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### **Marriage, Divorce, and Domestic Violence in Israel's Orthodox Communities**

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# Marriage, Divorce, and Domestic Violence in Israel's Orthodox Communities

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P&G 360

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## **Abstract**

This policy paper examines the intersections between domestic violence and the sovereignty Israeli religious courts have over family law. It analyzes the engrained Jewish traditions and values of *Gets*, *Agunah*, and *Shalom Bayit*. It later seeks to explain the contradictions between the civil and religious court systems and illustrate comparisons between the Israeli Orthodox community and Hasidic community of New York City. Finally, it illustrates that domestic violence legislation, gender dynamics, and the imposing nature of male-dominated rabbinical courts maintain a culture of domestic violence in Orthodox Israeli communities. With this analysis, the author concludes the need for comprehensive social programs and education, cultural change, and court reform in order to break the cycle of violence.

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## **Introduction**

Domestic violence, intimate partner violence, domestic abuse, or relationship abuse (all terms which can be used interchangeably) are “pattern[s] of behaviors used by one partner to maintain power and control over another partner in an intimate relationship” (National Domestic Violence Hotline). Domestic violence can be understood as physical abuse, emotional abuse, sexual or reproductive coercion, financial abuse, and spiritual abuse (NDVH, Dehan & Levi, 2009, 1294). This problem exists in every community and affects women's mental, physical, economic, and social health across the globe.

In Resolution 18/147, the United Nations called domestic violence “one of the most common and least visible forms of violence against women”, and while this issue also affects men and children, the structure of communities, courts, and resources make this issue most threatening for women (Stop Violence Against Women, 2012).

Israel, unlike other Western countries, is a religious state. There are two forms of courts in Israel: civil and religious. Because of its deep-seated power, religious, or rabbinical, courts have complete control of Israeli family law. The understanding of Jewish scripture as the law of the land, which the Orthodox rabbinate and religious court perpetuate, assists in enforcing ancient perceptions of marriage and divorce laws as well as gender roles that systematically disadvantage women. The autonomy religious courts have over marriage and divorce law in Israel maintains a culture of domestic violence in Orthodox Israeli communities.

## **Background**

*When a man takes a wife and is intimate with her, and it happens that she does not find favor in his eyes because he discovers in her an unseemly matter, and he writes for her a document of severance, gives it into her hand, and sends her away from his house. She leaves his house and goes and marries another man — Deuteronomy 24:1-2.*

In biblical law, a divorce is called a *Get*. Within the traditional Jewish community, both parties must consent to the separation and it is when the husband hands the document to his wife that the marriage officially ends. For about 1,000 years, Jewish law has prohibited a husband divorcing his wife without her consent. However, because of the gendered origins of religious law, there are a “very limited number of situations” where a

woman can obtain a *Get* against her husband (Meacham, Jewish Women's Archive). A *Get* precludes civil law which means no matter how long a couple has been separated, they are still married in the eyes of Jewish law (Chabad, para 4). This pattern is borne from the idea that through marriage the “man becomes the woman's owner” and has the final say over decisions within and throughout the marriage (Triger, 2012, 4). Because of the patriarchal system, a *Get* can be used to control women by both “denying and threatening” a divorce (Adelman, 2000, 1224).

In Hebrew terminology, a woman who is not granted a *Get* by her husband becomes an “*Agunah*”, a chained woman. She cannot remarry, as any marriage without a *Get* is considered illegitimate. She is usually forbidden from seeing her children, and any children conceived outside the marriage are considered *mamzerim*, or bastard children, and are ostracized from the community (Cobin, 1986, 409; Fournier, 2012, 166). Enforcing the rules of a *Get*, and forcing someone to be an *Agunah*, is commonly practiced in many, if not all, Orthodox Jewish communities.

A core Jewish value is *Shalom Bayit*, or peace in the home. This term refers to the idyllic state of the Jewish home where every member of the household is treated with respect and dignity. Over time, this term has turned into the “myth of the perfect Jewish family” because if there is *Shalom Bayit*, domestic violence cannot occur in Jewish homes (Fortune, 2005, 2). The term *Shalom Bayit* has also been misconstrued from peace in the home, to peace in the home as a woman's responsibility. This pressures women in more religious communities “to remain in or return to homes in which they have been the victims of abuse” due to pressure and shame (Fortune, 2005,

2). It also preserves a power imbalance because if domestic violence occurs, blame is mainly placed on the wife's inability to keep a happy, healthy home.

*Gets* are still the only way Rabbinical courts allow divorce in Israel. Israeli marriage statutes stand alone among Western countries for having a system of laws that are based on the religious underpinnings of the country. Often, as cultures and societies change, so do their laws, rules, and customs. This transformation has not taken place in Jewish courts.

