

Religious Law, Family Law and Women's Human Rights (Jewish Women, Jewish Identity and Human Rights Today: A Challenge and An Opportunity)

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Abstract

Family law, particularly in the area of marriage and divorce, has historically been strongly influenced by religious laws. In secular countries, which have a constitutionally mandated separation of religion and state, such as the US, there is nonetheless a strong impact of a variety of religious traditions and religious laws on the institution of marriage. A review of relevant legal jurisdictions on issues related to marriage and divorce reveals that civil court judges are often called upon to refer to religious law as it affects the rights and obligations of the parties. Members of various religious communities who wish to exit their marriages often turn to their clergy for information and counseling before they seek legal representation.

In countries which have varying degrees of religious law as part of their legal systems, it is the area of marriage and divorce, which receives the most input from traditional or religious sources today. This is due to the fact that on a practical, everyday basis, marriage and divorce is the area where religious law has the most impact. Thus in countries like Iran, Islamic Law determines the rights and obligations of the parties to a marriage as well as at the time of dissolution of the marriage. In the US and Europe, observant Jews follow Jewish law when entering marriage or at dissolution. Similarly, Roman Catholics who marry in the US and secular European countries are governed by Canon Law.

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Lawyers, judges, scholars, clergy, religious leaders, lay leaders and women's rights activists have become increasingly interested in the interplay between religious law and human rights law as they affect marriage and divorce. The dramatic rise in the dissolution of marriages among Catholics, Jews and Muslims in the last few decades has focused this interest on the rights and obligations of the parties in marriage and at the time of dissolution. Women claim that they are the victims of discrimination and a lack of equality in marriage and particularly at the time of divorce when religious law, which is interpreted and controlled by male clergy, is applied.

As a Jewish women's rights lawyer, the author will describe the human rights issues which arise when observant Jewish women seek a religious divorce in Jewish religious courts today. The paper will focus on the efforts of women's organizations in Jewish communities worldwide to restore fairness and justice to religious divorce. Women's rights activists and female religious scholars have been working together to influence the Jewish religious establishment and the religious court judges to find solutions to the plight of Jewish women who are unable to remarry because their husbands refuse to give them a religious divorce. Creative interpretation of religious sources combined with the use of coalitions to effect change will be described and evaluated in the paper.

Keywords: Religious Law; Family Rights; Women's Human Rights and Jewish Identity.