

Israel and International Human Rights

Introduction

Israel was established as a Jewish democracy. The relationship between state and religion, therefore, is critical when one analyzes the protection of human rights in the country. It is argued that human rights cannot be effectively secured without a clear separation between state and religion is enacted. It is further argued that the safeguard of equal rights and liberties for all citizens notwithstanding nationality, religion, race or colour is a critical issue, in particular when it comes to the rights of the Israeli-Palestinians.

This Entry consists of five sections: (1) The Jewish Democracy and (2) Human Rights legislation which lay the foundations for understanding human rights in Israel. Sections (3) about the Israeli-Palestinians (many Arabs in Israel prefer to be called Palestinians; in referring to this minority I use the terms “Palestinian” and “Arab” interchangeably), and (4) State and Religion probe the two major human rights concerns in Israel. Then section (5) will shed light on important human rights precedents aimed to secure fundamental rights and liberties of all Israeli citizens.

(1) The Jewish Democracy

Israel was established three years after the end of World War II. After the U.N. declaration proposing the partition of Palestine into two states (November 29, 1947), and immediately following the declaration of independence of the State of Israel on May 14, 1948 and the departure of the British the next day, five Arab armies invaded Israel, aiming to destroy the

newly established state and put an early end to the Zionist dream (namely the return of the Jewish people to their homeland and the resumption of Jewish sovereignty in the Land of Israel). After the Holocaust, this waged war brought about the full realization that Israel must develop the necessary mechanisms to defend itself. It also set the priorities: security is first on the agenda.

Israel is a democracy under constant stress. It is situated within a hostile environment. Since its establishment in 1948, Israel has periodically been at war with some of the Arab states in the region wishing to undermine its sovereignty and existence. Terrorism has been a continuous strenuous concern. Israel has been facing terrorism since its inception. Events during the years 2003-2008, however, have been particularly harsh. Sometimes, as in July 2006, it reaches the scale of a full-fledged war. These unstablizing conditions inevitably lead to undermining of human rights.

Israel is a country of immigrants. It was built as a refuge country for all Jews around the world who wish to connect their fate and future with Zion, the Promised Land. Jews came from all corners of the world to build their home in Israel. Like other countries of immigration, Israel is striving to achieve a shared *raison d'être* acceptable to people who have different languages, different cultures, different norms. This is not an easy task.

The *Law of Return*, passed on July 5, 1950, gives the Zionist doctrine its most forceful legal expression. It accords every Jew and his/her immediate family members who decide to make *aliya* (immigrate) the right to settle in Israel as *olim* (plural of *oleh*), thus automatically becoming citizens (*Law of Return*, 5710-1950, Section 1). Effectively, the *Law of Return* is a nationality law, granting only Jews nationality status in the state of Israel (Amendment 2, 5730-1970 extended the provisions of the law, stating “the rights of a Jew under this Law [...] are also

vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew”).

There are still schisms between different immigrant groups as well as between these groups and people who were born in Israel (*Sabra*). Generally speaking, three groups of people are being discerned in the Jewish population in Israel: *Sephardim* (also called *Mizrachiim* or Middle-Easterners) whose origins lie in Asia and Africa; *Ashkenazim* whose origins lie in Europe and America; and *Sabras*, native born Israelis. The large *Sephardi* sector holds justified grievances against the *Ashkenazi* elite, speaking of systematic discrimination and violation of basic civic rights during the formative years of the state, and arguing that some residuals of this discriminatory attitude continued to linger for decades, some say until nowadays (Cohen-Almagor, 1995).

Israel was built as a Jewish democracy. The State’s Founding Fathers wanted Israel to be democracy, and to be Jewish. However, to reconcile liberal-democratic values with Jewish values is hard, if not impossible, to achieve. While classical liberalism accords liberty primacy as a political value, Judaism is built on belief in God whose dictates administer how we all should live. All Jews are in the same boat, and therefore the maxim of Live and Let Live is unattainable: the non-believer might crack the boat and then we all might sink down deeply into the turbulent water. Against the liberal values of autonomy, personal development, individualism and self-government there is the deep Jewish belief in shared communality, shared destiny. Those who believe that liberal-democratic values and Jewish values are reconcilable argue that the underpinning values of liberalism, respect for others (derived from Immanuel Kant’s teachings) and not harming others (derived from John Stuart Mill’s philosophy) are enshrined also in humanistic Judaism.

In 2007, the Israeli population was approximately 7.2 million. Some twenty per cent of the Jewish people in Israel are religious who may prefer theocracy over democracy; some twenty per cent of the Israeli people are Palestinian-Arabs, who do not endorse the Zionist ethos of the State; and a further twenty per cent of Israelis arrived from the Soviet Union, in many cases unfamiliar with the practice of democracy. Most of the Russian immigrants are secular, if not agnostic. A third of them are said to be Christian. This mixture sets the scene for the understanding of Israel and its complex state of human rights.

