Muslim Wives’ Maintenance between the Israeli Shari’a Court and the Family Affairs Court: A Conservative Revolution in Liberal Clothing

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The tail end of 2001 witnessed a watershed in the Israeli legal system. Amendment No. 5 to the Family Court Law cracked the juridical monopoly held by the Shari’a and Ecclesiastical Courts, and granted a civil instance concurrent jurisdiction over the personal status affairs of Israel's Muslims and Christians (not including marriage and divorce). This legislative reform was a jurisdictional change that preserved the substantive religious law applying to personal status affairs. This gave rise, however, to a normative hybrid, which—for the first time in Israeli legal history—requires civil judges to apply non-Jewish religious law. Amendment No. 5 was meant, first and foremost, to aid women and provide them with a statutory right to choose between a religious tribunal that is perceived as patriarchal and conservative, and a civil tribunal, which is perceived as pro-women as well as an agent of gender equality.

Surprisingly, despite its historical importance and the fact that two decades have passed since it came into effect, no systematic study examining the 'civil transformation' of Islamic law in the family courts or its effects on the status and rights of women has been published to date. This article seeks to fill this lacuna through a comparative and integrative examination of the case law on wife maintenance in civil and religious tribunals.

The study concludes that the historically momentous statutory triumph was not as beneficial to Muslim women as envisioned by the women’s organizations that initiated it: while Shari'a courts exhibit reformist tendencies and advance novel, pro-women and gender-sensitive interpretations of Islamic law, family court rulings tend to harm Muslim women and compromise their rights and interests. This tendency arises from a combination of a patriarchal and conservative interpretation of the law that evinces a static, orientalist and androcentric approach to Islamic Law on the one hand, and a liberal-egalitarian approach that ignores the circumstances in which Israeli Muslim women live on the other hand. The proposed systematic comparison of the religious and civil instances destabilizes the Eurocentric and binary scholarly understandings of these tribunals, and provides us with sobering insights on the covert legal mechanisms that reproduce and reinforce a patriarchal social order and subordinate women who belong to religious and ethno-national minorities.