The Status of Women in Israel - Myth and Reality

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The Status of Women in Israel—Myth and Reality

I. INTRODUCTION

The issue of women's rights has been subjected to reexamination and redefinition in recent years. The legal structure relevant to this issue, so clearly intertwined with traditional values and historical prejudices, is increasingly studied in an attempt to find ways to achieve equality of the sexes in our lifetime. In this context, cross-cultural study of diverse societies and legal systems can make a vital contribution. A step forward in this direction was taken in the fall 1972 issue of this journal, in a symposium on the status of women. Among others, the Israeli legal system was discussed by Plea Albeck, who drew the categorical conclusion that there is no problem of women's rights in Israel since “most rights are enjoyed equally by men and women”¹. Such achievement, if indeed true, is of tremendous importance to women's movements. Israel is a self-proclaimed liberal democracy with a Western-oriented value system. It has no clear separation of synagogue and state. Both Jews and Moslems—who form the overwhelming majority in Israel—and within the Jewish population both European and Afro-Asian originated groups, have traditionally regarded women as subordinate to men economically and socially. Moreover, the legal system prevailing in Palestine before 1948 when Israel became a sovereign state was patently discriminatory: women were denied suffrage in all municipalities except the two all-Jewish municipalities, Tel-Aviv and Petach-Tikva.² Given these factors, Israel's alleged success in achieving a stage where no problem of sex inequality is conspicuous is so remarkable that it deserves further discussion. A critique of the Israeli model as forwarded by Ms. Plea Albeck is important both for purposes of self-appraisal within

Israel and for scholars elsewhere who may wonder about its supposed extraordinary achievement.

Ms. Albeck's presentation may be outlined as follows: she begins with the assumption that no problem of equality exists, documenting it with two individual examples of women holding high political and legal office. She then discusses a variety of statutes affecting the status of women, constantly implying that they indeed indicate equality of the sexes and thus are satisfactory.

The first part of this critique will contend that the widely shared assumption of achieved equality reflects myth, not reality. The second part will contend that the Israeli legal system only partially reflects the myth—i.e. it is only partially committed to the principle of sex equality—and that in a vital area, that of domestic relations, the principle is not recognized. It will be further argued that the principle of equality as conceptualized by this legal system does not amount to genuine sex equality and that consequently the legal structure enacted in good faith to improve the lot of women has resulted in their exclusion from some legal rights, opportunities and responsibilities. In this context “equality” will be taken to mean “that sex is not a permissible factor in determining the legal rights of women, or of men . . . [and] . . . that the treatment of any person by the law may not be based upon the circumstance that such person is of one sex or the other”.

II. THE MYTH: ITS ROOTS AND THE SOCIO-POLITICAL REALITY

A. The myth and its roots

The myth is that Israel is a unique society in which men and women are equal to the extent that no conspicuous problem exists. This myth stems from Israel's official ideology of classical Zionism, which since its very early stages has committed itself to the principle of sex equality. However, classical Zionism is a hybrid of moderate pragmatic social reform and radical socialist principles. Its core is the goal of establishing a Jewish home. The principle of sex equality derives from the radical faction of Zionism, whose founders established the first kibbutzim. Once adopted, the principle was applied pragmatically and moderately, within the framework of traditional sex roles, thus betraying the original meaning and necessarily failing to achieve the desired goal.

The myth of achieved equality was created by the firm ideological commitment to the principle and its historical roots in the kibbutz, where genuine sex equality was attempted. It was nurtured

by several phenomena which were impressive in themselves but were wrongly interpreted as indicating achieved equality rather than preliminary steps toward genuine sex equality. These phenomena were legal reform, the kibbutz and the military.

The legal system prevailing in Palestine was patently discriminatory against women, denying them legal status in matters such as property, inheritance and suffrage. The Israeli legislature not only invalidated these laws (except in the case of marriage and divorce as shall be elaborated later) but also introduced labor and welfare reform which has benefited (or was supposed to benefit) women in many ways. However, elimination of discrimination cannot in itself bring about equality; and the enacted laws, while well intended, created a “separate but equal” status for women.

The kibbutz movement served as another indicator substantiating the myth. Yet despite the Israeli inclination to view the kibbutz as a window to Israeli society, this movement forms less than 5% of the entire population and hence cannot serve as a valid indicator of the nature of the society as a whole. Moreover, the recent decline in the principle of genuine sex equality in the kibbutz may indicate the strength of traditional values regarding the female image and the “place of women” in Israel. Studies of the family in the kibbutz and the division of labor between men and women within the kibbutz show that there has been a gradual shift from the original “each according to his abilities” to the traditional male-female roles. Women today concentrate in areas of education and other “feminine” occupations such as cooking or laundering. Agricultural and industrial positions are increasingly held by men.4

The third phenomenon, widely publicized outside Israel and a source of pride to Israelis, is the Israeli Defense Forces. It is well known that women participated in the war of independence, although the nature and extent of such participation still remain to be studied. It is a fact that most women are drafted into the military at age 18. However, at the present time traditional sex roles and sex images are firmly entrenched in the army’s practice and policies. Combat roles as well as a variety of highly specialized occupations, such as flying, are open only to men. Most women are assigned to the “feminine” occupations—e.g. secretaries, nurses, teachers.5 Indeed, this state of affairs should be hardly surprising, since


the military by definition is the stronghold of characteristics traditionally considered “male”, e.g. power and aggression.