The schisms between religious and secular, between Palestinians and Jews, and between Israel and its neighbours (including occupied Palestine) shape, to a large extent, the Israeli identity and the preservation of human rights. This Entry is confined to Israel. A different entry addresses the state of human rights in the occupied territories.

(2) Human Rights Legislation

Human rights are broadly classified as civil, political, economic, social and cultural rights. Civil-political rights are often pictured as “negative” rights, in the sense that they impose upon the state a duty of inaction, to refrain from interference, and they derive from the principle of individual liberty. Socio-economic rights are often seen as “positive” rights, in that they impose a duty of action upon the state and its agents, to advance the substantive equality of vulnerable groups in relation to basic conditions of existence (e.g., housing, food, work, social security and health), and they derive from the principle of justice. Both these principles can be seen to derive from the fundamental concept of worth of the individual and strive for attainment of human dignity. Both “liberty rights” and “justice rights” enjoin the state to correct discrimination, whether individual or collective (Shalev, 2005, p.68).

Israel has a strong constitutional tradition of civil and political human rights as constraints on the government's executive powers. The Declaration of Independence of 1948 affirms that Israel will foster the development of the country for the benefit of all its inhabitants; that it will be based on the foundations of liberty, justice and peace; that it will ensure complete equality of social and political rights to all of its citizens irrespective of religion, race or sex, and that it will guarantee freedom of religion, conscience, language, education and culture. The Declaration has been invoked by the courts to protect basic human rights in the absence of law.

In 1992, the Knesset, the Israeli parliament, legislated two Basic Laws to guarantee the basic rights and liberties of all citizens. *Basic Law: Human Dignity and Freedom* (1992) purports to protect human dignity and freedom in order to establish the values of the State of Israel as a Jewish and democratic state. It maintains that a human being's property must not be harmed; that every person is entitled to the protection of his or her life, limb and dignity, and that no person's freedom may be taken or restricted by arrest, imprisonment, or extradition, or in any other manner. In turn, *Basic Law: Freedom of Occupation* (1992) holds that every citizen or resident of the State is entitled to engage in any occupation, profession or line of work, and that every governmental agency must respect the freedom of occupation of every citizen or resident. The “constitutional revolution” of the enactment of this Basic Law together with *Basic Law: Freedom of Occupation* did not introduce any new substantive principles, but extended existing ones in respect of the power of the Supreme Court to exercise judicial review. However, principles of equality and social justice were omitted from the Basic Laws, and attempts to propose legislation that would guarantee economic, social and cultural rights constitutionally have not materialized till now.

The Knesset has furthered protection of human rights in some fields by specific legislation, including a law tightening the restrictions on pre-trial arrest and detention (*Criminal Procedure {Powers of Enforcement – Arrest} Law*, 5756- 1996), laws extending the prohibited grounds of discrimination in employment (*Equal Opportunities in Employment Law* {Amendment no. 3}, 5755-1995), and prohibiting discrimination in provision of goods and services (*Prohibition of Discrimination in Goods, Services and Entrance to Public Places Law*, 5761-2000); an amendment strengthening the provisions of the *Equality of Women’s Rights Law*, 5711-1951 (every woman is entitled to protection against violence, sexual harassment, sexual exploitation and trafficking in her body), a law on sexual harassment (*Prevention of Sexual Harassment Law*, 5758 – 1998), a law on single-parent families that grants certain benefits to such parents, who are usually women (*Single-Parent Families Law* 5752 – 1992), and laws mandating affirmative action to promote fairer representation of women and Palestinian-Arabs in the civil service and government corporations (Section 15A of *State Service (Appointments) Law*, 5719-1959; section 18A1 of *Government Companies Law*, 5735-1975). A law of special importance is the *Equal Rights for People with Disabilities Law*, 5758-1998. This law establishes the universalist principle, that a person with disabilities will be able to exercise his/her rights within the existing institutions of society, and not in segregated frameworks. It prohibits discrimination against people with disabilities in the workplace, and establishes the right of people with disabilities to accessible transportation services, modified to address their needs. These include intra-city buses, trains, planes, and ships.

The *Universal Declaration of Human Rights*, 1948 [UDHR] is the normative foundation of human rights discourse. The preamble to the *Declaration* explains the need to protect human rights, in reference to the historic fact that “disregard and contempt for human rights have

