that, in many instances, activists had to choose between 'collaboration' with a colonial regime and 'complicity' with a patriarchal establishment. The paper is based on a variety of sources, including media articles, archival documents, protocols of parliamentary committees, and personal interviews conducted with leading feminist activists.

Keywords: Palestinians, gender politics, state, religion

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Introduction

Most of the post-colonial or post-imperial states in the Middle East and North Africa (MENA) region were established as secular states, with religious authority restricted to the private sphere (family laws). The states controlled national agendas and defined, or redefined, women's roles in the private and public spheres, negotiating these roles with various authorities, including kin groups, religious leaders, women's groups, and the international community (Kandiyoti 2004, 45-58). Some of these states acknowledged women's rights and supported the inclusion of women within the national project, though with reservations and conditions. On the one hand, national movements, and subsequently post-colonial states, invited women to be actively involved in the public space. On the other hand, however, they redrew the boundaries of what was considered acceptable conduct for women in both the public and private spheres (Ibidem), with the result, for example, that a woman could head a government but required the permission of her husband to travel. Much of the feminist struggle in the MENA region has been, and remains, focused on amending personal status laws, which are grounded in religion in almost all the region's states. The main challenge facing feminist organizations and human rights activists involved in this struggle is the purported 'sanctity' of these laws. As Ziba Mir-Hosseini (2009) and Asma Lamrabet (2015) argue, the religious personal-status laws adopted by the post-colonial countries of the Middle East were, in many cases, based on social norms and Islamic thought (*fiqh*), some of which were written more than a millennium ago. However, as Amira Sonbol argues, the patriarchal principles underpinning these laws are derived not only from traditional Islamic thought, but also from modern Western legislation (Sonbol El-Azhary 2009, 180).

Feminist and human rights activists and organizations that have demanded justice in family laws have variously faced accusations of 'incompetence' or of 'lacking legitimacy'. In many cases, the groups that participated in this struggle, whether their arguments were based on a feminist religious interpretation or on 'universal' human rights, have been forced to 'prove' that these laws were not sacred and that they, as women, possessed legal and religious knowledge.

While women in the MENA region were challenging the gendered and religious policies of the post-colonial state, Palestinian women in Israel, as part of the wider Palestinian people, were struggling for their mere existence in the newly-founded Jewish state. Thus, their positionality and activism cannot be understood in isolation from their specific social, economic and political context. While these women are part of a wider sphere of women activists in the Arab and Muslim MENA region, and share with them Arab and Islamic history, as well as the legacy of colonialism, after 1948 they became citizens of Israel, and have lived with the consequences of the *Nakba*

ever since. From 1948 to 1966, they were subjected to a military government (Bäumli 2011) and cut off from the other parts of historical Palestine. Since then, Palestinian citizens of Israel have been subject to settler-colonial laws that target their land, history and collective identity, and associated policies and practices of land expropriation, displacement, and political surveillance, among others (see more, Pappé 2001). Moreover, interactions between the gendered power relations within Palestinian society and the settler-colonial regime have contributed to the consolidation of the patriarchal system (see Hawari 2019, 47-50).

While the Arab women's movements that were active during the colonial era continued to function after the establishment of the post-colonial states, the destruction of the Palestinian political and cultural infrastructure during the *Nakba* led to the erasure of all Palestinian women's organizations that had operated in the territory that became the State of Israel prior to May 1948. The laws of the military regime prevented their revival, and it was only in the late 1980s and 1990s that we witnessed the reemergence of feminist activism and organizing (Abdo 2009).

Since Israel defines itself as an exclusively Jewish state, Palestinian feminist activism on issues related to gender, religion and the state takes place in a political context that creates analytical complexity. As Azmi Bishara argues, Israel is not only not the state of its many non-Jewish citizens, but is also the state of many 'non-citizens' who are Jewish (Bishara 2017). Thus, Palestinian feminist activists in Israel operate within a web of multiple, intertwined axes of power: the state, the patriarchy, and the hegemonic culture.

On the basis of the foregoing analysis of the political context and the Israeli regime, in this paper I investigate the struggles waged by Palestinian feminist activists in Israel for equality in personal status issues. First, I will provide the historical background of the personal status laws that apply to Palestinian citizens of Israel, followed by an analysis of two feminist initiatives that sought to alter the personal status of Palestinian women. I will conclude with some insights into gender politics in a colonial, ethno-religious state.

The paper relies on an analysis of various sources, notably the archive of reports produced by the Working Group for Equality in Personal Status Issues, press releases and news articles that relate to the feminist struggle to amend personal status laws, the minutes of Knesset plenum and committee sessions during the 14th and 15th Knesset, interviews I conducted with Palestinian feminist activists who were engaged in these initiatives,³ as well as my own participation as an observer in seminars, workshops and other events relevant to the struggle to amend the laws governing marriage.

As a feminist researcher, I consider it my obligation to lay out my personal, social,

³ Seven of the women were interviewed as part of a study that I conducted for the Working Group for Equality in Personal Status Issue to document the Working Group's work to amend the Family Court Law.

and political position on the matter. I am a feminist activist with opinions on issues that concern the research questions. I developed as a feminist within the secular feminist space, even though I am critical of this space. I therefore did not approach the research from a 'neutral' position, and I am not objective in the conventional sense of the word. I consciously conducted the research as part of my endeavor to achieve justice *vis-à-vis* the prevailing colonial, gender, and class-based systems of oppression (Ramazanoğlu and Holland 2002). Nonetheless, in the research process I remained aware of the need to distinguish between my political work as a feminist and my analytical work as an academic (see more, Saba 2011, 196). While this awareness did not allow me to fully resolve the tension between the political and the analytical, it helped me to maintain an academic focus on the analytical, with the aim of better comprehending the meanings of significant phenomena.

