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September 2015

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Israel: Spousal Agreements for Couples Not Belonging to Any Religion–A Civil Marriage Option?

Ruth Levush
Senior Foreign Law Specialist

SUMMARY Marriage and divorce in Israel are generally subject to the application of personal status laws of the parties involved. In the absence of a uniform law in these matters, Jewish Israelis who do not qualify under Jewish law or who do not wish to undergo religious ceremonies are trying to find alternative ways to marry and divorce. The Law on Spousal Agreements for Persons Without a Religion, 5770-2010 partially addressed the problems of couples where both spouses do not belong to any recognized religion. It did not, however, resolve the problems shared by couples where one spouse does belong to such a religion. It similarly did not offer a nonreligious alternative to those electing not to undergo religious ceremonies. Whereas some perceived the law as a positive step in regulating marriage and divorce in Israel, others view it as a step back, creating more dependence on religious courts and further dividing Israel's society not only along religious lines but even within religious groups. The law clearly does not provide a new civil law option to religiously recognized marriages.

I. Introduction

On March 15, 2010, the Knesset (Israel's Parliament) passed a law authorizing the registration of spousal agreements. The law is based on a bill that was submitted by Binyamin Netanyahu's government in accordance with the March 15, 2009, coalition agreement between Netanyahu's Likud and Avigdor Liberman's Israel Shelanu party lists.[1] The coalition agreement called for the immediate promotion of a governmental bill recognizing as spouses those relationships where neither of the parties was recognized as Jewish according to *Halacha* (Jewish law). Additionally, the agreement called for the establishment, within sixty days following the convening of the government, of a committee to be chaired by a representative of the Prime Minister's office and with the participation of all members of the coalition government. This committee would deliberate and issue recommendations on possible means, in accordance with Jewish law, for solving the "personal status problem" of those not eligible to marry under religious law.[2] The agreement emphasized, however, that "the status quo in matters of religion and state shall be preserved."[3]

The following report describes the law of marriage and divorce in the State of Israel. It explores the problems associated with the application of religious law to marriage and divorce under

[1] Coalition Agreement for Forming the 32nd Government for the State of Israel, signed between the Likud Party-Group and Israel Betenu Party Group in the 18th Knesset (Parliament), *available at* http://www.knesset.gov.il/docs/heb/coal2009YisraelBeitenu.pdf (in Hebrew; last visited Aug. 10, 2015).

[2] *Id.*, "A solution for 'Persons Prevented from Getting Married (Marriage Preventables),' " §§ 44–45.

[3] *Id.* § 46.

Jewish law and analyzes the extent to which the 2010 Law on Spousal Agreements for Persons Without a Religion addresses them.[4]

II. Marriage and Divorce Law in Israel

Israeli law is generally Western, secular, and liberal.[5] Family law constitutes an exception in its reliance on religious law. Matters of personal status are within the jurisdiction of religious courts of recognized religious communities. In the absence of civil marriage and divorce, these matters are adjudicated in accordance with the personal status law of individuals, according to their religious affiliation.[6] The nonuniform system of law of marriage and divorce is based on the Ottoman *Millet* system, which was applied by the British and incorporated into the new system by the Jewish founders of the state.[7]

The continued application of Jewish religious law to the marriage and divorce of Jews in Israel, however, is the product of a political compromise known as the "Status Quo Agreement" that was reached in 1947, on the eve of the establishment of the state. This agreement was designed to deflect tensions among Jews in Israel over contradictory ideologies and religious directives.[8] The Status Quo Agreement called, among other things, for the continued application of matrimonial Jewish law to Jews and for autonomous education for different groups in the state. The principles of freedom of religion established by the Agreement were further incorporated into the Declaration of the Establishment of the State of Israel.[9]

The principles of the Status Quo Agreement have directed Israeli governments since the establishment of the state and have usually been included in coalition government agreements. The March 15, 2009, coalition agreement referenced above does not appear to have deviated from any previous agreements and thus did not intend to break from the Status Quo Agreement in this regard.

A scholar has suggested that in reaching consensus on issues of freedom of religion in both the Status Quo Agreement and in the Declaration of the Establishment of the State of Israel, "[s]tate leaders did not consider religious pluralism within the Jewish people."[10] The system of religious

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[4] Law on Spousal Agreements for Persons Without a Religion, 5770-2010, SEFER HAHUKIM [SH] [Book of Laws, Official Gazette] 5770 No. 2235 p. 428 (in Hebrew).