The perspective from which Israeli society tends to evaluate itself lends considerable legitimacy to the myth of achieved equality. Israel identifies with, and strives to resemble, the model of Western societies. It is fond of contrasting itself to the traditional Arab societies surrounding it. By both standards, Israel has done well in the area of sex equality, particularly in light of the above described phenomena of the kibbutz and the military. Because genuine sex equality was not a goal, the myth was never exposed, and despite the grim reality the popular assumption remained that in Israel equality had in fact been achieved.

The following analysis of the socio-political reality with regard to the status of women in Israel attempts to document the gap between the myth and the reality. It opens with a short discussion of attitudes, which are at the heart of the problem, and then proceeds to offer statistics about the contemporary scene.

B. Attitudes

This discussion of attitudes towards women and women’s attitudes about themselves is based on three studies recently conducted by the department of sociology at the Hebrew University.\(^6\) One study covered attitudes of male and female students; the two others covered women only.\(^7\) In all three, the majority of the participants expressed adherence to traditional sex roles and images. For the students, the ideal wife was the homemaker, possessing the traditional feminine characteristics and satisfying herself within the framework of home and family.

The study of married women further indicated that women saw themselves as inferior to men in general and their husbands

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7. The 1971 Study, ibid., had 188 participants, 87 males and 97 females (4 did not specify sex); the average age was 23 and the majority (54%) were born in Israel. The 1972 Study, ibid., covered 20 married women selected on the basis of 4 criteria: origin (European/Afro-Asian), occupation of husband, degree of religiosity, and duration of marriage. The 1973 Study, ibid., covered 200 married women aged 20-40, selected at random. Together, the studies provide a picture of attitudes toward women which cross generational as well as ethnic, occupational and educational lines. The fact that these studies demonstrate a consistent perception of female inferiority shared by the majority of the participants, discards the notion that ethnic differences or a generation gap are determinant variables of the inequality of women in Israel and further emphasizes the depth of the problem.
in particular. Conflicts within the family tended to end with wife deferring to her husband's wishes. The husband was usually the principal decision maker in major policy issues concerning the home. For the majority of the participants having a job outside the home meant work in addition to, but not displacing, any part of the woman's responsibilities in the home.

Participation by women in public life and in "non-feminine" professions was frowned upon by most participants. Of the students, 86% though that equal opportunities should be granted in social work; 81% would grant equal opportunities in the professions; only 50% thought equal opportunities should apply to politics; and 40% considered them proper in commerce and industry. The same pattern, only more marked, appeared among the married women. Career professions such as medicine and occupations requiring physical strength were considered "male". Art, education, social sciences and secretarial occupations were regarded as areas where women could succeed better than men because of "required feminine characteristics."

Most women did not consider politics and political activity as appropriate for women. Even those who believed that women should be more active were not prepared to become so themselves. Reasons for passivity ranged from indifference to lack of time to reluctance to leave the family in the evenings. Yet one study concludes that these are only contributing factors to a basic attitude that politics are not "feminine". Interestingly enough, when questioned about Prime Minister Golda Meir, (the most frequently mentioned indicator of equality) most women expressed admiration for her achievement but did not wish to resemble her.

The studies clearly document a prevailing pattern of sex-role differentiation and conceptions of inequality of the sexes, particularly among married women. This refutes any suggestion that a problem in this respect does not exist in Israel and exposes the wide gap between official ideology and perceptions of the population. The following discussion of the political and social scene in Israel will attempt to demonstrate a correlation between these attitudes and the actual role performed by women in Israeli society.

C. The social and political scene

In 1971 women constituted 32.4% of the labor force. The percentage was much lower among non-Jewish women, 9% of whom

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13. 1972 Study, supra n. 6 at 114.
were recorded as working outside the home. Indeed, it has been suggested that the conspicuously inferior status of the non-Jewish Israeli women within their sub-culture has enhanced and contributed to the self image of equality shared by Jewish women.\textsuperscript{14} Available data on the participation of women in the labor force in the pre-independence period shows a similar pattern: in 1930, 20% of the registrants in the major labor union were women. The percentage jumped to 29% during World War II, a period of peak employment for women all over the world.\textsuperscript{15}

The average yearly earnings of female wage earners has been recorded as £5,000 while the average for males is £9,300. In industry the gap is even wider, with the average female employee earning only 45% of the income of the average male.\textsuperscript{16} This situation exposes not only the policies of the federation of labor (Histadrut) and vicariously of the government, but also the impotence of the 1964 Equal Pay Law. The Law, providing that “(a)n employer shall pay to a female worker a wage equal to the wage paid to a male worker at that place of employment for the same work”,\textsuperscript{17} has apparently been interpreted narrowly. Since jobs can be distinguished through a variety of contrived devices, and since the powerful Histadrut has tolerated such distinctions, the law has been an empty tribute to the principle of equality. An amendment is currently pending before the Parliament (Knesset), seeking to change the phrase “for the same work” to “for work essentially similar”.\textsuperscript{18}

The occupational distribution of women in the labor force underscores the traditional sex role differentiation pattern discovered in the studies of attitudes toward women. A recent study shows that 8% of the available political positions are held by women. Women constitute 7% of the legal profession, 5% of the engineers and 26% of the physicians. On the other hand 85% of the secretaries and typists, 80% of the non-physician medical personnel and 68% of the elementary school teachers are women.\textsuperscript{19}