I argue that the struggle conducted by Palestinian feminists in Israel, secular and religious, for equality in personal status takes place both in the context of the legacy of colonialism, through which Arab and Muslim culture came under attack, and in the enduring settler-colonial context. Under these circumstances, feminist activists sometimes had to choose between 'complicity' with a colonial establishment, and thereby exposing themselves to attacks and accusations, and 'complicity' via silence with a patriarchal establishment that reinforces their inferiority in the public and private spheres.

Gender, Religion and State: The Israeli Context

As a settler-colonial regime, Israel pursues colonial policies towards Palestinian natives in all matters pertaining to land and housing. However, in matters of society and culture, the same regime may adopt a variety of context-dependent and sometimes apparently contradictory strategies, depending on specific interests in play. For example, in some instances it encourages family planning and 'fights' polygamy under the guise of fostering gender equality, though its true agenda is demographic (Boulos 2019). In others, it works to consolidate patriarchal values precisely through inaction on the question of polygamy, now in the name of 'multiculturalism' (Abu Rabia 2011).

Since its establishment, Israel has preserved the legacy of the British Mandate in personal status issues, anchoring the latter exclusively in religious law. Several studies have examined the personal status of Palestinians in Israel and the status of Islam in the Jewish state (see, Abu Rabia 2022; Zion-Waldoks, Isrshay and Shoughry 2020; Zahalda 2017; Shahar 2015; Harel-Shalev 2017); however, the relationship between gender, religion and state in the case of Palestinians in Israel has yet to be subjected to in-depth investigation. In a groundbreaking study, Michael Karayanni argues that Israeli research and public debate on religion, state and gender is carried out

exclusively in relation to Jewish citizens. In his book, *A Multicultural Entrapment: Religion and State among the Palestinian-Arabs in Israel*, Karayanni (2020) highlights a contradiction within the Israeli academic and legal discourse on personal status law. He claims that religious law is viewed as a form of religious coercion in the case of Jewish citizens, whereas criticism of religious law as it pertains to Palestinians citizens of Israel is placed in the framework of ‘multiculturalism’. As well as constituting an abuse of the concept of multiculturalism, this divergent approach affects women in particular and perpetuates their inferiority (Ibidem).

Personal Status Laws and Palestinian Citizens of Israel: A Historical Background

With Article 11 of the Ordinance of Government and Law of 1948, enacted by the Provisional State Council, Israel adopted the legacy of the British Mandate in all matters relating to marriage law. Articles 47-54 of the King’s Order-in-Council on Palestine, enacted at the beginning of the British Mandate, stipulated that matters of personal status of Jews and Christians were to be adjudicated under the Ottoman *millet* system,⁴ and those of Muslims under the Ottoman Law of Family Rights of 1917. The adoption of the *millet* system by both the Mandatory authorities and later by Israel represented a regression from the Family Rights Law of 1917, the authors of which intended it to be a ‘modern’ law that views members of the various ethnic groups primarily as individual citizens, rather than members of their religious group (Shahar 2015). Following the State of Israel’s adoption of the Mandatory-era personal status laws, all recognized religious communities were granted exclusive authority in matters of marriage and divorce.

Furthermore, until 2001, as detailed below, the Islamic *Sharia* courts were granted exclusive authority in other matrimonial matters (primarily maintenance for children and wives, and custody of children), while the ecclesiastical courts were granted exclusive jurisdiction in matters of alimony for married Christian women. Religious courts may also have jurisdictional authority in other matters, upon fulfillment of certain conditions, including the consent of all parties concerned. In matters of personal status that do not fall within the jurisdictional authority of the religious courts, the civil courts have jurisdiction (today, the Court of Family Affairs), and may be obliged to apply the religious law applicable to the parties (as in the case of alimony claims, for example; see, Karayanni 2020). Thus, while Israel has annulled and amended many Mandate-era laws, in line with its self-perception as a modern, Western state, its personal status laws remain under religious jurisdiction.

⁴ *Millet* was the name given to any religious denomination recognized in law by the Ottoman Empire.

Karayanni argues that the granting of judicial authority to the religious courts, which rises to the level of ‘autonomy’ in personal status issues, did not stem from a concern on the part of the state for the welfare of religious minorities within its borders, but was rather intended to serve the interests of the Jewish state (Karayanni 2016). What is generally perceived in Israeli academic and legal discourse as the liberalism of the state is an illusion, or at most a form of ‘tainted liberalism’ that harbors an internal contradiction. In the case of Jews, Jewish religious laws, or *Halakha*, that apply in the rabbinical courts are perceived in the liberal approach as patriarchal laws that undermine the principle of the rights of individuals to access the judicial system of their choosing. However, this approach is not applied to Palestinian citizens, regarding whom the Israeli liberal view is that the state should not interfere in the autonomous authority of the religious courts.

Israeli Laws Binding on Religious Courts

Over the years, there have been several legislative interventions in the field of personal status law, with different motivations, each of which had its own background and particular consequences. These interventions resulted in the enactment of civil laws that are binding on the religious courts, including a number of articles in the Penal Code prohibiting polygamy and unilateral divorce,⁵ and the Matrimonial Property Law (1977).