[5] AHARON BARAK, 1 INTERPRETATION IN LAW 183–84 (1992) (in Hebrew).

[6] For Muslims, see the Palestine Order in Council, 1922, § 52, *available at* http://unispal.un.org/UNISPAL.NSF/0/C7AAE196F41AA055052565F50054E656; for Christians see *id.*§ 54(1); for Jews see the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953, 7 LAWS OF THE STATE OF ISRAEL [LSI] 139 §§ 1–2; for Druze see the Druze Religious Courts Law, 5723-1962, 17 LSI 27 § 4. *See also* MENASHE SHAVA, 1 THE PERSONAL LAW IN ISRAEL 225–30 (4th ed. 2001).

[7] FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, ISRAEL: A COUNTRY STUDY (Helen Chapin Metz ed., 1988), *available at* http://countrystudies.us/israel/45.htm.

[8] *See* MICHAEL CORINALDI, STATUS, FAMILY AND SUCCESSION: LAW BETWEEN STATE AND RELIGION, pt. IV, ch. 8, at 235 (2004), available in the Nevo Legal Database *at* http://www.nevo.il.co (by subscription).

[9] Declaration of the Establishment of the State of Israel, 1 LSI 3 (5708-1948).

[10] *See* CORINALDI, *supra* note 8, at 237.

institutions was established by the Orthodox Jewish Rabbinate and is managed by it. The Rabbinical courts are authorized to adjudicate matters of the marriage and divorce of all Jews, including Jews belonging to non-Orthodox denominations of both the Reform and Conservative movements.[11]

Accordingly, the application of Jewish law in matters of personal status in Israel is restricted to Orthodox Jewish law. Furthermore, only Orthodox Jewish rabbis are authorized to conduct marriage ceremonies, a controversial issue among parts of the world Jewry, including in the United States.[12]

III. Impediments Associated with the Application of Jewish Religious Law to Marriage and Divorce

In the absence of civil marriage and divorce, spouses wishing to get married or divorced in the State of Israel are generally required to undergo a religious ceremony.[13] This requirement is said to be in conflict with the attitudes of some members of Israel's secular majority who feel they are forced to marry or divorce in a religious ceremony "even though they are not believers and prefer to live their lives as totally secular."[14] The requirement to undergo a religious ceremony further imposes various limitations that impede the ability of certain groups of Israelis to marry and divorce.

Religious impediments to marriage under Jewish law include the prohibition on a marriage between a divorcee and a *Cohen*.[15] Similarly prohibited are intermarriage between a Jew and a non-Jew, between a *Mamzer* (a person born to a woman not from her husband) and one who is not, and between same-sex couples. The largest group of people in Israel who cannot marry, however, are those who are not affiliated with a recognized religious group or whose Jewishness is in doubt.[16]

Additional impediments apply to divorce. Jewish law requires both spouses' consent as a precondition for a divorce. The Jewish law requirement for mutual consent seems to guarantee

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[11] *Id. See also* H.C. 47/82 Fund for the Reform Judaism v. Minister of Religions, 43(2) PISKE DIN [PD] [DECISIONS OF THE SUPREME COURT] 661.

[12] SHACHAR LIFSHITZ, THE SPOUSAL REGISTRY (2006), *available at* The Israel Democracy Institute website, http://www.idi.org.il/PublicationsCatalog/Pages/PP_68/Publications_Catalog_2068.aspx (in Hebrew).

[13] Under Matters of Dissolution of Marriage (Jurisdiction in Special Cases) Law, 6729-1969, 23 LSI 274 (5729-1968/69), *as amended*, however, family courts are authorized to adjudicate matters of dissolution of marriage that are not under the exclusive jurisdiction of religious courts, such as where the spouses do not belong to the same religion or when they belong to a religious community that is not recognized in Israel. *Id.* § 1(a), (b).

[14] ORLI LOTAN, THE SPOUSAL COVENANT AND ADDITIONAL ALTERNATIVES FOR MARRIAGE ACCORDING TO RELIGIOUS LAW IN ISRAEL (Knesset Center for Research and Information, Dec. 27, 2007), http://www.knesset.gov.il/mmm/data/pdf/m01955.pdf.