resulted in barbarous acts which have outraged the conscience of mankind”. The two major international human rights legal instruments that derived from the *UDHR* are the *International Covenant of Civil and Political Rights*, 1966 [*ICCPR*] and the *International Covenant of Economic, Social and Cultural Rights*, 1966 [*ICESCR*], both of which were ratified by Israel in 1991. The government has also ratified the other major human rights conventions: *International Convention on Elimination of All Forms of Racial Discrimination*; *International Convention for the Prevention of Torture and Cruel, Inhuman and Degrading Treatment and Punishment*; *International Convention for Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of the Child*. These Covenants have not been incorporated into domestic law, and are not directly enforceable by the courts. However, all authorities are required, as far as possible, to interpret legislation so as to avoid breach of Israel’s international obligations (*Plonim v. Minister of Defence*; Lapidot, Ben-Naftali & Shani, 2004). The authorities are also required to report to the treaty bodies regarding compliance with the State’s human rights obligations. In 1998, the Human Rights Committee noted with regret that the *ICCPR* has not been incorporated in Israeli law and cannot be directly invoked in the courts. It recommended early action in respect of recent legislative initiatives aimed at enhancing the enjoyment of a number of the rights provided for in the Covenant, including proposals for new draft Basic Laws on due process rights and on freedom of expression and association (*Concluding Observations of the Human Rights Committee: Israel, 1998*; *Concluding Observations of the Human Rights Committee: Israel, 2003*).

(3) Israeli-Palestinians

The 2004 Index of Arab-Jewish relations in Israel shows that 45.1% of the Arab minority in Israel identify themselves as Arab Israelis; the same percentage identify themselves as Palestinian Israelis, and 9% identify themselves simply as Palestinians (Smootha, 2005, Table 29).

These findings may explain why twenty percent of Israel's population consisted of Palestinian-Arabs do not share the *raison d'être* of Israel as a Jewish and Zionist state. They often claim, quite rightly, that they are being discriminated against, and do not enjoy the same rights as Jews. Formally all Israeli citizens are equal before the law, regardless of national affiliation, religious beliefs, and political stands. An important distinction has to be made, nonetheless, between formal citizenship and full citizenship. Israeli Jews can be said to enjoy full citizenship: they enjoy equal respect as individuals, and they are entitled to equal treatment by law and in its administration. The situation is different with regard to the Israeli-Palestinians, the Bedouin (a desert-dwelling, nomadic Arab community) and the Druze (an ancient religious community of Islamic origin, comprising about 8.3 per cent of the population). Although they are formally considered to enjoy liberties equally with the Jewish community, in practice they do not share and enjoy the same rights and burdens (Lustick, 1980; Kretzmer, 1987; Frisch, 2005). According to the 2004 Index of Arab-Jewish relations in Israel, most of the Israeli-Palestinians (57.6%) think that the state treats them as second-class or hostile citizens who do not deserve equality. Jewish feelings of rejection toward the Arabs confirm and reinforce the Arab sense of estrangement. 73.5% of the Jews feel afar from the Arabs; a third of the Jews are unwilling to have an Arab friend (Smootha, 2005, pp. 23, 105).

Formally, Arabic is one of the two official languages of the State, together with Hebrew. However, in non-Arab public areas, the signposts are written mostly in Hebrew, and sometimes in Hebrew and English. Only rarely you will find signposts written also in Arabic. According to

phenomenology, language and lack of it create reality: the state – one might argue – conveys contradictory messages when it makes a language official, but then makes this same language hardly visible. In this regard, Article 1 of *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted by UN General Assembly resolution 47/135 of December 18, 1992, holds: "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity".

Israeli-Palestinians do not enjoy special provisions and discounts given to those who serve in the army. Recently, the District Court in Haifa ruled that University of Haifa's dormitory application process, which gives preference to Israel Defense Forces (IDF) veterans, is discriminatory against Arab students (*Hanin Naamna and Others v. University of Haifa*). Palestinian-Arabs are exempted from army service as they do not wish to find themselves fighting against Arab brethren, and the State of Israel respects their wish to avoid this situation. Still, Palestinian-Arabs can volunteer to serve and, indeed, a small minority of them serve in the IDF.

Palestinian-Arabs will find it more difficult than Jews to receive licences for extending their flats, or for building new ones. The *Budget Law*, which governs state funds, does not specify what proportion should be earmarked for minorities; the decision lies with officials' discretion. Due to their lack of representation in government offices, Palestinian-Arabs receive substantially less funding for local government budgets, and have fewer resources allocated for welfare budgets, school facilities or other education programmes. Budgets of Palestinian-Arab municipalities stand in no comparison to those of Jewish municipalities. Twenty five towns with the highest unemployment rate in the country, ranging from 13.9 percent to 24.8 percent, are

Palestinian-Arab (Dallal, 2004, p. 957). Arabs earn, on average, thirty percent less than Jewish workers (Dallal, 2004, p. 958). That is, being a Palestinian-Arab in many cases “guarantees” that a worker's salary would be lower than that of a Jew who is doing the same work. The poverty rate for Israeli-Arab children was 2.5 times higher than for Jewish children, and their infant mortality rate was double that of Jewish infants (U.S. Department of State, 2007, p. 28). The education system in Arab towns and villages is lagging behind the education system in Jewish towns and villages. Three times more money was invested in education of Jewish children as in Arab children. 49.4 percent of Arab students passed their matriculation exams in 2006 compared with 64.4 percent for Jewish students. While Jewish-Israeli students ranked 11th in the world in literacy, Arab-Israeli students ranked 40th (U.S. Department of State, 2007, p. 28). Arabs who graduate find it difficult to get a job in government offices. In the civil service, only 5% of employees are Israeli-Palestinians (Raday, 2002-2003, p. 487). The Oslo peace process, which started in September 1993, has reinforced the status of the Palestinians in Israel as a “double periphery”: being placed at one and the same time at the margins of Israeli society and at the margins of Palestinian National Movement (Al-Haj, 1993; Al-Haj, 2005; The Association for Civil Rights in Israel, *Report 2002-2003*, pp. 17-23).