An Initiative Within Israel’s Borders: Success Follows Attack

Initiative to amend the Family Court Law, 1995

The enactment of the Family Court Law in 1995 allowed Jewish citizens only to apply to the civil family courts in personal status matters other than marriage and divorce, such as custody, alimony and the division of property.⁶ Following its enactment, feminist activists and members of feminist and human rights organizations, primarily Palestinian citizens of Israel, formed a coalition named the Working Group for Equality in Personal Status Issues (hereafter: the Working Group). The Working Group sought to extend the applicability of the Family Court Law to Muslims

⁵ See sections 176 and 182 of the Israeli Penal Code.

⁶ Jews were able to take these matters to the civil courts even before the enactment of the law, but following concerns that the district civil courts were not the ideal place for discussions of family matters, an expert committee was set up which recommended the establishment of a special court for family matters, which came about in 1995. The committee focused only on Jewish citizens and did not include a single Arab member, or invite an Arab representative to appear before it, see Karayanni 2020, 246-47.

and Christians, to enable them to approach the civil courts on the aforementioned matters. After a struggle that lasted around six years, the Working Group succeeded in bringing about this change, through Amendment No. 5 to the Israeli Family Court Law.⁷

Examples of the problems faced by women prior to the amendment

As attorney Nahida Shahada puts it: "I felt sorry for every woman who came [to court] with a lawyer... I was always afraid that the lawyer had already 'sold her out,'" i.e. made a deal with her husband's lawyer."⁸ Feminist lawyers and activists who were active during the late 1980s and early 1990s testified to the difficulties entailed in applying to the religious courts, and such frustrations are also evident in documentation from the archives of the Working Group, including in the following areas:

- The reliance of *Sharia* judges on advisors in determining alimony payments. According to the activists, the role of advisor could be assigned by the judge to a man who happened to be sitting in the court, or even to a passerby on the street, and that professional criteria were often not followed and rulings not based on official documents (Boulos 2022).
- Marriage registration officers, who were certified by the *Sharia* courts, would routinely add an article to marriage contracts stating that the two parties' agreement not to abide by the Matrimonial Property Law of 1973,⁹ without informing one or both parties in many cases.
- Some judges would treat woman as being lower in status and in a humiliating manner in the religious courts.

The process of amending the law

Statements made by interviewees and the protocols of the Working Group indicate that the decision to campaign for the equal treatment of Muslim and Christian women relative to their Jewish counterparts (and not to demand, for instance, a civil marriage law) was strategic. The activists realized that, given the

⁷ The core of the amendment is the addition of the following text to Section 3 of the Family Court Law: "Sub-section B1 will be added after sub-section B: Notwithstanding the provisions of section 25, the family court will also be authorized on family matters of those for whom special jurisdiction has been established according to sections 52–54 of the King's Order-in-Council on Palestine (Israel) 1922-1947 except for marriage and divorce matters."

⁸ Member of the Working Group and an initiator of the amendment. Interview conducted with Advocate Nahida Shahada on 4 September 2017.

⁹ The Matrimonial Property Law provides that all property accumulated by the couple during their marriage is joint property and will therefore be divided equally between them. See: The Matrimonial Property Law 1973, *Nevo*, https://www.nevo.co.il/law_html/law01/171_001.htm

political landscape at the time, the Israeli parliament would not allow them to upset the prevailing balance between Israeli religious and secular parties, and that Arab women would not be granted more extensive rights than Jewish women. Accordingly, they decided to promote an amendment, which Karayanni refers to as a “copy and paste amendment mechanism” (Karayanni 2020, 248), to allow Muslim and Christian men and women to resort to the civil courts in personal status matters other than marriage and divorce. Thus, the strategic decision was taken to demand the equal jurisdiction of the Muslim and Christian religious courts on par with that of the Jewish religious courts, rather than any direct intervention in the jurisdictions of the *Sharia* or Christian courts (Ibidem).

Over the years, members of the Working Group sent letters to and approached in person most Members of Knesset in order drum up support for the law, and promoted the proposed amendment before the relevant Knesset committees. They also lobbied the Zionist political parties, including the extreme political right.¹⁰ Some of them endeavored to garner public support by signing up dozens of social workers, feminists, human rights activists and lawyers on a public petition calling for the law to be changed (Ibidem).

The Debate on Amending the Law: Gender, Religion and State

The bill to amend the law was submitted to the Knesset on 2 May 1997, and the amendment passed in a third and final reading on 5 November 2000. The minutes of the Knesset session and interviews with activists indicate that Member of Knesset (MK) Nawaf Masalha, an Arab MK from the Labor Party, proposed the bill and signed it, along with several other MKs. The Hadash (Jabha) political party¹¹ supported the bill and voted for it in its three readings, whereas the Ra’am-Ta’al party list, which included representatives of the southern branch of the Islamic Movement, and members of the Arab Movement for Change consistently voted against it. The National Democratic Assembly (Balad/Tajammu’) party, whose sole representative at the time was MK Dr. Azmi Bishara, voted in favor of the law in its first reading, but was not present for the second and third readings (see more, Gnahem 2011, 22-59).

The process of promoting the bill raised many questions about the status of women and the place of religion, identity, cultural autonomy and the state. It was complicated by the fact that personal status laws deal with intimate and sexual issues, encompassing a woman’s behavior, obedience to her partner, and sexual

¹⁰ Information taken from the archives of the Working Group.

¹¹ Hadash (the Democratic Front for Peace and Equality) is a left-wing Jewish-Arab party established by the Israeli Communist Party, and has a mainly Palestinian membership.

relations between them. Any appeal to the Israeli establishment concerning these issues – given that Israel is a Jewish state that exercises colonial control over a Muslim and Christian population – is widely considered taboo among Palestinians and as legitimization of interference by the ruler in the internal affairs of the ruled. One member of the Working Group, who asked to remain anonymous, stated as follows:

”We put the Sharia courts under a magnifying glass... We should not forget that they issued a fatwa [religious advisory opinion] against us... Religious people even approached my brother, who is also devout, and scolded him for having a sister in the group.”