[15] In Judaism, a Cohen is a person who is recognized as a descendant of Aaron. The *Cohanim* (plural of Cohen) were priests in the Temple in ancient Jerusalem, and a man identified as a Cohen still retains specific obligations in Orthodox Judaism today.

[16] LOTAN, *supra* note 14, at 3.

equal rights for both spouses.[17] However, the negative impact of this requirement has been described as follows:

> The fact that a person wishing to divorce his spouse must depend on the other spouse's consent has created an ugly phenomenon of blackmailing during divorce negotiations. A simple economic analysis of these negotiations reveals that divorce laws in Israel create an economic incentive for objecting to divorce. The spouse that represents himself as objecting to the divorce will be able to condition his consent to divorce on payment. The payment may be by a generous property arrangement, through a deduction or addition to alimony payments, and even by giving up rights connected to the custody of children or contact with them.[18]

Usually, the spouse that is subjected to the above-described blackmail is the wife. This is because, although the law requires both spouses' consent to divorce, it treats a refusal to divorce by a wife differently than a refusal by the husband. A woman whose husband refuses to grant her a *Get* (Jewish decree of divorce) is considered chained (*Agunah*). Whereas the Agunah's children from a relationship with another man are considered Mamzers, who are held to a lower standard and prohibited from marrying non-Mamzers within the Jewish community, no such status is conferred upon the children of her husband from an out-of-wedlock relationship.

Differential treatment is also prescribed under Jewish law for an adulterous wife as compared with an adulterous husband. Whereas adultery by the wife constitutes an absolute cause for divorce even if the husband forgave her, adultery by the husband, especially if it has occurred only one time, is not usually recognized as a cause for divorce.[19]

As a practical matter, women's rights to a divorce, where recognized, are further not implemented. A review of rulings by rabbinical courts in Israel found that these courts frequently refrain from enforcing an abusive husband's duty to divorce under Jewish law in situations involving aggravated violence.[20]

IV. Overseas Marriages as a Circumvention of Religious Law Impediments

Under rules of private international law as applied in Israel, a marriage celebrated outside of Israel is recognized as valid if it was recognized as lawful under the personal status law of the spouses at the time it was entered into.[21] Israel's Supreme Court has therefore recognized that "no difficulty arises . . . if at the time of marriage the spouses were not the state's citizens or residents."[22] The validity of a marriage between spouses that were Israeli citizens or residents at

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[17] As compared with the husband's unilateral repudiation of marriage under Moslem law (*talaq* divorce).

[18] Shachar Lifshitz , Contractual Arrangement of Spousal Relationship in Civil Law 176 (5762) (doctoral thesis, Bar Ilan University), *cited in* LIFSHITZ, THE SPOUSAL REGISTRY, *supra* note 12, at 20–21 (translated by the author, R.L.).

[19] LIFSHITZ, *supra* note 12, at 21.

[20] *Id*.

[21] HCJ 191/51 Skornik v. Skornik, 8 PD 141 (1954).

[22] *See* HCJ 2232/03 Anonymous v. Regional Rabbinical Court Tel-Aviv Yafo, ¶ 23 (2006), http://elyon1.court.gov.il/files/03/320/022/A16/03022320.a16.pdf (in Hebrew).

the time of conducting the marriage abroad, however, is the subject of debate considering that the personal status law of such spouses requires their compliance with religious requirements.

A. Marriages Between Israeli Citizens and Residents Who Are Eligible to Marry Under Their Personal Status Law

In accordance with Israeli law, a marriage celebrated abroad between spouses who are residents and citizens of Israel who were eligible to marry under their personal status laws will be recognized by the state if it is deemed valid at the place where it was celebrated.[23] This conclusion was reached by the Supreme Court in a 2006 decision that recognized the need for a divorce to dissolve a marriage celebrated outside of Israel between two Jewish Israeli citizens and residents. A formal recognition of marriages celebrated under these circumstances, the Court reasoned, was necessary in view of the "the reality of life in Israel, [where] thousands of Jews, citizens and residents of the state, wish to conduct their marriages through a civil marriage that are conducted outside of Israel. This is a social phenomenon that the law must consider."[24]