The same study reveals an equally disturbing picture of the status of women in the academic world. Women tend to enroll in the humanities rather than the natural sciences. In 1970-71 women constituted 48% of the student population. The distribution of women students in the various disciplines was as follows: women were 66% of the students enrolled in the humanities, 41% of those

\textsuperscript{14} Padan-Eisenstark, supra n.5.
\textsuperscript{15} Padan-Eisenstark, supra n. 4 at 359.
\textsuperscript{16} Padan-Eisenstark, supra n. 5.
\textsuperscript{17} Male and Female Workers (Equal Pay) Law, s. 1, Israel-Laws 5724-1964.
\textsuperscript{18} Davar, 19 March 1973 at 11 (in Hebrew).
\textsuperscript{19} Padan-Eisenstark, supra n. 4 at 542-43 and Padan-Eisenstark, supra n. 5.
enrolled in the social sciences and only 36% of those enrolled in the natural sciences—a distribution confirming the place of traditional sex images in the Israeli value system. Furthermore, the study indicates that most women stop studying after the first academic degree and are employed as teachers, secretaries or research assistants. 27% of the graduate student corps and 13% of those enrolled in doctoral programs are women. Again, discontinuation subsequent to the first degree excludes women from the cycle of senior positions where advanced degrees are required. The low participation of women recurs at the faculty level: 21% of the faculty personnel are women: 25% of the assistants and instructors, 18% of the lecturers, 15% of the senior lecturers and only 4% of the full professors.

Low participation of women in the labor force has been a cause for concern of Israeli decision makers. Israel is in great need of labor and women could satisfy part of it. As a result, publicity campaigns have been initiated by the Ministry of Labor to "get the women back to work". Recognizing that children may inhibit mothers from returning to work, the Ministry of Labor is currently engaged in construction of more day care centers. Contrary to prevailing assumptions day care centers operating on a full-day basis are not readily available in Israel. The Labor Ministry claims that such centers are available outside the cities, where industrial plants are located (and women's labor is vital). In the cities, day care centers are scarce. In the whole of Tel-Aviv only 3 day care centers, operated by the Working Mothers Organization, are functioning. This situation reflects an attitude that facilities will be created where women are needed, and not where women would like them to exist.

Current policy toward family planning confirms the view that women should maintain their traditional female roles in addition to working outside the home. In the early 1950's the Israeli Government launched a massive campaign encouraging large families. Women who bore ten children received a special prize as well as national press coverage. As a consequence of this policy, no public family planning programs exist in Israel. The widespread network of public child care clinics, as well as the labor union's clinics' and hospitals' outpatient units provide neither contraceptives nor family planning.  

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21. Ibid.
22. Padan-Eisenstark, supra n. 5.
23. Supra n. 20.
planning advice. Family planning is available only at the private doctor’s office for those who can afford it.

Abortion is illegal, but since the early fifties the definition of criminal abortion has been narrowed by the Supreme Court and by special instructions by the Attorney General that prosecution would take place only in cases where negligence on the part of the physician was shown. However, as with the case of contraceptives, abortion is available only to those who can afford it.

The pattern described above reappears on the political scene. A recent study of the role of women in politics concluded that women constituted a very small part of upper-echelon decision makers and that consequently their influence on Israeli politics is negligible.

In the Knesset, consisting of 120 members, the number of women representatives dropped from 11 in the first elections to 8 at present. Its two most important committees—the foreign relations committee and the finance committee—are composed solely of men. Female representation in the legislative committees is usually limited to the “feminine” subjects—culture, education, public services and labor. No woman has ever served as Chairman of the Parliament nor was a woman ever nominated for this prestigious position, while the more technical, administrative and necessarily less prestigious positions of Vice Chairman (there are four Vice Chairmen) are shared by women.

A similar pattern appears in the executive branch. There is only one woman among the 18 members of the Government Cabinet. The number of women representatives was no higher even when the Cabinet had 24 members. The fact that the most prestigious and important post is held by a woman—Mrs. Golda Meir—is clearly an exception that provides no basis for generalization. Mrs. Meir might well have arrived at the prime of political power despite her sex. She belongs to the old tough elite which founded the labor movement in the thirties. At that time, political organizations and bureaucracies were less stiff and female representation in top decision-making roles not as strongly resisted. In addition, the circumstances under which Mrs. Meir was elected to the top position should not be overlooked: after the death of former Prime Minister

29. Ibid. 6.
30. Ibid. 7-8.
31. Ibid. 8.
Levi Eshkol, a feud between the two major contestants to the top office, Alon and Dayan, threatened the stability of both the party and the government. Mrs. Meir was pressured to accept the position of Prime Minister as a temporary expedient of avoiding a showdown.

On the lower yet politically important level of Deputy Minister, the scene is equally dominated by men. No woman has been appointed Deputy Minister in the entire 25 years of Israeli independence.83

Within the civil service, 9 percent of the upper echelons of the service are women. Of these, half are in typically "feminine" fields like nursing and social work.84

Ms. Albeck's article on the status of women in Israel indicates a similar situation in the judicial branch. No woman had ever been appointed to the Israeli Supreme Court, a position of double importance since the Court also serves as High Court of Justice, with the opportunity to check upon policy decisions and practices of the executive branch. Few women serve on the middle judicial level—the District Courts—and on the lowest level—that of Justice of the Peace.85 The poor representation of women in prestigious judicial positions is particularly conspicuous, in view of the fact that a number of women possessing vast legal experience, as well as widely respected talent and reputation, are available for these positions.