The *Halakha* is the collective body of Jewish rules and laws. Joined with the notable lack of an Israeli constitution, it leaves the Torah as the final law of the land. Even though Israel has a High Court which presides over most matters of law in the country, religious Jews follow the rules set forth by religious law. This is exemplified by the High Court deferring to the Religious Courts on matters of marriage and divorce disputes. Marriage laws do not allow for religious intermarriage, so if a Jewish citizen wants to marry a Muslim or Christian, they would have to leave the country to do so (David, 2018, para 1). Per religious law, every Jew who wants to get married in Israel must have a traditional Jewish service and sign a Jewish marriage contract known as a *Ketubah*.

Israeli women face obstacles from equitable marriage and divorce practices on three fronts: The first are the inequalities written into the *Halakha*. These rules are evident that traditional Jewish marriage “is based on an embedded inequity between the male and female partners” which are written into Jewish law and enforced by Orthodox Jewish courts (Labovitz, 2017, 91). The rules women are expected to follow when

entering into a marriage range from respecting what is outlined in the *Ketubah* to allowing their husband, and his family, to enforce rules which serve to regulate women and “permit the regimentation of a woman's body” (Fogiel-Bijau, 2003, 39).

Another major obstacle women confront is gender discrimination in court. Because of the culture imbued into Orthodox Jewish communities by marriage and divorce laws, courts often view women seeking a *Get* unfavorably and tend to side with the husband’s desires or perspective on the marriage. The lack of a constitution that openly states the equality of women is another obstacle faced (Halperin-Kaddari, 2004, 25). Because rabbinical courts hold all the power when ending a marriage, women are often trapped in relationships whose values are based on an ancient patrilineal and patriarchal system.

The traditions of *Gets*, *Anugah’s*, and the idea of *Shalom Bayit* in accordance with Israeli rabbinical courts cooperate to create a system of marriage and divorce that fosters a culture of domestic violence in Orthodox Israeli communities.

### **Current Dynamics**

Understanding the tensions between the right to exercise religion and the right to gender equality is highly impacted by the systems put in place by various religious and civil factors (Stone, 2000). It can be argued that the more conservative or traditional any given group is, the more likely they are to adopt discriminatory practices based on “cultural autonomy” and religious freedom (Stone, 1, 2000). Israel’s Jews can be broken down into four major categories: Haredi, Dati, Masorti, and Hiloni each of which is defined by their devoutness and everyday social practices.

Haredi are the most devout religious group in Israel, followed by Dati who can be described as modern Orthodox Jews because of their integration into modern society, then Hiloni Jews who are mostly considered secular and Masorti Jews who encompass the middle ground in Israel and describe individuals in between Orthodox and secular (Pew Research Center). Domestic violence is harder to escape for more religious women because their strict adherence to *Halakha*, isolation due to “preference and traditional behavior”, and a dearth of social resources outside of the religious community which make it very difficult for women to leave an abusive situation (Ringel & Bina, 2007).

In 1991, the Israeli *Knesset* passed the Prevention of Family Violence Law. This law was a leap forward concerning the protection of assault victims, and was the first of its kind in Israel (Ministry of Justice). Above all, it highlighted penalization, protection, and treatment as the primary methods for disrupting the cycle of violence (Yassour-Borochowitz, 2016, 1). It detailed how the government is responsible to victims of assault and the ways victims can seek help. Another act placed before the *Knesset* was the National Strategy to Combat Violence Against Women which was approved in 2017 but has yet to receive funding from the State (Yaron, 2018, para 4). While this is a clear step in the right direction, Orthodox women who follow the *Halakha* but rarely civil law, will be unable to receive the same resources and support from law enforcement or social services due to cultural and social isolation.

The year 2000 marked the first Israeli National Survey on Domestic Violence. While intimate partner violence is not a new phenomenon, awareness of this

multidimensional and generational problem has been steadily increasing. The study focused on over 2,500 households from all different faith backgrounds to determine the “prevalence and severity” of intimate partner violence in Israel (Eisikovits, Z., Winstok, Z., & Fishman, G., 2004, 730). The study concluded that the likelihood of “verbal abuse, threats, and controlling behaviors” is significantly higher in Israel than in other developed countries and that “Israeli society is highly tolerant toward violence, as reflected in prevalent attitudes toward intimate violence” (Eisikovits et al, 746). The importance of these revelations cannot be overstated for they offer distinct insight into the culture and dynamics of domestic violence in Israel.

A major factor contributing to Israel’s high levels of tolerance towards violence is the idea of *status quo* which, in this case, refers to the political compromises made between civil and Orthodox courts that allow ultra-Orthodox religious law to govern family law (Eisikovits et al, 746; Triger, 4). This agreement created two levels of inequality: First, it demands that women be subservient to men and second it blocks women from participating as judges or jurors in the family court system (Raday, 2001). Its effects have removed women from legal decision making processes and forced submissive behavior. Status quo enforced by divorce law allows men to maintain control over women (Adelman, 2000, 1224). It has also created substantial barriers to transparency when it comes to divorce court, child custody, and policies in place to assist battered women and children.