In accordance with data released by Israel's Central Bureau of Statistics (CBS), in 2013 the number of marriages celebrated abroad that were registered in Israel in which at least one of the spouses was an Israeli resident was 8,939. This number is equal to about 17% of the 52,705 marriages conducted by authorized religious authorities in Israel that year.[25] In comparison, 7% of Israelis who got married in 2000 were married outside of Israel; 76% of those were Jewish and only 19% were "undesignated" by religion.[26] More than half of the overseas marriages were celebrated in Cyprus. According to a 2000 CBS report the dramatic increase in marriages of Israelis celebrated overseas (ten times more than the preceding decade) was first associated with the immigration from the former Soviet Union, many of whom were not Jewish in accordance with Jewish law.[27] According to the 2000 CBS report, however, a review of the data revealed that a significant number of such marriages were between Israelis registered as Jewish.[28]

A CBS report for 2000–2006 indicates that 52% of overseas marriages of Israeli residents during that time period involved parties who were both Jewish. It is not possible to identify how many of those who married overseas did so because of incapability under Jewish law and how many of them did so by choice. The data provided by the report further indicates that 46% of the couples who married overseas included at least one spouse designated as "other"—a person not classified

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[23] *Id.* ¶ 28.

[24] *Id.* ¶ 44 (translation by author, R.L.).

[25] Press Release, CBS, Selected Data on the Occasion of "Tu B'av" (July 2015), http://cbs.gov.il/reader/new hodaot/hodaa_template.html?hodaa=201511200 (in Hebrew).

[26] CBS, *5,600 Israelis Were Married Abroad in 2000: Over Half Were Married in Civil Ceremonies in Cyprus* (2000) (hereafter 2000 CBS Report), http://www.cbs.gov.il/ hodaot2002/01_02_262.htm (in Hebrew).

[27] According to Jewish Orthodox law, a Jew is a person born to a Jewish mother or who converted according to Halacha (Jewish law). The Law of Return, No. 48 of 5710-1950, 4 LSI 114 (5710-1949/50), *as amended*, recognizes the right of Jewish persons and their relatives (Jewish or not) to immigrate as *Olim* (a status resulting in eligibility to various benefits).

[28] 2000 CBS Report, *supra* note 26.

by religion. These couples cannot marry in Israel and marriage overseas was therefore necessary for registration of their marital status.[29]

B. Marriages Between Persons Ineligible to Marry Under Their Personal Status Law

As marriages and divorces in Israel are generally regulated under the religious law of recognized religious communities, interfaith marriages celebrated in Israel are not recognized except for marriages between a Moslem man to a Jewish or Christian woman, in accordance Shari'a (Muslim) law.

In a November 2006 decision the Supreme Court recognized for purpose of eligibility for spousal succession under Israel's Succession Law, 5725-1965[30] an interfaith civil marriage celebrated in Romania between a Romanian Christian woman and a Jewish Israeli man.[31] Although the recognition of the marriage in this case was restricted to implementation of the appellant's right to spousal succession, Court President Aharon Barak commented that if it was necessary he would extend the recognition "in order to ensure uniformity in the application of Israeli law to the relationship between the couple."[32]

According to Barak, such a general recognition of status is required under private international law rules as applicable to the Israeli reality as a country that is open to immigration and in which there is no civil marriage option for interfaith couples who wish to marry. In formulating choice of law rules, Barak opined, the constitutional right to marry and have a family should be respected. Considering the complexity of this issue, Barak, with Justices Elyakim Rubinstein and Asher Grunis consenting, called upon the legislature to provide a legislative framework to regulate the status of marriages of Israelis that cannot marry in Israel.[33]

V. Attributes of Legal Alternatives to Marriage and Divorce

A. Cohabitation—"Known to the Public" as Married

The legal impediments that derive from the application of religious law have further affected the development of alternatives to religious marriage and divorce. The Knesset has recognized a legal status for spouses who cohabit and who are "known to the public" as husband and wife. Although not recognized as married, Israeli law provides persons who are "known to the public" as married various rights and protections that are similar to those of married spouses. The decision of whether a person is "known to the public" as married is based upon factual proof.[34]

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[29] CBS, *Marriage of Israelis Overseas, 2000-2006* (Nov. 2007), http://www.cbs.gov.il/ publications/nisuim_hul/nisuim_hul.pdf; *see also* LOTAN, *supra* note 14, at 7-8.