The amendment did not seek to abolish the authority of the religious courts over personal status issues, but rather to allow women and men to choose the legal system in which they want their cases to be decided, and for the litigants’ right to make this choice to be respected. Still, it was clear that the amendment would affect the powers of the religious courts, and therefore their officials opposed the initiative. The two branches of the Islamic Movement in Israel argued that the amendment constituted an attack on the religious establishment, on Arab and Islamic identity, and on the few remaining institutions in the country under Muslim control.

A group of clerics, religious judges, and leaders from both branches of the Islamic Movement even took the step of issuing a *fatwa* expounding their opposition to the bill (*Sawt Elhaq Walhorra* 1997, 8). They maintained that the bill diminished the powers of the *Sharia* courts and was a step towards their abolition. They further claimed that the principles upon which Israeli law governing matters of alimony, adoption and inheritance were based created models that are alien to Islam and in conflict with Islamic *Sharia* law. In addition, they argued that the application of civil law to the religious affairs of Muslims, in accordance with the bill, directly controverted the teachings of the *Quran*.

The *fatwa’s* authors also asserted the opinion that Arab citizens must enjoy cultural autonomy, of which religion is a core component, and thus that any weakening of the *Sharia* courts would alienate Arab citizens from their Arab and Muslim identities. The wording of the *fatwa* shows that, at that time, like the feminist activists, its authors were unaware that the family courts must adjudicate in accordance with the religious law applicable to the litigants, or else that they decided to ignore this fact.

While the feminist activists relied on references to ‘universal’ human rights,

the opponents of the bill – the authors of the *fatwa* and MKs affiliated with the Islamic Movement – drew their arguments from the rights to religious freedom and to national and religious autonomy of a minority group within the Jewish state. These arguments were echoed by some other Arab MKs, representatives of the *Sharia* courts, and activists in the Islamic Movement. In his speech before the Knesset plenary, MK Abdel-Malek Dahamsheh of the southern branch of the Islamic Movement stated that:

”This law comes to fundamentally and wholly detract from the authority of the *Sharia* courts. If this law passes as currently drafted, neither a woman nor anyone else who has a dispute will be able to resort to the *Sharia* courts in their affairs, other than in issues of divorce and marriage ... Paternity matters, guardianship matters, matters such as who is the father of [the newborn] and alimony matters, all these issues that are anchored in Islamic law and must be judged according to the Islamic religion will go to the family courts, to the courts of the state” (Knesset 1998).

The arguments put forward by members of the Islamic Movement and representatives of the *Sharia* courts regarding the contravention of Islamic principles are proof of the distinct, special treatment granted to personal status issues. According to MK Dahamsheh, matters of paternity and alimony are anchored in *Sharia* law, and while *Sharia* court judge (*Qadi*) Ahmad Natur stated that most questions concerning personal status in Islam had been expounded upon in the *Quran* (Knesset 2000).

Classical, orthodox Islamic *Sharia* law (the *Sunnah*), on which the authors of the *fatwa* relied, contains teachings, rules and commandments on countless subjects related to the lives of individuals, including the relationship between human beings and God, and between them and their fellow human beings, and even on the treatment of animals and the environment. Some of the teachings are recommendations, while others are strict orders. The orthodox *Sharia*, like the Jewish *Talmud*, established principles for religious rituals, prayers, eating, drinking, treatment of parents and children, education, criminal acts, property and money matters, and the conduct of commerce, among others (see, Hallaq 2009).

In the case under discussion, the public figures concerned called for the preservation of religious authority exclusively in the private sphere. They generally do not employ religious argumentation in relation to other matters of

concern to Palestinian citizens in Israel, such as education, land expropriation, finance, criminal justice, food insecurity, freedom of occupation, human dignity, etc. Their positions on these issues are anchored in the national Palestinian discourse or in the discourse of civil rights. They invoke religion only in the service of protecting holy sites and to preserve the status quo with regard to personal status issues and gender-based relations, which, like holy sites, are still seen as of religious and national significance.

The various Muslim religious groups took a clear, entrenched position against the amendment, and defended this position in the name of Islam and cultural autonomy. The position of the women who initiated the amendment was also clear: they advocated for the right of women and men to choose the legal system in which to have their cases adjudicated, and for equality for Arabs vis-à-vis Jews in terms of their access to the various legal systems. They employed international human rights treaties as a universal reference. They claimed that the *Sharia* courts were not, in fact, national institutions, but rather part of the wider Israeli establishment, and moreover that they were managed in an unprofessional manner, without proper checks, controls or procedural oversight. On top of that, they emphasized that the bill's opponents appealed to religious and national arguments only in matters of women and gender relations. In response to the aforementioned *fatwa*, Working Group member Attorney Taghreed Jahshan stated that, "The woman is the victim of these [religious] courts and of this corruption [in the courts]; it cannot be that these courts, which were partners in the sale of the *Waqf* properties,¹² act as national institutions only when it comes to women" (Abu Ershied 1997, 12-3). Working Group member Muhammad Zidan, General Director of the Arab Association for Human Rights at the time, asked the following rhetorical question: "How does Sheikh Tawfiq Khatib [an MK in the Islamic Movement] justify to himself sitting on the Zionist Legislative Council, while forbidding women from being judged under the laws enacted by that same council?" (Sleeman 1997, 12-3).