In January 2004, after it became clear that only 31 of the 641 governmental companies' directors are Palestinian-Arabs, Prime Minister Ariel Sharon had instructed to freeze directors' nomination in companies where there was no Arab representation (Yashuvi, 2004. p.17).

Palestinian Knesset members are systematically excluded from positions on the Finance, Foreign Affairs, and Defense committees, which are the most influential committees in parliament. It is rare to see Palestinians hold senior positions in government ministries or state owned firms. Palestinians are also excluded from the centers of public, social, economic and military power

(Zakheim, 2003-2004). In this context, it is noted that the UN Committee on Economic, Social and Cultural Rights voiced concern about the persisting inequality in wages of Jews and Arabs in Israel, as well as the severe under-representation of the Arab sector in the civil service and universities.

The Orr Inquiry Report about the circumstances leading to the killing of 13 Palestinian-Arab citizens by the Israeli security forces in October 2000, issued in September 2003, sheds light on this continued discrimination in all spheres of life. The committee emphasized the alienation felt by the Palestinian-Arab citizens in Israel, as a result of discrimination and injustice since the establishment of the State, and recommended to take appropriate measures in order to strengthen Arab equality by the taking the following means:

- Accomplishment of distributive justice in the allotment of national lands.
- Allocations of resources and a vigorous action in order to close the gaps between the Jewish and the Arab sectors, by setting clear and practical objectives and fixing definite schedules.
- Addition of national events and symbols with which all citizens could identify.
- Profound change in the police attitude towards the Arab sector ("Main findings of the Orr Committee Report", 2003).

Land discrimination is one of the most troubling concerns of the Palestinian-Arab sector. The most acute expression of the consistent and systematic discriminatory policy can be seen in the State's attitude towards the Arab population in the Negev. Israel had established seven small towns in the Negev that turned into unemployment stricken slums, governed by outside appointees. In the 1960's, thousands of Bedouin had submitted claims to acknowledge their

ownership over 1.5 million dunams. The State decided not to probe these claims; instead, Israel paid insignificant compensations to those who agreed to waive their claims and move to small towns. Half of the Arab Negev residents accepted that settlement and were thus transferred to those small towns. The other half continue to live in small villages – some have existed long before the establishment of Israel while others were set up after a string of forced transfers of people from their original residency. The State refuses to recognize these villages and thereby prevents their residents the right to basic services and essential infrastructure. About half of the 160,000 Bedouin community are not connected to water and electricity and lack educational, health, and welfare services (Yashuvi, 2004. p. 21; U.S. Department of State, 2007, p. 34).

Israel has established a hierarchy of planning authorities that discriminate against Arab citizens and communities in planning matters. The *Planning and Building Law* of 1965 created these planning bodies at the national, regional and local levels, with all levels dominated by Jewish officials. Planners have also designated all the areas for development and all the areas of green belt and agricultural use. It is illegal for people to live outside the areas marked for development. The 1965 law established 123 Arab communities, with the proscribed development area usually tightly encircling existing homes. No new Arab community has been approved since then (Cook, 2006, p. 17).

On July 31, 2003, the Knesset affirmed the *Nationality and Entry into Israel Law* (Temporary Order), known as the *Citizenship and Family Unification Law* for a period of one year, with the right to extend it indefinitely for a maximum of one year at a time. The law denies Israeli citizenship or residency status to the spouses of Israeli citizens who are residents of the West Bank or Gaza. It virtually froze the family reunification procedure for Israeli and Palestinian couples and prohibited new mixed couples from applying for the right of the

Palestinian to live with his or her Israeli spouse inside Israel. Later, the law was modified to allow Palestinian men younger than 35 and women under 25 to begin the application process and also eased up on other restrictions. However, the law prevents children of mixed marriages older than 14 who were not born in Israel and do not have citizenship from living with their Israeli parent inside Israel.