Other aspects of public and political life also testify to the negligible role of women in public life. On the local government level, 3% of the elected representatives in 1969 were women. In the major cities, no woman has ever been elected mayor or deputy mayor.86 In the steering committee of the Federation of Labor (Histadrut) there are 2 women out of 19 members. In parallel associations of employers, such as the Federation of Industrialists, no woman has ever held a senior position.87

There is evidence that the low participation of women in public life is as old as the labor movement itself. Women have always been active in auxiliary "women's organizations" affiliated with the various political factions. These organizations concerned themselves mainly with community projects. The absence of women from national politics in the early stages of political organization in Israel has been attributed to the fact that political positions require devotion of one's free time to the political cause and frequent absence from one's home. It has been suggested that women were

33. Weiss, supra n. 28 at 8.
34. Padan-Eisenstark, supra n. 5.
35. Albeck, supra n. 1 at 694.
36. Weiss, supra n. 28 at 9.
reluctant to undertake such commitments and that those who did had broken family lives.\textsuperscript{38} But this explanation points to the symptom, not the cause. It simply attests to the fact that the principle of genuine equality was neither understood nor accepted and that the traditional conception of sex roles still prevailed even among those who purported to incorporate sex equality in their ideology. The absence of women from meaningful positions in the national leadership in the early phases of the formation of Israeli society also precludes the possibility that a generation gap may be an important variable in the contemporary gap between myth and reality. The same conclusion may also be drawn from the survey of attitudes previously discussed.

Other social phenomena in Israel, such as the tension between religious and secular institutions and the fact that Israeli society is a melting pot to a wide variety of ethnic groups, may also have adversely contributed to the current status of Israeli women. However, these too cannot be interpreted as determinant variables of the present situation, since to do so would be accepting as a basic premise the myth that the principle of genuine sex equality has been a solid component of the labor movement's ideology. It is true that the important political position held by the religious block has been largely instrumental in the predominance of religious law in domestic affairs. It is also true that the massive wave of immigration from Afro-Asian countries has obstructed the integration of Israeli women into the labor force. Both phenomena affect Israeli society as a whole, women not excluded. They are more pertinent to evaluating variations of discrimination against women than to the general phenomenon of discrimination discussed in this article. Rather, the decisive case of the contemporary discrimination against women is the failure of the ideological and political elite to accept the principle of genuine sex equality. That elite's own principle of equality, namely equality within the framework of traditional sex roles, is the one which alone has been adversely affected and its application obstructed by the religious-secular tensions, ethnic and cultural differences and other social factors in Israeli reality.

In sum, there is a wide gap between the myth of women's equality in Israel and the socio-political reality. Since legal systems do not operate in a vacuum but are intertwined with the culture which they purport to regulate, one should expect to find the basic elements analyzed above reflected in Israel's legal system.

\section*{III. The Legal System}

Israel's legal system may be generally described as composed

\textsuperscript{38} Weiss, supra n. 29 at 10.
of two layers: the pre-independence legal system introduced by the British Mandate authorities and their predecessors the Ottoman Empire, and the post-independence system based on this inheritance but largely reformed to conform with Israel's different values and goals.

As already noted, the pre-independence legal system did not recognize the concept of sex equality even in its narrowest form. Women had no right to suffrage and were restricted in their ability to handle property, particularly if they were married.\(^{39}\) The Succession Act, an ancient Ottoman law, imposed severe restrictions on the rights of female relatives to inherit property. Since the days of the Ottoman Empire, the field of domestic relations and personal status, including not only matters of marriage and divorce but also those indirectly related to them such as the custody of children, was under the exclusive jurisdiction of the relevant religious tribunals (depending upon the religion of the parties).

After independence, a series of steps were taken to reform the legal system in this respect. These steps can be divided into solemn declarations affirming the state's commitment to the principle of sex equality and piecemeal reform legislation implementing the principle as conceived by the legislature.

The Israeli Declaration of Independence provides that “(t)here shall be full political and social equality for all citizens irrespective of religion, race or sex”. In a statement of the Government's policy issued at the opening session of the first Knesset “full and complete equality for women . . . in their rights and duties as citizens, workers, members of the community” were promised.\(^{40}\) However, both the Declaration of Independence and the Government's subsequent assertion are not laws and lack legal status. In the absence of a constitution, the basic legal document implementing that solemn commitment was the Woman's Equal Rights Law enacted in 1951.\(^{41}\)

The Woman's Equal Rights Law deserves detailed analysis. It has served consistently as evidence of the realization of the principle of sex equality in Israel—thus considerably substantiating the myth. The law provides ample insight into the leadership’s concept of sex equality, as its 9 sections deal with almost every aspect of the status of women in Israel.

The statute opens with a sweeping declaration that “[w]ith regard to any legal act, the same law shall apply to a woman and a man, and any provision of law that discriminates against women shall be of no effect” (s. 1). It proceeds to grant married women full competence in handling property (s. 2); grants women equal

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39. Schwartz, supra n. 2.
40. Weiss, supra n. 28 at 13.
rights to custody of their children (s. 3) and annuls discriminatory provisions of the Succession Act (s. 4). Having thus established the principle of equality and invalidated some of the most outrageous and discriminatory aspects of the pre-independence law, the statute goes on to circumscribe the equality principle. In a historic bow to religion, the religious courts were allowed to maintain their exclusive jurisdiction over matters of marriage and divorce. S. 5 declares that the new statute does not purport to derogate from the laws applied to marriage and divorce. These laws, since the days of the Ottoman Empire, have been the laws of the religions, applied by the respective religious tribunals. Thus in one stroke the Israeli legislature sanctioned inequality in one of the most important areas of individual life—domestic relations. As will be seen below, both Jewish and Moslem laws regulating marriage and divorce are patently discriminatory against women.

