

Examining Efforts to Reform Religiously Influenced Family Law – A Human Rights and Social Change Perspective

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Family Law is an area of law where religion has an especially strong influence, even in countries whose legal system is relatively free of such influence. Such religious influence is for the most part detrimental for human rights, as the norms of most major religions in this area infringe on human rights such as freedom of conscience and religion, the right to marry and found a family, personal autonomy, freedom from discrimination in general and gender equality in particular. This is manifest in specific norms such as restrictions on interfaith marriage, non-recognition of same-sex marriage, restrictions on choice of spouse, prohibition or strong restrictions regarding divorce and gender discrimination in the marital relationship (i.e. bigamy, grounds for divorce, division of marital property and allocation of parental responsibility).

The impact of religion on family law is magnified in personal status systems of family law, where citizens who belong to different religions are subject to different legal standards and/or jurisdictions in the area of family law. Such systems - in large part a legacy of a colonial past reinforced by contemporary religious sentiment, identity politics, gender politics and everyday politics - have become battle grounds for human rights reform efforts, usually with limited success: In India - the only democratic country except Israel which maintains a personal status system - different family laws (but not jurisdictions) are applied to different religious groups concurrently with a rarely used option for civil marriage. A struggle to enact a uniform civil code in the area of family has been taking place since India gained independence, without success, but some other reforms were successfully implemented; Lebanon maintains a personal status system in which different laws and jurisdictions are applied to 15 different religious groups. As no option of civil marriage exists, significant numbers of Lebanese would-be spouses, belonging to different religious affiliations, conduct civil marriages abroad, yet a major effort in the late 90's to enact an option for civil marriage has failed. Morocco, which maintains a personal status system for the 99% majority of *Sunni* Muslims and small minority of Jews, introduced in 2004 significant reforms to the *shari'a* based family code, advancing gender equality within a religious framework.

Examining the processes that took place in these countries, we will try to shed some light on the following questions: Which factors and forces affect the possibility and nature of human rights reforms of personal status family law systems? Which venues exist for such reforms? How viable are they likely to be in a given social context, and what is their potential for bringing about human rights compatibility?