[30] Succession Law, 5725-1965, 19 LSI 58, as amended.

[31] Fam. Appeal 9607/03 Anonymous v. Anonymous (Jan. 27, 2005), *available at* http://www.nevo.co.il (by subscription; in Hebrew) (interpreting the Succession Law).

[32] *Id*. ¶ 23.

[33] Barak, *id*. ¶ 22–23; Rubinstein, *id*. ¶¶ K & L.

[34] CrimA 384/61 State of Israel v. Pesler, 15 PD 102 (5722/23-1962).

A person so recognized is entitled to various benefits, including tenant residence protection,[35] social security benefits,[36] and benefits resulting from the death of a spouse as the result of a crime.[37] Such a person may also enjoy protection against family violence, just as a lawfully married person would.[38]

The separation of cohabiting spouses known to the public as married may be accomplished by signing a separation agreement. With or without such an agreement, the law that applies to issues such as child custody and child support is similar to that which applies to married couples. Differences apply with regard to the scope of application of a presumption of shared property. In the case of married couples the presumption applies to all property acquired during the marriage; in the case of cohabiting spouses, in the absence of proof of an intent to share, the presumption applies only to property that has been used by the spouses in their daily lives. An additional difference between married and cohabiting spouses following separation applies to alimony. Whereas Jewish law usually requires the husband to pay alimony to his wife following separation in the absence of a final divorce, such a duty normally does not apply to a cohabiting spouse following separation.[39]

A serious complication deriving from separation following cohabitation may arise under Jewish law. One of the reasons for couples to cohabit or to enter into a civil marriage is their wish to avoid the need to divorce by permission of the Rabbinate in the event they want to terminate their relationship. However, refraining from undergoing a marriage ceremony under Jewish law does not necessarily exempt the couples from the obligation to undergo religious divorce and provide a *Get* if they wish to marry other spouses in a religious ceremony in the future or prevent their children from being labeled Mamzers.[40]

The Spousal Agreements for Persons Without a Religion Law does not provide any solution to this problem, as it does not apply to couples who are both Jewish.

B. Gay Couples' Partnerships

Although not recognized as legally married or as cohabiting spouses who are known to the public as married, gay partnerships have been viewed as creating entitlements in specific cases. For example, in a 1994 case the Supreme Court accepted a petition by a gay employee of El Al, Israel's national airline, to grant his gay partner free flight tickets to which heterosexual employees' married spouses, as well those cohabiting who were known to the public as married spouses, were entitled in accordance with a collective bargaining agreement. The Court

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[35] Tenants' Protection Law (Consolidated Version), 5732-1972, 26 LSI 204 (5732-1971/72), *as amended*.

[36] National Insurance Law (Consolidated Version), 5751-1995, SH, No. 1522 p. 207, *as amended*.

[37] Offense Victims Rights Law, 5761-2001, SH No. 1782 p. 183.

[38] *See* Family Violence Prevention Law, 5751-1991, S.H. No. 1352 p. 138, *as amended*; *see also* Penal Law, LSI Special Volume, 5737-1977.

[39] LOTAN, *supra* note 14, at 6.

[40] LIFSHITZ, *supra* note 12, at 53 (discussing disadvantages of the current situation from a religious point of view).

recognized that depriving gay partners of the benefit that is awarded to heterosexual employees violated their right to equal opportunity at work.[41]

In a 2005 case, the Supreme Court, by an extended bench of nine justices, recognized the right of gay women who cohabited and raised their children together to legally adopt each other's children. The Court reached its decision based on a provision in the Adoption of Children Law, 5741-1981 that allows a court to authorize an adoption in circumstances not based on the death of the adoptee's parents or on his family relation to the adoptive parent, when it finds that the adoption "is in the interest of the adoptee."[42] The Court held that the fact that the appellants lived together in a same-sex relationship did not, in itself, dictate that an adoption by them would not be in the best interest of the children. The court further determined that each case must be examined on its own facts. The Court emphasized, though, that the adoption by the appellants in this case did not create any legal status that had not existed before and should not be viewed as recognition of same-sex partnership as legal marriage.[43]

C. Alleviating Hardship Deriving from Refusal of Divorce

The recognition of a legal status of cohabitation of spouses who, although not legally married, are known to the public as married, has also been used by Israel's Supreme Court to alleviate the hardship resulting from the refusal of one married spouse to agree to divorce. By recognizing the status of known to the public as married, even for those not legally divorced, with all the rights and entitlements of that status, the Court has actually allowed the spouse who was prevented from getting a divorce to leave his/her spouse and enter a new relationship that is recognized by law.