With the area of equality thus substantially and effectively limited, s. 6 defines the premise upon which sex equality is to be based: “(t)his law shall not derogate from any provision of law protecting women as women.” The idea behind this section, as Ms. Albeck herself asserts, is that “special rights and privileges accorded to women are to be preserved”; but as she herself continues, “in this latter respect Israel's law differs significantly from the Equal Rights Amendment proposed in the U.S.A., which provides for equality of rights under the law for all persons, male or female.”42 The premise then is that women are different from men to the extent that their protection requires a special set of laws. Hence, when given the opportunity to translate its principles into laws, the leadership clearly rejected the radical concept of genuine sex equality upheld by the founders of the kibbutz movement and preferred the traditional Western concept of equality intertwined with paternalism.

S. 7 and 8 further illuminate the concept of equality as unfolded by the preceding sections. S. 7 provides that the Law shall be binding on all courts and tribunals except where all parties are above the age of 18 and have freely consented to be bound by their religious laws. The religious laws regulating marriage and divorce apply to the parties regardless of consent through s. 5. S. 7, therefore, restores the invalidated discriminatory laws when the woman is a consenting adult. Hence a woman may, under the Equal Rights Law, consent to the application of a legal system which strips her of most rights just granted her by the same law. Inevitably, Israel's social commitment to even a narrow concept of sex equality becomes open to question.

S. 8 had a very noble purpose: it made criminal the unilateral dissolution of marriage by the husband, otherwise valid under both

42. Albeck, supra n. 1 at 693-94.
Jewish and Moslem laws. Despite this evidently well-meaning step, the section reveals the extent to which the legislature has compromised the equality of women. S. 8 specifies that such unilateral action is criminal in the absence of a court decision authorizing divorce; i.e. if the court has authorized divorce, the husband can lawfully dissolve the marriage. No such solution is available for women, at least under Jewish law, which does not recognize the dissolution of marriage by court order and requires the husband's dissolution of his own free will. Hence, even if a court reaches a conclusion that divorce should be granted, a stubborn husband may keep his wife in marital bond for the rest of her life.

In concluding her brief discussion of the Woman's Equal Rights Law, Ms. Albeck asserts that "it is not surprising that judicial decisions under the Woman's Equal Rights Law are very rare and that the few litigated cases have involved unusual situations . . . . In general, equal rights for women is a principle accepted from the start in Israel civil society, so that implementation of the law has not occasioned difficulties." The preceding discussion has shown that this conclusion is at best superficial. The Equal Rights Law, despite its pretentious title and promising opening section, does not offer a uniform theory of sex equality. First, it excludes the principle of equality from applying to vital domestic relations. Secondly, it offers a narrow concept of equality to be applied to areas other than marriage and divorce, in which a paternalistic attitude and separate status for women are retained. If indeed litigation based on this law has been rare, the reason must be the impotence of the law, not the actual equality enjoyed by Israeli women. By securing exclusive jurisdiction to the religious tribunals in matters of marriage and divorce on the one hand, and by specifically authorizing a separate set of laws to be enacted, protecting the "woman as woman", on the other, the law gutted the concept of genuine sex equality and left little to be challenged through litigation.

Thus the myth of women's equality breaks down upon analysis of the very law which purportedly guarantees it. In the following section the infrastructure of the legal system in the two areas will be analyzed in more detail, in order to ascertain the actual nature of implementing the principle of sex equality: first, the area of domestic relations, followed by regulation of labor and welfare.

A. Domestic Relations

As already noted, matters of marriage and divorce in Israel are within the exclusive jurisdiction of the various religious tribunals. Other matters relevant to domestic relations, such as the custody of
children or inheritance, may be litigated before the religious tribunals and have substantive religious law applied to them, but only with the parties' express consent.

The following discussion will focus on matters where jurisdiction of the religious tribunals is exclusive and does not depend on the parties' consent. In this context one point should be further emphasized: the submission of these matters to exclusive religious control is not, as some would like to believe, a remnant of the pre-independence legal system. S. 5 of the Woman's Equal Rights Law clearly and unequivocally demonstrates that this is the policy of the Israeli legislature. That such policy was accepted only after tremendous political pressure by the religious parties does not ameliorate the situation. The fact remains that in this vital area women are deprived of even narrowly conceived equality and that this deprivation is part of the Israeli legal system proper.

In the rabbinical tribunals all judges are men. It has long been an established tenet of Judaism that the woman's place is in the home and her education is a waste of time if not a cause of her corruption. The laws applied in the religious tribunals, both procedural and substantive, are Jewish laws as stipulated to govern the Jewish people in the Bible and refined by subsequent generations. Many of these laws have served an important social purpose in previous eras, but are archaic and purposeless today.

