

Human rights and state-enforced religious family laws in Israel, Egypt and India by Yuksel Sezgin

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Sezgin presents a competent and comprehensive analysis of family law systems of Israel, Egypt and India. While placing the selected family law systems in a broad framework of religion-based family laws, he engages, successfully in the exercise of highlighting the nuances and the particularities of each of the countries under study.

The book can engage a wide range of audience from political theorists, to lawyers and, most notably, the analysis talks directly to policy makers. Drawing policy inferences from the complex and controversial terrain of religious family law is in itself a difficult academic pursuit which Sezgin has achieved with commendable success. For instance, in his conclusion the book acknowledges the potentiality of religious or hermeneutic legal regimes over customary laws of the time, which occasionally throws up more liberal interpretations of religious texts/scriptures. At the same time, the analysis hesitates from making a case for potential or a hopeful ‘progressive’ interpretation of religious laws, as the author warns against limiting the scope of human rights by reinforcing the notion that rights must solely be negotiated within the discourse of tradition or the dictates of religion.

Sezgin approaches personal status regimes by creating an intriguing comparative theoretical apparatus of confessional (fragmented and unified in Israel and Egypt, respectively), and unified semi-confessional (India) models of personal law regimes. Sezgin describes government interventions as initiatives that hope to engender a certain view of subjectivity within a society, and this provides a template for challenging the authority of religious courts or laws by the citizens and also exhibits the way in which religion and the state could be (in certain cases) perhaps competing for expanding their spheres of influence. Thus, while the analysis very

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successfully triangulates the dynamics and negotiations between the state, civil society and religious orthodoxy, perhaps an exploration of the balance of power within state institutions of the legislature and the judiciary would have aided in a more nuanced understanding of the body of the state itself, and the instrumentality or intentionality of law and law making in these countries.

Tackling the question of gender, the book addresses, questions about female subjectivity in a post-colonial context, and how the gender and state relationship in the three countries is often mediated by and through religion. The centrality of religion in legal systems suggests that often the rejection of religion incentivised by offering a collection of abstract human/civil rights found limited traction among women who find themselves entrenched in religion and hesitate to opt out of these regimes even when they are presented with that choice by the state (as in the case of India, where in the historic case of *Shah Bano*, who ultimately withdrew her case). In the Egyptian example, the analysis suggests that women's decisions to seek their rights within a marriage, in the language of religious/Islamic laws (the introduction of delegated right to divorce, or *Khul*) produced more confident decisions and favourable outcomes by and for women, despite the court's reluctance to issue the decree of divorce when it is initiated by women.

The case of Israel demonstrates a unique judicial model of separate courts for separate religions, which is sustained by consistent legislative attempts to homogenise populations on the one hand, by streamlining the differences in laws despite separation of courts. On the other hand the state encouraged stricter categorisation and differentiation amidst their citizenry by sub-categorising individuals within (Jewish) community, as 'proper' or 'improper' members of the religious community. While the intended consequence of the segregation was founded on a hope of endogamy, it unintentionally served to disillusion almost a fifth of the population to seek alternate arrangements to escape the glaring and growing problem of difficult divorces (anchored women in deadlocked marriages—*Agunot*) and that of declaration of 'un-marriageability' pronounced by the courts on account of one being insufficiently Jewish.

In the Egyptian case, attempts at secularisation resulted in institutionalising the dominance of the majority community over religious minorities. The application of Christian family law was also routed through Islamic courts, and tenets of Christianity were subject to the interpretation by a Muslim judge. Family laws of the Christian minorities were, therefore, also subject to limited revisions or reform if any, a trend that may be generalisable to the fate of most minority laws which remain untouched. Even the subjects of these laws (for the religious minority) continue to resist change, on the claim of immutability of their religious beliefs, since the existence of this 'difference' recognised by 'law' becomes a matter of representation or indicator of collective strength of the vulnerable religious minority. In Egypt, the evolving Islamic jurisprudence though feminist movements and engagements with the law materialising in the year 2000 resulted in incentivising conversions from Coptic Orthodoxy to Islam in order for women to access better laws and quicker justice.

The chapter on India's family law regimes touches on most of the significant debates on the matter and also discusses the political implications of any

amendments or alterations to personal law codes. The book aptly summarises the political history of personal law codification in India, from the Hindu Code Bills to the Muslim Women's Act 1986 and the amendments to Christian marriage in 2001. The author makes an interesting argument about the judiciary and the social movements, particularly the women's movements becoming allies in their attempts to precipitate gender-just legislations. The role of the parliament is viewed with some scepticism as the author addresses resistance that the legislature encounters from the more orthodox but influential quarters of religious communities. However, historically, this has not always been the case; the book misses some of the forceful legislative initiatives in the early 1960s under Nehru's Prime Ministership that spoke directly to Muslim Personal Law reform. Evidence of these failed but substantive attempts to institute uniform Muslim law can be found in the records of the correspondence from the Prime Minister's and the Vice President's offices in 1960s at the National Archives of India.

While the disadvantages accruing to women under religious law may bare significant commonalities, the way in which the new social movements are negotiating with law is evolving in unique ways. Sezgin narrates the histories of new social movements evolving in these states, which highlight the difference between the Israeli articulation of 'common problems' cutting across all religions, addressed through 'secular' articulations, and the new wave of religious reform movements in contemporary India through Bharatiya Muslim Mahila Andolan which achieves quite the opposite by insisting on their 'separate' status as Muslim women, even though the ends that both the movements aim at, may appear identical.

Sezgin's research is based on a study of archives, court observations, case law and, most notably, interviews which help contextualise legal changes in the political histories of the three countries. Interviews have effectively established the relationship between the subject (or the user) of the law and the implementer of the law (courts), which authenticates his claim that the law, in practice, may have no connection to the 'divine origins'—the very grounds on which such laws claim their legitimacy. This man-made codification of divine law appears to have, in fact, allowed many secular as well as religious citizens in seeking alternate routes for seeking justice or opting out of deadlocked marriages. Different models and means of judicial 'forum shopping' have emerged in the three countries. These include conversions (to different religions or sects in the case of Egypt) to access better laws available (often) to the majority community.

However, while the book acknowledges that in the Indian case (*Ahmedabad Women's Action Group* case), the problem of bigamy was often also enabled by conversion, it offers a limited discussion on how Muslim Personal Law's recognition of bigamous marriages has generated quite the opposite consequence in India, from what it did in Egypt (*Sarla Mudgal v Union of India*); that is, conversion of religion was used for circumventing the default law regime and denying rights (of a monogamous marriage to the wife) rather than accessing rights (the right to bigamy). This brings us to the final question about the theorising of 'human rights'. Sezgin's use of the term human rights is nuanced, convincing and therefore does not fall prey to the limited Euro-centric theoretical tropes; and he locates the field of family law as a 'testing ground' for human rights theories. The

book cogently argues that neither are religion and human rights completely irreconcilable, nor does state's recognition of religious law necessarily satisfy the religious citizens. What it shows is the way in which different stakeholders in the society engage with and negotiate their rights within and outside the legal institutional framework.

The book is detailed, comprehensive and very relevant in the contemporary context of the global resurgence of religion and religious movements. It also engenders a more substantive understanding of feminist engagements with the law by exploring the gradients of these movements as secular (cross-community alliances) and/or hermeneutic which provide emancipatory readings of original/religious scriptures/commandments to wrest out rights within the discourse of religion or tradition. Sezgin's research is a skilful and authoritative analysis of religious family laws in pluri-legal states, and tugs at the heart of a discourse on human rights.