A leading 1962 Supreme Court decision on this issue determined that a woman who cohabited with a state employee for many years while legally married to another man qualified as "a person known to the public as (the deceased's) wife," for the purpose of receiving his retirement benefits. The Court held that, for purposes of determining whether the respondent in the case was known to the public as the deceased's wife, it was immaterial whether from a legal point of view she was married to another, or whether she could not have married the deceased for any other reason.[44] A 1994 decision further permitted the petitioner, a woman known to the public as the wife of a married man, to adopt his last name in spite of the objection of the lawful wife. In the circumstances of that case the man had been engaged in divorce proceedings from his wife for more than seven years and had two children from his relationship with the petitioner.[45]

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[41] *See* H.C. 721/94 El Al Airline Ltd. v. Danilovitz, 48(5) PD 749 (5754/55-1994).

[42] Adoption of Children Law, 5741-1981, § 25, 35 LSI 360 (5741-1980/81).

[43] CA 10280/01 Yaros Hakak v. the Attorney General, *available at* http://www.nevo.co.il (by subscription; last visited May 4, 2010). For general information on gay rights in Israel, see LIOR BEN DAVID, RIGHTS OF SAME SEX SPOUSES IN ISRAEL–STATUS REPORT (Nov. 2004), *available at* http://www.knesset.gov.il/mmm/data/docs/m01052.doc (in Hebrew).

[44] CrimA 384/61 State of Israel v. Pesler, 15 PD 102 (5722/23-1962).

[45] H.C. 6086/94 Nazari v. Population Registry Official, 49(5) PD 693 (1995).

D. Certificates of Spousal Relationships

The legislature and the courts' willingness to recognize cohabitation relationships have allegedly laid the ground for an additional "alternative" to religious marriages, one that is said to reflect "a grassroots revolution." According to Irit Rosenblum, Executive Director of the New Family Organization, "there is no urgent reason to legislate civil marriages anymore."[46] Her organization issues *Teudat Zugiout*, a legal declaration of spousal partnership. According to Rosenblum, more than 9,000 couples have declared their unions before a lawyer and are now recognized by the Income Tax Authority and the National Insurance Institute as married under Israeli law.[47] "The organization believes this type of union provides an answer for more than 300,000 Israelis in the Jewish sector, mostly immigrants from the former Soviet Union, who cannot get married here because of the Orthodox Rabbinate's monopoly on life-style events, where only those considered halachicly Jewish can marry Jews."[48]

Contrary to Rosenblum's statements, Teudat Zugiout offered by her organization cannot create a status of cohabitation that is the equivalent of marriage. Such a declaration serves only as an additional fact, in addition to other facts indicating the existence of such a relationship. It has been stated that the proof of cohabitation that is "known to the public as marriage" is not only cumbersome but also unpleasant in that it sometimes requires the exposure of intimate details of spouses' lives.[49] Additionally, discontinuing such a relationship, as in any other case of recognized cohabitation, does not ordinarily require any authority's intervention.

VI. Legislative History of the 2010 Law on Spousal Agreements for Persons Without a Religion

Several proposals for recognizing civil marriages and divorces in Israel have been made over the years. All, however, were repeatedly rejected by the Orthodox Jewish establishment based on the following concerns:

- Allowing civil marriage may raise Halachic problems, primarily adultery by women and an increase in the number of Mamzers.
- Civil marriages would legitimize intermarriages between Jews and non-Jews.
- Social disharmony: Depriving the Rabbinic establishment of control in matters of marriage and divorce may lead to the practice of filing private pedigree books by religious bodies, indicating those who cannot marry within the Jewish community.
- Lack of social cohesiveness: Participation of a secular person in Jewish religious services is believed to contribute to a feeling of social cohesiveness.

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[46] Ruth Eglash, *NGO: Civil Marriage Debate Irrelevant*, THE JERUSALEM POST (June 4, 2010), http://www.jpost.com/LandedPages/PrintArticle.aspx?id=172463.

[47] *Id*.

[48] *Id*.