The procedural rules of the rabbinical tribunals center around the man and regard the woman's role as essentially passive. A woman cannot serve as witness, thus precluding testimony of female neighbors, often instrumental in a conflict between husband and wife.44 Also, religious tribunals do not recognize accepted principles of private international law (conflict of laws), and would not accept as valid a divorce or marriage performed in another country and sanctioned by that country's civil authorities if such divorce or marriage would have violated Jewish law. For example, interreligious marriages are void under Jewish law, and no civil ceremony may change this fact. A partial remedy may be found in the civil courts, which do uphold principles of private international law. But the process is long, sometimes expensive and by no means

44. Silberg, Ha'Maamad Ha'Ishi B'Yisrael (Personal Status in Israel) 399 (1957). This situation, according to Justice Silberg, does not violate s. 1 of the Women's Equal Rights Law, since the section, providing equality in every "legal act", means acts directly affecting legal relations. Procedural and evidentiary rules affecting legal actions only indirectly are not covered. In Bar- yeh v. Sheik Moussa Taberi, 187/54, 9 P.D. 1193, the High Court of Justice decided in dictum that only an explicit violation of the Women's Equal Rights Law by the religious tribunals would be considered void. For a detailed account of Jewish law and its application in the rabbinical tribunals see Silberg, ibid., and Shereshevsky, Dinei Mishpacha B'Yisrael (Family Law in Israel) (1958).
conclusive, since the final authority in marriage and divorce still rests with the religious tribunals.

A series of restrictions make women ineligible for marriage under Jewish law. A married woman who has had a romantic relationship with another man is forbidden to marry the latter once her marriage is dissolved.\textsuperscript{45} No similar restriction applies to the husband, who may marry whomever he pleases after divorce. A logical extension of this rule is the Jewish conception of illegitimate children. Children born out of wedlock are not considered illegitimate and are not deprived of any rights. However, children born of a forbidden relationship, such as a child born to a married woman and her lover, are considered bastards and subject to several disqualifications, among them inability to marry a Jew. This restriction applies in all circumstances where the mother had been married to another while bearing the child, even when she had long been separated from her husband due to circumstances beyond her control (war, disappearance) or where she had innocently believed him dead. Since only women are forbidden to have lovers, the inevitable conclusion is that the awesome punishment is inflicted because of the woman’s “sin”.

The preceding discussion alluded to another category of women ineligible for remarriage: the “agunot”, those whose husbands have disappeared and their whereabouts unknown. Since under Jewish law only the husband, not the court, can dissolve the marriage, his absence precludes such an act. Even if the civil courts issued a declaratory judgment proclaiming the husband dead, the religious tribunals applying their own much stricter requirements consider the woman married; and, since only they can preside over her remarriage within Israel’s boundaries, she is forever forbidden to remarry. The above restrictions would not apply to men since the Jewish religion allows polygamy. The criminal law against bigamy in Israel allows one exception, where the highest rabbinical court has issued a special permit for a second marriage. It would appear that a case where the wife has been absent for a considerable period would be deemed sufficiently rare to warrant issuance of the permit by the high court.

Still another category is that of women whose husbands are mentally ill. So long as the husband is ill and incapable of exercising his free will, no divorce is possible. Again, the situation is much simpler for the man whose wife in mentally ill. He is the one

\textsuperscript{45} The most recent case is that of Mrs. Rachel Dayan (present wife of Israel’s Defense Minister, Mr. Moshe Dayan) whose divorce decree from her former husband specifically forbade her to marry Mr. Dayan. The couple’s marriage in a secret ceremony by a military rabbi in 1973 received wide press coverage because of the ability of Mr. Dayan, one of Israel’s most influential politicians, to bypass the rigid religious law.
who grants the divorce. S. 8 of the Woman's Equal Rights Law, prohibiting unilateral divorce, made an exception for divorce granted pursuant to a court's decision. Thus a rabbinical court may help a man divorce his mentally-ill wife, but not vice versa.

Finally there is the "yebama": if a man dies without a successor, his brother has to marry the widow in order to ensure the continuity of the dead brother's name. Unless the brother voluntarily frees the widow in a special ritual before a rabbinical tribunal (chaliza), she is forbidden to others and is ineligible to remarry. The Israeli legislature has tried to overcome this obviously outdated restriction by giving the widow a right to demand chaliza from her brother-in-law. Yet, absent civil marriage, the religious law still applies precluding remarriage before performance of the ritual, thus subjecting the widow to unnecessary additional suffering and litigation.

Complementing the one-sided marriage restrictions and, as the preceding discussion suggests, frequently bound up with them, are the decidedly unequal divorce laws. As Ms. Albeck states in her article, under the religious law divorce is not an action of "a third party arbiter" i.e. it cannot be granted by the courts. However, this does not mean that the substantive positions of husband and wife are equal. If the wife's consent was as material for the divorce as the husband's why did the Israeli legislature find it necessary to enact a section in the very Woman's Equal Rights Law making a unilateral divorce by the husband a criminal offense? Obviously the question is rhetorical. A unilateral divorce by the wife is just not possible under the law. It is well known that both Jewish and Moslem law view divorce as a unilateral act performed by the husband. Moreover, the criminal law, as discussed above, permits unilateral divorce by the husband, should a religious tribunal sanction such act. No such possibility exists for women, and no matter what the religious tribunals decree, there can be no divorce without the husband's free consent. The Israeli legislature has tried to improve the lot of women by providing that a husband who refuses to grant a divorce to his wife could be put in prison until he changes his mind, but this is no consolation for the wife who desires the divorce and whose claim has been approved by the court. A stubborn husband may stay in prison indefinitely, and the situation only puts him in a better bargaining position with his wife if she is anxious to get the divorce.

46. Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, s. 5, Israel-Laws 5713-1953.
47. Albeck, supra n. 1 at 700.
48. Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, s. 6, Israel-Laws 5713-1953.
The preceding discussion is by no means meant to be an exhaustive survey of the status of men and women in the area of domestic relations, but is intended merely to give the highlights of inequality. Some may argue that the restrictions on marriage and divorce listed above are in fact encountered only in very rare instances. Statistics on the number of women who have suffered from the prevailing laws are not available nor are they particularly germane to our discussion. The size of the population subjected to inequality does not make inequality more just or tolerable. Moreover, the very existence of the plainly sex-based distinctions detracts from any claim that the principle of sex equality had been accepted as fundamental. Furthermore, some of the solutions to the problems discussed above have ominous ramifications. People who wished to bypass the laws have either gone abroad where they could be legally married, or were members of the elite and thus could safely ignore the archaic restrictions, or had their case publicized to the extent that the country underwent a political crisis and legal maneuvers were found to solve the particular case without disturbing the status quo for everyone else. Remedies of this kind have resulted in the creation of a particularly privileged class of persons who could afford to bypass the religious law, in the sacrifice of privacy by those whose cases had to be publicized in order to awaken public opinion, and in a disdain for religion and law by those who evaluate the system from this perspective.

It is true that ever since independence the Israeli legislature has tried to ease tensions resulting from this situation by piecemeal legislation designed to curb the jurisdiction of the religious tribunals. Such legislation was described by Ms. Albeck, e.g. in her sections on property rights, guardianship and custody of children and age of marriage. For example, the concept of a common law wife has

49. As did Justice H. Cohen of the Supreme Court, who is forbidden by Jewish law to marry a divorcée by virtue of his being born a "cohen." Justice Cohen and his bride, a divorcée, were married in New York, and their marriage is valid under Jewish law.

50. As did Defense Minister Moshe Dayan (supra n. 45).

51. The most recently publicized case is the so-called "bastards case." In this case the rabbinical courts refused to perform the marriages of a brother and his sister on the grounds that they were bastards and thus forbidden to marry Jews. Their mother had been married, divorced and remarried in Poland, and while her divorce and remarriage were legal under Polish Law, the divorce was defective under Jewish law and thus her remarriage defective and the children by her second marriage bastards. The case resulted in social and political turmoil in 1971-72. Because of the enormous pressure, Israel's Chief Rabbi intervened and in a "clever" decision found the first marriage void, thus retroactively legalizing the second marriage. This legal maneuver took place outside the regular channels provided by Israeli law and also inflicted damage on the first husband by declaring his conversion to Judaism void, with all the implications this has in a country where religion dominates so many aspects of life.

52. Albeck, supra n. 1 at 698-703.
been consistently introduced in a variety of statutes in order to offset the strict religious rules. However, the “common law wife” as recognized by the Israeli legislature is “one who is known in public as his wife”—a requirement hard to prove and reflecting the predominance of the institution of marriage in Israeli society. The attempts by the Israeli legislature to improve the lot of women without attacking the heart of the problem have naturally been unsatisfactory. The solution lies in the application of a uniform theory of sex equality throughout the legal system, including marriage and divorce. Since inequality is inherent in the religious law, the only way such sex equality could be achieved is through the enactment of civil laws for marriage and divorce. Such a step, however, might cause the fall of the present coalition government, which includes the religious party. The reluctance of the labor party to face such a consequence attests to the gap between its verbal commitment to sex equality, and its readiness to compromise and sacrifice principles for political power.

B. Labor and welfare legislation

While even ardent believers in the myth about sex equality in Israel would concede that the principle has not been applied in the area of domestic relations, they proudly point out that labor and welfare legislation applies the principle in full. Yet close analysis of this legislation shows that although it is progressive, it is not based on a principle of genuine sex equality but on traditional sex roles and images. The concept of equality, borrowed from Western democracies, particularly from England, could not but result in the same legislative structure prevailing in the West which sanctions the social and economic subordination of women.

Mention has been made of the fact that the Woman’s Equal Rights Law itself has recognized a distinction between men and women by providing that laws designed to “protect the woman as a woman” would be interpreted as violating the legal principle of equality.53 Hence women may not be employed in “production processes and work places connected with lead and operation or work in proximity of certain dangerous machinery”.54 Also, women cannot work night shifts, with some revealing exceptions: women employed in the traditionally female occupations—nurses, waitresses, chambermaids—and women who have obtained a special permit from the Minister of Labor. A special permit is granted where female labor is an economic necessity, e.g. when night work is es-

53. Woman’s Equal Rights Law, s. 6, supra n. 41.
sential to prevent spoilage of goods". The basic premise behind this law, then, is that women need not be protected from the evils of night shifts when their night work is important for the economy.

Impediments to women's participation in the labor market have not been limited to the restrictions listed above. It took a lawsuit to invalidate a provision in the collective bargaining contract of Israel's national airlines (El-A1) which barred women from occupying senior crew positions. Eged, the major transportation cooperative in Israel, acknowledged recently that women are not eligible to drive its buses. This restriction prevents women from being accepted as full members in the cooperative, which guarantees its members considerable economic stability. In 1973, for the first time in Israel's history, women were admitted to a vocational school training printers. Female immigrants from Russia who wished to continue their "male" occupation in the construction industry were turned down by employers and compelled to form their own cooperative.