In contrast to the plurality of voices that criticized the amendment from an Islamic religious perspective, I was unable to find a single reference to a statement by the Christian ecclesiastical courts on the matter. The amendment did not stand to bring about a drastic change in the authorities of these courts, since most Christian personal status matters (aside from marriage, divorce and alimony payments for married women) could already be adjudicated in the civil courts. Still, their complete silence was surprising.

The secular-nationalist camp, for its part, did not have a unified stance toward the bill. The Hadash political party supported the bill throughout the legislative

¹² Charitable endowments recognized under Islamic law.

process, but there was no public discussion on the issue in its published media. Hadash MKs voted for the bill in all three readings and argued in its favor in the Knesset plenum, employing a discourse of human rights and equality. Hadash MK Muhammad Barakeh stated as follows in the Knesset deliberations that preceded the vote in the second and third readings:

”I think there is an unnecessary uproar around the bill, which proposes equality and justice... This equality is not intended to destroy or harm the *Sharia* or ecclesiastical courts, but to create an additional choice. The law is unequivocal about this. Any attempt to obscure this fact aims, I think, at concealing the truth” (Knesset 2001).

A small number of discussions on the subject were also held in the forums of secular and nationalist organizations and political parties, such as Balad, the Arab Association for Human Rights, and Adalah - The Legal Center for Arab Minority Rights in Israel (hereafter: Adalah). The main question under discussion was whether the religious courts, and especially the *Sharia* courts, fell within the sphere of cultural autonomy championed by these bodies. The discussions raised additional questions about national and religious groups, the limits of cultural autonomy, and the ‘right’ to a monopoly on religion. Two main positions towards the relationship between the bill and cultural autonomy emerged from this debate, as detailed below.

The Sharia courts and cultural autonomy

During the discussion over the amendment to the law, the concept of ‘cultural autonomy’ was brought under scrutiny. The Balad party, and specifically its former chairman Dr. Azmi Bishara, introduced the principle into the public discourse when the party was founded in 1995 to substantiate his demands for the self-management of Arab schools, universities, media and other cultural institutions. Two main views of the relationship between the bill and cultural autonomy emerged from the discussion. The first was espoused by Attorney Hassan Jabareen, the General Director of Adalah, who saw the bill as a violation of the right to cultural autonomy of Palestinian citizens of Israel, and the second by Azmi Bishara, who argued that the amendment did not infringe this right. Jabareen argued that the *Sharia* courts were national as well as religious institutions, and that the state should not interfere in the affairs of the national minority other than in exceptional cases of harm to human life and dignity, or to offer protection from violence (Jabareen 1997, 25). During a meeting with the Working Group that was held following the issuance of the aforementioned *fatwa*,

at which Arab Knesset members in favor of the amendment were present, Bishara expressed surprise that some had depicted him as an opponent of the bill because of his leading role in calling for cultural autonomy. The amendment did not, he contended, seek to abolish the *Sharia* courts: anyone who so wished could still turn to the *Sharia* courts, and the amendment would create competition for litigants that may have the effect of improving the performance of the courts. Bishara further argued that cultural autonomy should not come at the expense of universal human rights.¹³

Discussions on the content of the legislation and its limitations

Alongside the debate over the principles underpinning the bill, there were also discussions relating to the content and limitations of the legislation. I will examine here only one issue that arose during the discussions, due to its overriding importance, concerning the application of religious law to the family courts. In family matters, the civil courts rule in accordance with the religious law applicable to the litigants. Thus, judges in the family courts are supposed to hand down judgments based on their understanding and interpretation of the religious law applicable to the applicants, regardless of the religious belonging or belief of the judge. In addition, relevant Knesset-enacted laws, such as the Matrimonial Property Law and the Penal Code, apply in the civil (and religious) courts.

At a meeting of the Knesset's Constitution, Law and Justice Committee held in February 2000, *Qadi* Ahmed Natur asked how a Jewish judge could rule in accordance with Islamic law. "If it is according to personal law [of the litigant], which is Islam, will Moskowitz and Berkowitz [Jewish surnames] rule?" (Knesset 2020). MK Bishara asked what purpose the amendment would serve given that deliberations are conducted according to religious law even in the civil courts, and asked the chairman of the committee to explain how the committee would respond to the *Qadi's* question (Ibidem). Then, ahead of the vote on the second and third readings of the bill, Bishara submitted a reservation to the proposal, seeking an additional provision that family court judges must undergo a year of training in Muslim and Christian personal status laws.¹⁴

¹³ Minutes of a meeting from the archives of the Working Group, undated.

¹⁴ In the debate in the Knesset plenum before the second and third readings, it was noted that MK Bishara had entered a reservation to the bill; however, the reservation was not discussed because Bishara did not attend the session. A speech delivered by MK Barakeh during the debate indicates that Bishara demanded that judges in the family court should undergo a one-year training in Christian Muslim marriage laws. MK Barakeh expressed his own support for the reservation. Minutes of Session 242 of the 15th Knesset (5 November 2001).

The Working Group for Equality in Personal Status Issues submitted the bill based on an assumption that the law governing the family courts should be the civil law, which the activists regarded as universal in nature. In interviews I conducted over ten years after the amendment of the law, female lawyers who are members of the Working Group claimed that, even though the civil family courts ruled in accordance with religious laws, in practice they took greater account of civil laws and were subject to more extensive control and oversight than the religious courts.