[49] LIFSHITZ, *supra* note 12, at 53.

- Heightened sensitivity over matters of religion and state require the preservation of the Status Quo (pre-independence) Agreement.
- Preservation of the Jewish character of the state requires preservation of the rule that the marriage of Jews must be celebrated in a Jewish religious traditional ceremony.[50]

Several proposals have been made over the years in an attempt to bridge the gap between the perceived need to institutionalize nonreligious spousal relationships and the objections of the religious establishment. These proposals purported to create a registry of spousal relationships that would provide for the needs of those who cannot or do not wish to enter religious marriages. In 2004, the Ministry of Justice published a memo regarding a "spousal covenant" law. Several individual Knesset Members' bills have also been introduced. A 2004 bill offered to recognize civil marriage as a parallel and equal route for "those citizens of the state who wished to establish a family not via the religious route."[51] In 2005 a private member bill was introduced by Knesset Member Yitshak Pritsky. The bill proposed limiting civil registration of spouses only to those who are unable to marry under religious law, explaining as follows:

> To remove any doubt, this proposal does not come to establish an alternative civil system that will compete with the religious system, and does not intend to harm the status or the authorities of the religious system. This proposal is intended to provide a proper and fair response to the State citizens who cannot marry under religious law.[52]

A similar bill was submitted in 2006,[53] followed by the submission in 2007 of a bill for the Determination of Status of Spouses Who Entered a Spousal Agreement.[54]

However, the bill that finally passed, the Law on Spousal Agreements for Persons Without a Religion, 5760-2010, was based on a government bill. This bill had been introduced in July 2009, four months after the signing of the coalition agreement between Netanyahu's Likud and Avigdor Liberman's Israel Shelanu party lists.[55]

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[50] *Id.* at 45–46.

[51] Spousal Covenant Bill 5765-2004, Private Bill No. 3385204 by Knesset Member Roni Brizon et al., http://www.knesset.gov.il/privatelaw/data/16/2851.rtf (translated by the author, R.L.).

[52] Registration of Spouses Bill 5765-2004, Private Bill No. 3979605 by Knesset Member Yitshak Pristski, http://www.knesset.gov.il/privatelaw/data/16/3482.rtf (translated by the author, R.L.).

[53] Spousal Covenant Bill 5767-2006, Private Bill P/17/1671 by Knesset Member Elkhanan Glazer et al., http://www.knesset.gov.il/privatelaw/data/17/1671.rtf.

[54] Determination of Status of Spouses Who Entered a Spousal Agreement, Private Bill P/17/2649 by David Rotem et al., http://www.knesset.gov.il/privatelaw/data/17/2649.rtf.

[55] Coalition Agreement for Forming the 32nd Government for the State of Israel, *supra* note 1.

VII. The Law on Spousal Agreements for Persons Without a Religion, 5760-2010

On March 15, 2010, the Knesset passed the Law on Spousal Agreements for Persons Without a Religion, authorizing the registration of spousal agreements and the appointment of a registrar of spousal agreements.[56] The registrar may register spousal agreements freely entered into by Israeli residents eighteen years of age or older who are registered at the population registry as not belonging to any religion and are not relatives and not registered as married under either Israeli or foreign registries.[57]

The Law provides family courts with exclusive jurisdiction to adjudicate matters arising in connection with its application, except for the determination that a person does not belong to a religion.[58] The Law further authorizes the Minister of Justice to appoint spousal registrar(s).[59] According to the Law, spouses who wish to enter a spousal agreement and register in the registry must file an application and attach affidavits regarding their compliance with the conditions enumerated by the law.[60] The registrar, after verifying that the spouses complied with these requirements, will make a public announcement regarding the application and will transfer a copy of the application to the heads of all recognized religious courts.[61] The Law establishes a procedure whereby the heads of such courts may object to the registration if they believe that one of the applicants belongs to the religious community within the jurisdiction of the religious court.[62] Objections to registration may also be made by the public at large.[63] The registrar may only register couples against whom no objection has been made.[64] The Law provides a procedure for ending spousal agreements by mutual consent[65] or by a determination by the family court in the absence of such consent.[66]

Spouses registered in the registry of spousal agreements are treated as married couples for the purpose of application of any other law, except immigration law.[67] For the purpose of application of laws regarding adoption and surrogacy motherhood, such spouses are treated as married couples only upon the expiration of eighteen months from the day they were officially

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[56] Law on Spousal Agreements for Persons Without a Religion, 5760-2010 § 4, SH 5770 No. 2235 p. 428 (in Hebrew).