In May 2006, an expanded panel of 11 High Court justices voted six to five to reject eight petitions calling for the nullification of this law. The minority justices accepted the state's argument that the law was passed for a worthy cause, in that Palestinians who were given Israeli identity cards and allowed to travel freely throughout the country could pose a security threat. But they also rightly argued that the injury to the human rights and the dignity of the person was greater than the benefit achieved by the law in its current form, and that the law affects only Israeli-Palestinians and thus negates equality. The law should, therefore, be nullified. The law unjustifiably prevents, in a categorical manner, Israeli Palestinians from fulfilling their desire to live family life with their loved ones in Israel. Security considerations should not license grave injury to the lives of thousands of Israelis. President Aharon Barak articulated in this context that Article 8 of the *European Convention on Human Rights* was interpreted by the European Court on Human Rights to include the right of family members to live together (*Berrehab v. The Netherlands; Moustaquim v. France; Ciliz v. The Netherlands; Carpenter v. Secretary of State*). However, the European Court also ruled that states cannot be imposed upon a general obligation to respect immigrants' choice of the country of their matrimonial residence and to authorize family reunion in its territory (*Abdulaziz, Cabales and Balkandali v. The United Kingdom*, p. 28; *Ahmut v. The Netherlands; Gül v. Switzerland*).

Justice Salim Joubran further mentioned Article 16 of the *Universal Declaration of Human Rights*, Article 10 of the *International Covenant on Economic, Social and Cultural Rights*, and Article 23 of the *International Covenant on Civil and Political Rights*.

The majority justices, on the other hand, emphasized Israel's special security considerations, arguing that a citizen did not have the right to force the State to allow a foreign citizen to immigrate to Israel and that Israel, like all sovereign states, had the right to prohibit the immigration of a foreign citizen. They argued that the law was meant to achieve a worthy purpose and that the injury it caused to human rights was not excessive (*Adalah Legal Center and Others v. Minister of the Interior and Others*). There are critics of this reasoning: the law could be justified only if it negates certain individuals, who might be harmful to state security, the right of entry into Israel. Blanket prohibition, however, is manifestly unjust. If it is difficult to isolate the potentially harmful from the far greater number of people who wish to unite peacefully with their loved ones in Israel, then we need to invest more in developing sufficient security measures, not to punish the many for the sins of the few (for further discussion, see reports of Committee on the Elimination of Racial Discrimination, 2007; Arab Association for Human Rights and Centre Against Racism, 2006).

(4) State and Religion

The main concern in this sphere is not freedom of religion but freedom from religion. The most controversial issue, in fact, is the lack of separation between state and religion. As a consequence of this, people in Israel are obliged to assume customs that not necessarily coincide with their conceptions of the good.

There are four officially recognized religions in Israel: Judaism, Islam, Christianity, and Druze. Each citizen may follow the religion into which s/he is born. This arrangement is the heritage of the Millet system, introduced under the Ottoman rule and maintained under the British mandate and by Israel after 1948. Matters of personal status are determined in accordance with religious laws by the religious courts of different communities (Raday, 2002-2003, p. 492). In Israeli Judaism, the orthodoxy rules supreme and dictates the norms and customs of the state although only twenty percent of the Jewish population is orthodox and ultra-orthodox. Most of the Jewish people in Israel define themselves as secular or as *Massortiim*, that is, as people who assume some religious norms and *Halachic* (Jewish Law) dictums. The Reform and Conservative Movements that are very strong and prevalent outside Israel suffer discrimination in Israel.

There are many variations within each movement but essentially, Orthodox Jews believe in Torah handed down at Sinai by God to Moses and from there uninterrupted through the ages. The Rabbis interpret the Law, slowly adapting it to new exigencies, but only after deep discussion and vote. Orthodox Jews conceive Judaism as a total religion, affecting every aspect of their lives. Conservative Judaism and Reform Judaism are relatively modern phenomena, from the 19th century onwards as an adaptation to the modern world and secular/scientific enlightenment. Conservative Judaism believes the Torah was written by Moses (not given by God) and handed down through the generations. Conservative Jews view the Halakhic process through more liberal eyes, focusing on many Rabbinic decisions in the past that did allow for change and reform. They believe that Rabbis have the authority to make major changes in the Halakha as long as it is done through Rabbinic thought, principles and discussion. Reform Judaism does not believe in the divinity of Jewish Law but views Jewish practice in more

national-cultural terms, and thus is willing to change with the Jewish folkways. Reform Jews are very open to change in the spirit of the day, thus accept female rabbis and allow interfaith marriage.

In Israel there is no division between state and religion. The concept of a Jewish state has been imbued with religious values, and gender equality rights clash with religious norms. Women in Jewish (and also Moslem and some Christian denominations) are subject to discrimination in property and inheritance laws. At present, some religious practices are offensive to the sensibilities of women, and involve coercion, which conflicts with the liberal elements of democracy that vouchsafes the rights of individuals. One of these is the right to follow one's conscience and to practice one's beliefs as one sees fit, as long as this practice does not entail harm to others.