The complexity of the issue was captured by MK Bishara. In an article that he wrote a few days after the aforementioned committee meeting, Bishara claimed that the liberal logic underpinning the bill could have been consistent had the civil courts applied civil law, not religious law. However, he contended, those Israelis who supported the law did not trouble themselves with such questions; the Jewish majority used its liberalism to exploit the traditional image of the Arab woman, thereby reinforcing its own stereotypes and precluding change (Bishara 2000, 3).

The Working Group's activists chose to discuss the law from a liberal perspective, drawing on individual civil rights, and with an awareness of the feminist narrative employed by Palestinian and Arab women's national movements. According to that narrative, the activists argued, women's interests are habitually relegated to the bottom of the national agenda. However, the activists failed to criticize, or even discuss, the problems associated with the adoption of a liberal discourse in a colonial context.

The act of ignoring the national-political context produces a decontextualized liberal discourse, while engaging with this context consolidates the place of women as a symbol of identity, even among secular movements. In this way, women fall into a trap in which they are compelled to choose between their national identity and their gender identity. Choosing the 'national' agenda results in reliance on *Sharia* courts, which are subordinate to the Israeli Ministry of Religion or the Ministry of Justice, whereas selecting the 'liberal' agenda entails the application of personal status laws that are religious in nature in civil courts by judges who are usually Jewish.

The Second Initiative: Challenging the Monopoly on Knowledge, an Attempt at Silencing

The amendment of the Ottoman Law of Family Rights, 1917 (2012-2015)

In 2001, the Nisaa Waafaq (Women and Horizons) association was established,

defining itself as a feminist organization that aims to improve the status of women and opposes the use of religion as a tool of their oppression. Its founders believe that their position is in line with their religious beliefs, and that religion can provide a sound basis for advancing the status of women (see, Nisaa Waafaq Brouchure).

In line with its goals, Women and Horizons worked to improve the status of women in the *Sharia* courts. In 2014, members of the organization sought to enforce publication of the ‘judicial decrees’ to which to *Sharia* courts refer in their rulings, arguing that the contents of these decrees were not available in the public domain. The organization first appealed to the administrators of the *Sharia* courts to publish the decrees. After the courts ignored its repeated appeals, the organization submitted a petition to the Israeli High Court of Justice, demanding that these decrees be declared illegal (*Nisaa and Afak Association v. The Administration of Sharia Courts* 2015). The High Court dismissed the petition and accepted the argument made by the *Sharia* courts that the decrees were only opinions and not legally binding. Women and Horizons, however, considered the decision to be an achievement for its recognition of the non-binding nature of the decrees. In this case, feminist activists approached the institutions of the state in order to censure the conduct and limit the jurisdiction of the *Sharia* courts. Between 2012 and 2015, Women and Horizons worked on a bill to amend articles of the Ottoman Family Law of 1917, on the principal ground that it was not suitable to contemporary times Sarisi, Ziad and Taghreed 2014).

Unlike the Working Group, Women and Horizons did not call for a change to the powers held by the *Sharia* courts, but rather sought to amend the Ottoman Family Law on which the *Sharia* courts and civil courts rely. These amendments include:

- The amendment of Article 10 of the Ottoman Family Law, related to the question of guardianship in marriage: In place of a provision referring to a guardian as “the one who represents the woman in the signing of the marriage contract should be the man closest to her on the father’s side, based on degree of proximity”, Woman and Horizons proposed the text, “There shall be no guardian assigned to those aged 18 and over, unless it is in accordance with his/her will.”
- The amendment of Article 34, concerning witnesses: Instead of the requirement for two male witnesses to validate a marriage contract, they proposed that, “The two witnesses may be two men or one woman and one man.”
- The abolition of Article 129, which provides for the annulment of a marriage

that a woman entered into after the ascertainment of the death of her previous husband, in case it later comes to light that the previous husband is, in fact, still alive.

The bill, which was published as a booklet (Sarisi, Ziad and Taghreed 2014), was drafted by three legal experts: Naifeh Serisi, Director of Women and Horizons, who holds a doctoral degree in the field of human rights law; *Qadi* Ziad Asaliya, a retired *Sharia* court judge and expert in Islamic law; and Attorney Taghrid Jahshan, a feminist activist who represented women in religious courts for over twenty years. As part of training and discussions that they held in preparation for the bill, members of the association held consultation meetings with numerous experts. In addition, they attended a week of training in Amman, Jordan, in November 2012, led by Dr. Frieda Benani, a lecturer in law at the University of Marrakesh and a world-renowned expert on Islamic law. Lawyers and judges who work in *Sharia* courts within the territory of the Palestinian Authority also participated in the training course.¹⁵

The bill was presented to MK Haneen Zoabi to allow her to introduce it for discussion within the Joint List political party.¹⁶ Before such a discussion could take place, however, the bill was leaked to the media and was met with sharp criticism from *Sharia* court judges, members of the Islamic Movement and commenters on social media. An activist in Women and Horizons, who requested anonymity, stated the following in reference to the vehement attacks on the organization, and also to the credibility of and need for the bill:

”They used offensive words that are unbecoming to religion, to an Islamic movement, and certainly to *Sharia* court judges... Our project aims at the amendment of the Family Law used in the *Sharia* courts... This is a law that was enacted in 1917 and to this day has not undergone a single amendment, not even to its language. Even its translation contains errors [...] it is a text that was translated from the Ottoman [Turkish] language to English, and from English to Arabic.”¹⁷

¹⁵ The training course took place from October 31 to November 14, 2012. I participated in it for two days as an observer. According to an announcement by Women and Horizons, the participants in the various meetings and discussions included the President of the *Sharia* Court in the Palestinian Authority, *Sharia* Court Judge Yosef Deibas, Dr. Leila Abd Rabu, *Sharia* Court Judge Sumud Aldomiri, *Sharia* Court Judge Asmahan Al-Tawhidi, and MK Haneen Zoabi (Women and Horizons archives).