[57] *Id*. § 2.

[58] *Id*. §§ 2, 3 & 6.

[59] *Id*. § 4.

[60] *Id*. § 5(a).

[61] *Id*. § 5(b).

[62] *Id*. § 6.

[63] *Id*. § 7.

[64] *Id*. § 8.

[65] *Id*. § 10.

[66] *Id*. § 11.

[67] *Id*. § 13c(1).

registered.[68] The Law specifically clarifies that its provisions do not affect the law of marriage and divorce that applies in Israel, nor do they affect the jurisdiction of the religious courts.[69]

VIII. Impact of the Law on Spousal Agreements for Persons Without a Religion

The passage of the Law by the Knesset Constitution, Law and Justice Committee on March 9, 2010, was accompanied by a heated debate. According to the only member of the Knesset Committee on the Constitution and Law who objected to the passage of the law, Knesset Member Dov Henin, "the law is terrible; it harms the status quo and provides superior authorities to the rabbinical courts. A legal creature is thereby created which harms human dignity and freedoms."[70] The Committee's Chairman, David Rotem, argued, however, that although the Law was not perfect it was a step forward.[71] Knesset Member Nitsan Horowitz argued that "this law is a political bluff. It does not offer any solution for large segments [of the population] in Israel who cannot marry in Israel."[72]

According to the explanatory notes to the Law on Spousal Agreements for Couples Not Belonging to Any Religion, the Law was designed to address the needs of a group of some 300,000 Israeli residents who cannot marry in accordance with their personal status laws because they do not belong to any recognized religious community.[73]

Statistical data posted on the Ministry of Justice website, however, indicates that from September 22, 2010, the day the Law entered into force, to January 5, 2015, only 112 couples actually registered at the registry of spousal agreements; eight of those were "erased" from the registry during that period. In 2014, only fifteen requests for registration were received, thirteen of which were registered and two "erased" from the registry.[74]

Considering the complex procedures for verification of nonaffiliation with any recognized religious community in Israel, and the clear distinction between legal marriage and "registration

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[68] *Id*. § 13c(2) & App.

[69] *Id*. § 14.

[70] Mazal Mualem & Yair Etinger, *The Spousal Covenant Bill Promoted by Yisrael Beteinu Was Confirmed in the Committee on the Constitution*, HAARETZ ONLINE (Mar. 9, 2010), http://www.haaretz.co.il/hasite/spages/1155147.html (in Hebrew; translated by the author, R.L.).

[71] Noam Sharvit, *The Constitution Committee Approved the Spousal Covenant Bill*, MAARIV, NRG ONLINE (Mar. 9, 2010), http://www.nrg.co.il/online/1/ART2/078/661.html (in Hebrew).

[72] Ronen Libowitz, *A Hot Debate in the Knesset: "The Spousal Covenant Law–a Political Bluff,"* NANA10 ONLINE NEWS, http://news.nana10.co.il/Article/?ArticleID=704699&TypeID=1&sid=126 (in Hebrew; last visited May 6, 2010).

[73] Spousal Agreements for Couples Not Belonging to Any Religion, 5769-2009 Government Bill No. 445, p. 748 (July 20, 2009), http://www.knesset.gov.il/Laws/Data/BillGoverment/445/445.pdf (in Hebrew).

[74] *Statistics*, Unit for Conversions, Christian Communities and Register of Spousal Agreements, MINISTRY OF JUSTICE http://index.justice.gov.il/Units/RasamHazugiut/MarriageRegistrar/Pages/Report.aspx (in Hebrew; last visited Sept. 17, 2015)

in the spousal registry" and its legal implications,[75] it is not surprising that statistical data indicates a very negligible usage of the registry.

Specifying that the provisions of the Law do not "harm the laws of marriage and divorce and the jurisdiction of the religious courts,"[76] the Law clearly does not offer a civil marriage option for religious marriages in Israel. Israelis to whom it was designed to apply apparently have chosen not to resort to the registration option that it provides.

[75] *Id*.

[76] Law on Spousal Agreements for Persons Without a Religion § 14.