There is no civil marriage in Israel and persons must be married according to the law of their religious communities. Divorce is also regulated by such law and generally speaking constitutes the jurisdiction of the religious courts. The *Rabbinic Courts Jurisdiction Law (Marriage and Divorce)* of 1953, which was passed after considerable controversy, provides that for Jews, who are either citizens or residents of Israel, matters of marriage and divorce are exclusively under the jurisdiction of the Rabbinic Courts, and that marriage and divorce should adhere to *Halacha* (Cohen-Almagor, 2000). Even before the passage of this law, the Rabbinic Courts had received a monopoly over matters of personal status under Article 5 of the *Women's Equal Rights Law* of 1951, which stated that the intent of the law was not to change the laws concerning permissions and prohibitions regarding marriage and divorce (Sharfman, 1993. p. 78).

The Rabbinic Courts are guided by patriarchal norms. Women are conceived as playing a

passive role in marriage and divorce as they cannot initiate divorce proceedings without their husbands' consent. It is the husband who delivers the divorce paper to the wife. The wife cannot divorce the husband, although she can go to the Jewish Court and have them pressure the husband to do so if her demand is legitimate (e.g. wife beater, no breadwinner, he is adulterous). The level of such pressure depends on the Court's composition. Today in Israel the Rabbinic Courts are mostly manned by Ultra-Orthodox rabbis who have a very patriarchal attitude. There are thousands of instances in which the husband refuses to grant the wife a divorce, and then the women (called *aguna*, chained woman) cannot remarry or have legitimate children. Although the Rabbinic Courts have the ability to sanction those men, they rarely do this. As a result, women are forced to agree to economic concessions in order to get a divorce. The gender inequality is staggering as child support determined by the Rabbinic Courts is 30% lower than child support determined by the civil family courts, in the incidents when the woman in concern rushed to open the alimony file in the civil court (Merin, 2004. p. 713; U.S. Department of State, 2007, p. 27). Furthermore, men who refuse divorce can start a new family without fearing that the children born as a result of the new bond will be considered bastards (Sharfman, 1993. p. 79). The UN Committee on Economic, Social and Cultural Rights in its 2003 concluding observations expressed concern regarding the fact that the Jewish religious courts' interpretation of personal status law with respect to divorce is discriminatory as regards women, especially the regulation that allows the husband to remarry even when the wife is opposed to the divorce, whilst the same rules do not apply to the wife. The Committee recommended that the State party take steps to modify the Jewish religious courts' interpretation of the law concerning divorce to ensure equality between men and women, as provided for in Article 3 of the *Covenant on Economic, Social and Cultural Rights*: "The States Parties to the present Covenant undertake to

ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant".

Requiring all who wish to marry to do so by religious law is a serious incursion on the fundamental right to marry. Furthermore, there is a large population of people in Israel who cannot marry at all under Israeli law, either because they belong to different religious communities or to non-recognized religious communities, or because they are not allowed to marry under the law of their community. These incursions on the right to marry are compounded by the fact that both Jewish and Muslim law discriminate between men and women, in the laws of marriage and divorce themselves, as well as in the laws of evidence. Women are not permitted to serve as judges or even witnesses (Kretzmer, 2005). It should further be noted that approximately 300,000 citizens who immigrated either as Jews or as family members of Jews are not considered Jewish by the Orthodox Rabbinate. They cannot be married, divorced, or buried in Jewish cemeteries within the country (U.S. Department of State, 2007).

The system of marriage and divorce is not the only sphere in which religion has an effect on individual rights. Sabbath observance laws, which may potentially impose unacceptable limitations on such rights, have in practice been relaxed in recent years. Their existence and level of enforcement now vary from town to town. Thus, in many towns cinemas and other places of entertainment are open on the Sabbath and some shopping centers operate too. However, in most towns, and in interurban routes, public transport does not operate on the Sabbath, a restriction that obviously has an inordinate impact on the poorer sections of the population who do not have their own cars, and curtails exercise of their right to freedom of movement (Kretzmer, 2005; Raday, 2005).

Democracy is supposed to allow each and every individual the opportunity to follow her or his conception of the good without coercion. Unfortunately, Israel today gives precedence to Judaism over liberalism (Ravitzky, 2005; Kasher, 2005).

(5) Important Precedents

Following its traditional role as the main protector of human rights in Israel, the Supreme Court has continued to bolster protection of rights. On security issues, it ruled that use of force is not permitted in interrogation of suspected terrorists (*Public Committee Against Torture v. Government of Israel*), and that administrative detention may not be used to hold persons as “bargaining chips” (*Plonim v. Minister of Defence*; Cohen-Almagor, 1996).

On women’s rights, the Supreme Court interfered to strike down practices that banned women’s representation in religious-municipal councils (*Poraz v. Mayor of Tel Aviv*; *Shakdiel v. Minister for Religious Affairs*). In a 1994 landmark decision, the Court ruled that women’s right for an equal share in property applies to any litigation, which meant that religious tribunals had to accept the equality principle that guides secular tribunals (*Bavli v. Great Rabbinical Court*). The Court further ruled that the air force may not exclude women as candidates for a pilot’s course (*Alice Miller v. Minister of Defence*), and that provisions in a collective agreement that discriminate against women in pension rights are null and void (*Niv v. National Labour Court*). It must be noted, however, that the UN Committee on the Elimination of Discrimination against Women expressed concern about laws governing personal status which are based on religion and about the 2003 law which bars family unification for Israelis who marry Palestinians from the Occupied Territories. It called on the Israeli government to intensify efforts to combat trafficking in women and girls; to take measures to improve the status of Israeli Arab women, especially in

the fields of education and health, and to eliminate discrimination against Bedouin women; and to enforce adherence to the minimum age of marriage.