There are approximately 70 reports filed daily due to domestic violence alone, and over 200,000 battered women living in Israel (Yaron, 2018). It is critical to note that

women in conservative communities will not only face barriers to legal and social support, but will be suppressed by the culture of silence surrounding domestic violence because of *Shalom Bayit*. Considering “about 1 million women, men and children populate the cycle of violence”, which is equal to about one- eighth of Israel's total population, this issue should be of greater national importance (Yaron, 2018, para 4).

Due to Israel’s high tolerance of violence, the dearth of comprehensive policy around domestic assault, as evidenced through the lack of funding for the National Strategy to Combat Violence Against Women, and the culture of silence and shame in more traditional and closed off Jewish communities like the Haredi, it is not surprising Orthodox women suffer from a culture of domestic violence.

### **Domestic Implications**

Awareness of implications the dynamics of domestic violence have in Israel, specifically the way domestic violence legislation, gender dynamics, and status quo, impacts Orthodox women, creates a baseline understanding of the policies in place regarding child custody, gender equality, and the strained relationship between civil and religious courts in Israel.

Child custody laws offer a stark example of the harm Israeli Orthodox women face and how the autonomy of the rabbinical courts perpetuate a system of violence against women. In 1962, the Legal Capacity and Guardianship law was passed which stated that custody of a child, whether that be legal, physical, joint, or sole custody, must be “in the best interest of the child” (Halperin-Kaddari, 2004, 249). While this was a territorial law, meaning it applied to everyone in the state regardless of religious

affiliation, rabbinical courts have often stripped the mother of custody of her children citing “best-interests-of-the-child terminology” which can be invoked when the court feels that placing the child with the mother would interrupt the child's religious lifestyle (Halperin-Kaddari, 250). Not only are women being abused by their husbands, but also by the courts when they attempt to leave an abusive relationship.

Another constraint in obtaining child custody is the economic barriers Orthodox women face. As a whole, while Israel birth rates have steadily decreased over the past forty years, the birth rates of Orthodox women have actually increased to approximately seven and a half children per woman in the Haredi community (Berman, 200, 935). The increase in average family size along with the historically gendered roles of the Jewish family means that women are not present in the labor force “in favor of household activity”, meaning most women “have jobs, not careers” so they can focus on their familial obligations (Berman, 908, Adelman, 1234). This lack of economic independence, which can be translated to property ownership and financial autonomy, are additional reasons religious courts give to not allow a mother child custody.

Even as divorce rates have steadily increased throughout all communities in Israel, the religious court system has failed to adjust to the change in Israeli culture and society (Hacker, 2005, 411). It is important to note that the religious court has fallen behind in adjusting to “new families” such as international, inter-religious, and same sex couples (Rutlinger-Reiner, 2013, vii). In looking at the tensions between the rabbinical and civil court systems, it is possible to identify where people are attempting to change and how the lack of modification is hurting battered women.

The unease between religious and civil court systems is best understood in cases which decide child custody and marital property. The dissonance between the two court systems can be described as “concurrent jurisdiction” resulting in each court opposing or subverting the laws or rulings of the other (Yefet, 2016, 1522). In many cases, the rabbis of the religious courts will completely reject the power of civil courts, stating that *Halakha* is supreme over any form of civil law (Steinmetz & Haj-Yahia, 2006, 526). This undermines a woman's economic security and ability to maintain child custody because of the gendered outcomes that are ruled on by rabbinical courts, making family law a harsh exception to gender equality in Israel (Yefet, 1523, Triger, 4).

This exception may force women to stay in domestically abusive relationships. To reinforce the culture of shame and silence felt in relationship abuse, the improbability of Orthodox women winning child custody or having financial security after obtaining a *Get* can be enough to keep someone in a physically or emotionally abusive relationship. If there is little chance of gaining child custody, a woman might not seek a divorce in the first place and stay in the relationship for the children. Women may also stay in harmful relationships to avoid the disgrace of becoming an *Agunah*. Allowing religious courts to have the plurality of jurisdiction over marriage and divorce outcomes also extends the power and control a husband has over his wife in a domestically abusive relationship.

### **Prospects**

Due to the entrenched history and gender discrimination contributing to domestic violence in Israel, it will prove helpful to look at a comparative example of Jewish Orthodoxy to discern prospects for change. New York City is home to 40% of the global

Hasidic Jews (Freeman 2018). Hasidism or “pious ones” are a group of Jews that can be traced back to the 18th century that intensely follow the *Halakha* as a means to “hasten the coming of the Messiah” and end the suffering of the Jewish people (Morris, para 3). After fleeing Eastern Europe during the Holocaust, Hasidic Jews settled in Jerusalem and Brooklyn looking for a better life. The major difference between the two communities is that in Israel, marriage and divorce laws are the domain of the religious court and mostly supported by the state, while in America, civil law eclipses religious law.