¹⁶ In March 2015, the Arab parties and Jewish-Arab party Hadash established a united list name the Joint List. It was dismantled in September 2022.

¹⁷ Interview dated January 12, 2016.

The attack on Women and Horizons and on MK Zoabi began even before the organization had issued any statement about the bill, and before the Joint List had discussed it. In early November 2015, the *Bokra* news site published a report, based on information circulated on social media networks, that Balad party MKs, including MK Zoabi, had submitted a personal status bill (Manaa 2015). A press release issued by the Islamic Movement claimed that one of the bill's provisions would remove the requirement for a woman to be assigned a guardian (a male family member) in signing a marriage contract, in violation of the *Sharia*. The southern branch of the Islamic Movement stated that it would oppose any proposed amendment that was not initiated by the *Sharia* establishment, regardless of whether it was raised for pre-discussion or brought directly for a vote in the Knesset (Panet news 2015).

Qadi Ahmad Natur, the former President of the *Sharia* Court of Appeals, said:

”What I understood from this bill is that it will be presented to the Israeli parliament in order to abolish the Islamic Family Rights Law. If this is the case, then it entails the voluntary granting to Israel of the right to legislate for Muslims in matters of their religion. This is a red line that cannot be crossed, because it means Judaizing the *Sharia* and replacing the sources of legislation with those of the Knesset, its representatives, and its laws” (Atamleh 2015).

The Islamic Movement's response to the arguments made by Women and Horizons reflects an ongoing struggle over representation and authority. The Islamic Movement assigns the mandate in matters of legislation exclusively to the *Sharia* establishment, as stated above. However, it is not clear whether they refer to the *Sharia* court system in Israel, which is partially appointed by the state, or to the Islamic Movement itself, as a political movement.

It is difficult to ascertain how many of the bill's opponents were aware of the fact that the Ottoman Family Law is a state law, and that its provisions are less flexible than the Islamic *Sharia*, which allows disputants to choose between different Islamic schools of thought (Hallaq 2009). They did not refer to the fact that the law was designed to be a modern law and that it did not apply solely to Muslims; indeed, of the law's 157 articles, 30 were specific to Jews and Christians, and Article 155 stated that any provision not tailored to a specific religion applied to all citizens of the Ottoman Empire (Shahar 2015).

In the aftermath of the attack, Women and Horizons clarified that its

immediate goal was not to table the bill in the Knesset, but rather to submit it to the Joint List for internal discussion (Women and Horizons Association). However, not a single debate, conference, seminar, or even roundtable discussion was held on the bill, be it on behalf of Women and Horizons, MK Zoabi, or any other MK.

The attacks and hostile public reaction towards the organization evoked the atmosphere that prevailed during the amendment of the Israeli Family Court Law that was led by the Working Group over ten years earlier. The arguments levelled against Women and Horizons mirror those made against the 1997 bill. First was the claim that feminists sought to weaken the *Sharia* courts and buttress the standing of civil law at the expense of Islamic law, thereby undermining the last remaining institution over which Muslims have jurisdiction and autonomy (according to the bill's opponents). Second was the argument that, if the bill were to reach the Knesset plenum, then Jewish and Zionist MKs would be given the right to vote on a religious interpretation of the *Quran*, a problematic prospect for a national minority living in its homeland under the sovereignty of a Jewish state. Even after Women and Horizons issued a statement clarifying that its aim was limited to instigating a public debate, and after making attempts to bring the bill for discussion by the *Sharia* courts system, however, no religious, national or feminist body invited the activists to discuss the issue, and the status quo prevailed.

Many feminist activists in the Working Group, whose struggles were documented in the preceding part of this paper, revealed in interviews with the author the extent of the disdain and disregard exhibited towards them by the opponents of the Amendment No. 5 to the Family Court Law. Such disregard was expressed in various questions directed at them such as, "Who are you anyway?" and, "What do you even understand?" Yet again, their competence and legitimacy were called into question, if not outright denied, to allow for portrayal of the amendment as 'un-Islamic' and as having been initiated by women with no mandate or knowledge on the subject.

In the aftermath of the attack on Women and Horizons, the organization received no support from any public, political or religious entity, but only from secular feminist organizations, despite the fact that none of the latter fully approved of its adoption of religious texts as sources of authority, or with their attempts at achieving 'change from within'. Feminist organizations published a statement of solidarity in which they condemned the attack on the Women and Horizons and expressed appreciation for its courage in opening up public debate, and for its activism to advance the status of women (Women and Horizons Organization 2015).

Having conducted a review of family laws and their various amendments in the Middle East region at large, I argue that the bill proposed by Women and Horizons is rooted in Islamic religious thought and in religious feminist jurisprudence. Indeed, relative to various legislative proposals promoted by Muslims in other countries in the Middle East and around the world, it sought to bring about only a modest change in the existing law (Hawari 2019, 37-42).