On issues relating to state and religion, in 1993 the Supreme Court allowed the opening of theatres on Shabbat. It overruled a municipality decision to close theatres in its authority zone on days of rest (*Israel Theatres and Others v. Netanya Municipality and Others*). The Court ordered the government to make arrangements for a suitable prayer area for the Women of the Wall at an adjacent site to the Western Wall (of the second Temple; a central national, cultural, and religious site for Jews). These women wish to pray in this holy site as a group, wearing prayer shawls and reading aloud from the Torah, a manner of prayer customary reserved for men only, and a subject of considerable controversy among Orthodox Jewish sages (*Anat Hoffman and Others v. Director General of Prime Minister's Office and Others; Director General of Prime Minister's Office v. Anat Hoffman*). The Court also allowed the closure of a central road in Jerusalem for traffic on Shabbat, in respect of Orthodox residents in nearby neighbourhoods whose feelings might be hurt as a result of allowing traffic on their holy day of the week (*Horev v. Minister of Transportation*).

For years, the state of Israel recognized that only conversions to Orthodox Judaism made a non-Jewish person into a Jew. Accordingly, only a person who had converted to Judaism via the Orthodox movement would be automatically granted the right to immigrate to Israel under their *Law of Return*, and be registered in the state's population registry as a Jew. On February 20, 2002, the Supreme Court ruled that the Ministry of Interior should register as Jews 24 plaintiffs in the Population Registry. They had converted to Judaism within the Reform and Conservative movements, some in Israel, others abroad. This ruling ended a 7-year struggle for those who do not wish to commit themselves and their families to the Orthodox way of life, as demanded by

the Orthodox conversion religious courts (*Naamat and Others v. Minister of the Interior and Others*; Sela, 2002). The Court also ruled in a 7 to 4 decision that non-Jews, who studied Judaism for conversion purposes in Orthodox, Conservative or Reform institutions, then were converted abroad, and returned to Israel, will be recognized as Jews by the *Law of Return* and receive the benefits entitled by this law (*Toshbeim, Makarina and Others v. Minister of the Interior and Others*).

The Supreme Court further held that the authorities may not discriminate in funding of non-orthodox religious movements (*Conservative Movement v. Minister for Religious Affairs*), and it overruled decisions of the Jerusalem and Tel Aviv Municipalities that refused approving the candidacy of Reform representatives for service on the local religious councils (*Anat Hoffman v. The Jerusalem Municipality and Others*).

On minority rights, the Supreme Court ruled that municipalities in which Palestinian-Arabs reside need to include Arabic on their public sign-postings. The appellants argued that most sign-postings were written in Hebrew and in English, ignoring that Arabic is one of the two official languages of the State, and the Arab minority residing in the relevant cities. The Court, in a 2-1 decision, accepted the appeal (*Adalah Legal Center v. Tel Aviv Municipality and Others*). The Supreme Court further ruled that the state may not discriminate against Arabs applying for housing rights on state land (in the Katzir community village) by leasing the land to the Jewish Agency (*Kaadan v. Israel Lands Administration*); that Palestinian-Arabs should be given more adequate representation in the Israel Land Council, which makes the land ownership policy in Israel (*Association for Civil Rights in Israel v. Israeli Government*), and that the principle of equalitarian proportionality must be respected in allocation of resources to Arab cemeteries

(*Adalah Legal Center v. Ministry of Religion*). This latter decision opened the way to egalitarian discourse on budgetary allocations.

On July 20, 2000, the High Court of Justice ruled that the Ministry of Education should provide Israeli-Palestinians with a proportionate budget to its size (*Supreme Follow-up Committee on Arab Education in Israel v. Ministry of Education*). In December 2001, the Supreme Court ruled that the budget for reconstruction of Palestinian villages and towns in the Suburb Rehabilitation Plan need to comply with the Palestinian-Arab sector's needs and should be proportionate to the sector's size in Israel (*Council of Heads of Arab Local Authorities and Others v. Minister of Construction*).

Another minority consists of homosexuals and lesbians. In an important precedent, the High Court of Justice ruled that the term "partner" in the collective agreement signed between El Al (Israel's major airline company) and its workers concerns also couples of the same sex. Thus partners who live together with El Al personnel are entitled to the same benefits, notwithstanding their sexual orientation (*El Al v. Daniloff*). In 2004, a District Court decided that a man, who lived with his male partner as a couple, may inherit his property after the latter's death (*In the Matter of the Inheritancy of S.R., and In the Matter of A.M. v. Legal Advisor to the Government in the Office of the General Custodian*).