Central to American law is the separation of church and state, equality of treatment, and cooperation between secular and religious creating “mutual independence and autonomy” of institutions across the country (Davis, 2016, 5). This creates a system whereby religious laws are subject to the civil laws of the state. Additionally, in the United States, civil courts have absolute jurisdiction over property, custody, and divorce settlements (Capell, 1998, 339). While within the New York Hasidic community a woman might still have to seek a *Get*, she can subvert the system by going to a civil court to seek custody of her children and financial autonomy. This option opens doors for women in abusive relationships who might not have another way out.

Contrasting these two systems offers an interesting perspective on what the Israeli Orthodox community can do to cease the culture of domestic violence. The rabbinate must consider a three pronged approach: an increase in community awareness and social programs to assist battered women and children, a shift away

from *Shalom Bayit*, and changes in the autonomy religious courts have over family law paired with the advancement of civil law as the alternative approach. Hasidic communities in New York demonstrate what additional access to a civil court in the case of domestic violence can do, and it is worth examining the effects all three approaches could have in impacting the prevalence of intimate partner violence in Israel.

The first step in this approach is the easiest. By taking a sample of global trends, financing more social programs, fostering community awareness, and reducing stigma can all have an advantageous impact on the frequency and severity of domestic violence (Adelman, 2000, 1228). There are also concrete steps that the Israeli Knesset can take to bring about this change. First, the Knesset can fund the 2017 National Strategy to Combat Violence Against Women. Second, they can offer more programs and shelters for women who are looking to, or have managed to, leave an abusive relationship. Finally, the state can finance more education opportunities which will foster a culture that actively fights against the pervasiveness of domestic violence.

*Shalom Bayit* “has been acknowledged as a barrier” to leaving abusive relationships (Guthartz, 2004, 46). In order to relieve Orthodox women from the “myth of the perfect Jewish family” it is essential that there is a culture shift from a tolerance to a refusal of domestic violence in the Jewish home (Fortune, 2005, 2). This is not a shift that can be pressed upon the Haredi communities from the outside, but must come from within. It will require an acknowledgment of domestic abuse as a problem and a move from the leaders and Rabbis of the community to promote social change.

Lastly, religious courts must loosen the hold they have on family law. If the religious rabbinate and courts continue to interpret and enforce the *Halakha* in such a strict and unyielding manner, any attempts to reform the marriage and divorce system will be deemed unacceptable. Ultimately, the court system will perpetuate a cycle of violence that cannot be broken unless such reforms are allowed to take place.

### **Lessons and Conclusions**

While factors such as gender dynamics, lack of public policy, and religious tradition all play a significant role in the development and entrenchment of domestic violence in Israeli Orthodox communities, it is the autonomy that religious courts have in enforcing the aforementioned factors that perpetuate a culture of domestic violence. The divergence comes to the surface when understanding the historically embedded traditions that are bolstered by the religious courts of Israel. It should be understood that domestic violence occurs at all levels of Israeli and global society, but what makes the Haredi community so interesting is the lack of civil courts or laws to mediate the damage being done.

The ancient and misused tools of *Gets*, *Agunah*, and the concept of *Shalom Bayit* must be critically re-evaluated and re-made in order for the cycle to stop with this generation. While it might seem that profound change is impossible because of how densely engrained domestic violence is, hope should not be lost.

Over the last 20 years, a handful of Orthodox feminist organizations have surfaced in Israel. In 1997, the Jewish Orthodox Feminist Alliance (JOFA) was created as a network to advance the “roles women play in their religious lives” and work towards

equality in the community (Cohen 2018). Organizations like JOFA are sparse throughout Israel and are facing intense backlash from both men and women in the Orthodox community. Despite these criticisms, the following of Orthodox feminist groups continue to grow and provide hope for the future. They fight to place more women in control of synagogues, court decisions, conversion, and removing the prevalence of *Agunah's* throughout Orthodox communities.

Even while writing this paper change is on the horizon in Israel. A nationwide women's strike calling the end to violence against women took place in the first days of December 2018. The campaigners requested that 250 million shekels (about \$67 million USD) be budgeted for National Strategy to Combat Violence Against Women (Halon, 2018). The attitudes of the strike we summed up by the incoming Mayor of Jerusalem when he stated "The intolerable ease of violence against women must stop. The time has come for all Israeli society to stand up as one to fight this shocking phenomenon". In order for the protests to have a lasting impact, Orthodox feminists must be included.

The coalition between secular and religious women to end domestic violence will do what civil and religious courts cannot: create a more sustainable and equitable society that could serve as an inspiration to oppressed communities across the globe.

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