The attack against Women and Horizons quickly came to an end after the organization halted its activities on the issue. Even MK Zoabi, to whom the proposal was submitted, did not hold a single discussion on the issue, be it with feminist organizations, within the Joint List, in the High Follow-Up Committee for the Arabs in Israel, or even within her own party, Balad. It is worth mentioning in this regard that Zoabi is well-known for her vigorous opposition to any attempt at religious coercion (see, Zoabi 2015, 22). In response to a question about her silence on the matter, she answered as follows:

”In the end, I did not continue working on this issue. I could have, but I would have had to put in double effort, not only outside my party but also within it. As a woman, many act as if there is a ‘guardian’ for me to whom they can go to complain. I take a certain step, and then the complaints from the *qadis* and the Islamic Movement start arriving to the male MKs of Balad. As a result of this, in the absence of support, and in light of the fact that, instead of seeing the public uproar as an opportunity to begin a struggle that is of social and political value, the party saw it as a burden to be eradicated and scratched from the public agenda ... in light of all this, I stopped.”¹⁸

The words of MK Zoabi concerning the attitudes of the men in her party towards the issue echo those I heard from other feminist leaders, Hadash and Balad party members, throughout the interviews. According to these women, the male secular political leadership frequently opts to reach a compromise with tradition and with the religious leadership. When the issue at hand is perceived as testing the boundaries of patriarchy or encroaching on questions of sexuality, or of women’s freedom, the feminist activists are accused of ‘sabotaging’ the institution of the family.

¹⁸ Interview with MK Haneen Zoabi dated December 3, 2018.

Discussion and Conclusions

The struggle waged by Palestinian feminists - religious and secular - regarding personal status issues in the Israeli context is directly related not only to gender-based issues, but also to the politics at the intersection of religion, gender, and the state. Any initiative to amend legislation or demand supervision requires an appeal to the political sovereign. Unlike their counterparts in other Arab and Muslim countries, the two groups that initiated legislative amendments do not operate within their own sovereign state. Palestinian feminists in Israel, both secular and religious, face a unique struggle in their homeland, in a country that defines itself as Jewish, treats its citizens as essentially religious entities, and regards Arab citizens of Israel as 'second class'.

The feminist activists and organizations that sought to amend laws with bearing on the religious courts operate in a context that generates a matrix of intersecting challenges. In one case, as we have seen, the feminist activists succeeded in bringing about concrete legal changes (the Working Group), and in another (the case of Women and Horizons), they failed to bring about the desired change and were harshly silenced, but did challenge the religious establishment and the prevailing public discourse. Notably, the women were attacked regardless of whether they adopted the 'universal' values of human rights or a 'reformist' Islamic approach. In either case they were accused of consciously or unconsciously collaborating with the Zionist establishment in the service of alleged 'foreign agendas'.

The attacks on the Working Group and the stifling of Women and Horizons reveal the robustness of the power structures that work against women's agency, even though these power structures are weak relative to the state and inherently dependent on it. The constant, consistent disregard shown to Palestinian feminist activists, mostly in the form of verbal attacks and attempts to silence them, demonstrates that their voices are not considered seriously by the patriarchal elites in relation to issues that are perceived as religious in character, even if these issues affect their lives in both the private and public spheres. Meanwhile, the traditional religious leadership – the religious courts system, the Islamic movements, and clerics in the mosques – endeavors to preserve the status quo in personal status issues.¹⁹

In every struggle against discrimination against women fought on the basis of individual freedoms, the body and/or sexuality, senior secular and religious men alike have worked tirelessly, directly and indirectly, to silence public debate, and in many cases have succeeded. Such patronizing responses and sentiments

¹⁹ It sometimes goes further, attempting to establish new facts by banning certain activities for women, such as sporting activities, singing performances, or mixed cultural events, alleging that they risk 'harming religion'.

have also been directed towards female feminist political leaders, who have been portrayed as ‘impulsive’ and ‘emotional’, or as ‘elitists’ with little understanding of their own society.

The continuous attempts to silence or disregard these activists clearly reveal the privilege of the marginal ‘masters’ in relation to the ‘weakened feminist leaders’. These ‘masters’, who themselves operate at the margins of the Israeli power structure and are denied access to material resources, nonetheless enjoy many symbolic resources that the patriarchal regime grants them. These resources are reinforced by the colonial regime, and somewhat compensate for their sidelining within the Israeli establishment.

Despite all attempts at silencing, incitement and general disregard, Palestinian feminist activists continue to promote their agendas, and remain the only group to raise questions and pose challenges in the Palestinian public sphere on issues related to the politics of gender, religion and state. As a feminist researcher, it is incumbent on me to contribute to this type of analysis, which is still in its infancy. And as a political activist, it is important for me to continue to critically explore the relationship between gender, religion and state in the context of those Palestinians who live under the Israeli regime.

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Арин Хавари

Род, држава и религија: палестинске феминистичке политике

Сажетак: Лични статус који је заснован на верској припадности у судској пракси је занимљива компонента јеврејског карактера државе Израел. Однос између личне верске припадности и права који уређују лични статус има дугу историју. Међутим, важност и динамика овог односа не може бити анализирана у изолацији од ширег идентитета државе, идентитета локалних актера у смислу њихове националности, верске припадности, и рода. У случају држављана Израела који су Палестинци, њихов лични правни статус је под великим утицајем државне хијерархије и дискриминаторског режима. Овај рад истражује борбе палестинских феминисткиња, држављанки Израела, у циљу побољшавања њиховог личног статуса које су кренуле још 1990-тих година и које су биле вођене од стране секуларних и религиозних феминисткиња. На тај начин, рад открива сложеност феминистичких политика на раскршћу религије, рода и колонијализма и указује на сличности и разлике феминистичких дискурса и активности. Главни аргумент рада је да активисти морају да бирају између колаборације са колонијалним режимом и сложености односа са патријархалним естаблишментом. Рад се заснива на различитим изворима, укључујући новинске чланке, архивску грађу, протоколе парламентарним комитетима, и интервјуа са водећим феминисткињама.

Кључне речи: Палестинци, родне политике, држава, религија