Conclusion

Israel is saturated with schisms. Those schisms challenge the foundations of liberal democracy (liberty, equality, tolerance, justice) and the ability to maintain human rights.

After the Holocaust, the goal was to found a safe haven for Jews all over the world so as to avoid the possibility of another horrific experience of that nature. Indeed, the United Nations

acknowledged the need for establishing a Jewish state. This creation, however, based on a Jewish conception of the good, discriminates against the Israeli Arabs. Israel acknowledges the problems involved in the introduction of this perfectionist element in its framework of ruling. To assure an equal status for the Palestinian-Arab minority, the words of the Declaration of Independence must be translated into deeds, striving to achieve real equality between Arabs and Jews, and to secure civic and human rights for all.

Israel, being the only Jewish state in the world, strives to preserve its Jewish character. But the preservation of the Jewish character of the state does not necessarily entail the coercion of the predominant secular circles of Israel. People are born free and wish to continue their lives as free citizens in their homeland. Coercion is foreign to human natural sentiments and desires to lead one's life as free as possible from alien restraints and impediments. Thus a differentiation is needed in Israel between the symbolic aspects and the *modus operandi* aspects. On the one hand, the history of Israel requires that the symbols remain Jewish with some accommodations in order to make the state a home for its Palestinian citizens as well. Shabbat is to remain the official day of rest. Palestinian villages and towns may make Friday their day of rest. One may hope that one day, when security considerations would become less dominant and pressing, and the Israeli economy could afford two days of rest, as is the case in many parts of the world, then Friday and Shabbat will become the two official days of rest.

As far as the *modus operandi* aspects are concerned, on the other hand, separation between state and religion would arguably be beneficial. Most scholars agree that effective protection of human rights in Israel will be difficult to achieve without separation of state and religion. Hence, without questioning the symbolic role of the Shabbat as the day of rest, malls and shopping places outside the cities can be made available for the many people who work

during the week and do their shopping during weekends. Public transportation, moreover, can be made available for all people who cannot afford having a car and for those who do not drive.

The state is responsible for catering for the needs of as many citizens as possible. It is important, therefore, that Kosher shops and restaurants be available and with them non-Kosher shops and restaurants for the secular, agnostic population. Most importantly, it is critical that citizens be granted the right to decide when it comes to the significant events in everyone's life, namely birth, wedding, divorce and death. People may involve rabbinate and other religious institutions in their private lives, if they so desire. However, human rights advocates argue that those who wish to have secular ceremonies should enjoy the ability to conduct them and not to be forced to undergo practices which mean very little to them, if anything. Presently, many couples travel to Cyprus and other countries to get married. This is not a solution for people who cannot afford the financial burden associated with traveling abroad. Furthermore and principally, this is not a solution for secular Israelis who rightly conceive the Orthodox domination as a severe encroachment of their civic freedoms (Bassli, 2000).

Furthermore, separation between state and religion entails that the state has as little possible say in family, intimate affairs. The role of the government is that of being an umpire both in the sense of applying just considerations when reviewing different conceptions and in trying to reconcile conflicting interests, trends, and claims. This delicate task demands integrity as well as impartiality. It is the duty of democratic governments not to exploit their role for their own advantage and, when making decisions, to bear in mind the relevant considerations and demands which concern society as a whole, not only one or some fractions of it (Cohen-Almagor, 2005).

Education is a key factor in establishing human rights norms and in erecting bridges between different people of different walks of life. In its most sensible recommendations, the UN Committee on Economic, Social and Cultural Rights encouraged the State party to continue to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among state officials and the judiciary. It further encouraged Israel to develop the system of mixed schools for Jewish and Arab pupils, in order to promote understanding, tolerance and friendship among the citizens of the country (*Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*. Paragraphs 44 - 45).

Final note on security, which has considerable effect on Israeli life and on the state of the civic and political rights of Jews and Palestinians: Security is not an end in itself, but a means. The final aim is to secure a democratic system, an administration of the people, for the people, by the people, that guarantees individual freedoms and fundamental human rights. Unless Israel ends the occupation, its democratic foundations will not be secure. The state of occupation harms primarily the Palestinians but it also damages the civic foundations of democracy. Decision makers thought that it is possible to maintain the duality of Dr. Jekyll and Mr. Hyde: being an occupier outside the Green Line, and a citizen inside the Green Line. However, norms of the occupation infiltrate inside Israel and damage the democratic foundations of the State. Prime Minister Sharon's Disengagement Plan, also known as the Gaza First Plan, was a possible route to follow as – indeed – the first step in a calculated process designed to evacuate the territories and shifting responsibility to the Palestinian Authority (Cohen-Almagor, 2003). A two-state solution, bringing peace and tranquility to Israel and Palestine, remains today the most viable option for both nations to follow and the best way to effectively protect human rights.

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