The Equal Pay Law, already discussed, has no teeth and outside the civil service and a few other places such as the universities, has had little impact.

Another area where the "protection" of women has resulted in discrimination against them is retirement and pension benefits. The regulation of retirement in Israel is largely in the hands of the Federation of Labor. The uniform age of retirement sanctioned by this body is 60 for women and 65 for men. A notable exception is the Civil Service Law, which knows no distinctions between men and women. The 5 year difference, however, is sanctioned to some extent by the National Insurance Law, which gives women the right to old age benefits 5 years earlier than men. Pursuant to the retirement regulations enforced by the Federation of Labor, an employer can demand the retirement of a female employee at 60 regardless of her ability or wish to continue to work. The Federation of Labor regards this regulation as a "significant social achievement" and would not hear of changing it. A rationalization justifying the distinction is that because of their dual role as housewives, women

55. Ibid.
57. Padan-Eisenstark, supra n. 4 at 543.
58. Padan-Eisenstark, supra n. 5.
60. Male and Female Workers (Equal Pay) Law, Israel-Laws 5724-1964.
work much harder than men. Another explanation, more in line with this article’s thesis that Israel’s concept of equality has been borrowed from the West, is that in England, which has served as model for these regulations, it was decided that since women usually marry men 5 years their senior, they should retire at an earlier age so that they may retire simultaneously with their husbands and thus not upset the internal family balance. Whatever the reason, the fact remains that women have a longer life expectancy than men and that many strongly desire to continue working beyond age 60.

The repercussions of the present retirement age are not merely psychological but also financial. A woman who starts to work at a relatively older age may not be eligible for the maximum pension guaranteed by the collective bargaining contracts, since she has not accumulated the required number of years of employment.

Severance pay legislation should be mentioned in this connection, for it bears indirectly on pensions. The Severance Pay Law provides that a mother may resign within 9 months after giving birth and be eligible for full severance pay, in proportion to the number of years she has been employed. This seemingly progressive legislation, preventing employers from withholding such benefits from mothers on grounds that they have resigned, has proved to be a two-sided coin. A woman who invokes her right to severance pay forfeits her right to a pension. Should she decide to resume work, she would have to accumulate pension time anew, as if she had never worked before. For many reasons, women exercise their right to resign much more than men who are entitled to claim severance pay upon resignation. Women use the money whether to provide for the needs of the newborn or raise the family’s standard of living. Consequently women usually retire with small pensions and are dependent on their husbands despite the fact that they have worked a considerable number of years and that the Israeli legal system is geared to protect the working class.

The rights that widows and widowers may bestow upon their relatives also demonstrate the limited concept of equality of the Israeli system. Under most arrangements, including the State Service (Benefits) Law, a pension is provided for the widow of an

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employee, but none for a widower, unless he was dependent on his wife for support. As a result, benefits that should accrue to a female employee remain in the pension fund and her husband cannot make use of them. The Federation of Labor justifies the different treatment by saying that women (widows) live longer than men and therefore make more use of the pension funds, a justification which makes little sense since the wives of male employees (whose life expectancy is presumably the same as that of female employees) receive benefits. One may only speculate that the distinction is based on the traditional premise that the male is the family's provider.

Another example of the same phenomenon is the National Insurance Law. The law considers the family, and not its individual members, as the basic unit for distribution of benefits, an approach which frequently results in discrimination against women. Until recently old age benefits would accrue only to individuals who had been employed throughout the 5 years prior to retirement. The provision proved particularly damaging to women who had worked for longer periods previously, but did not meet this requirement. The Law also compelled a woman entitled to support both as a widow and as individually insured to relinquish one source of support. In addition, the Law denied husbands the right to a survivorship claim for their wives' insurance. In April 1973 a series of amendments changed some of these features. Still, the National Insurance Law does not regard a housewife as a working person and therefore does not make her insurance mandatory. Consequently, a housewife has no independent right to old age benefits unless she had been voluntarily insured, a practice not widespread in Israel.

The practices and regulations of the income tax authorities constitute one more example of the system's approach toward sex equality. Despite the official policy to "get the women back to work", increased expenses at home resulting from women's outside employment are not deductible for income tax purposes. Also, a bizarre regulation prohibits a wife from seeing the couple's joint income tax files, unless she obtains her husband's written consent. No such restriction applies to the husband. Preferable treatment of divorced men in the area of income tax deductions has also been acknowledged by the income tax authorities. When a divorced father pays child support he is the only one entitled to tax deductions on this item even when the mother has custody of the child; i.e. the sum paid by the father is considered as covering all the mother's ex-

68. Nachman, ibid. Aloni, supra n. 62.
69. Nachman, supra n. 67.
70. Dvar Ha-Poelet May 1973 p. 22 (in Hebrew).
penses for the child, and the argument that more is actually spent and that deductions should be divided proportionally falls on deaf ears.\textsuperscript{72}

All the preceding instances substantiate the theory that the principle of equality, accepted by the Israeli legislature in the areas of labor and welfare, is not a principle of genuine sex equality. The foregoing discussion is not intended to belittle Israel's achievement in this area, but is designed to put it in proper perspective. Indeed, much of the legislation concerning mothers has been particularly progressive and praiseworthy. But the model for the well-meaning legislation, the Western model accepting equality subject to traditional sex roles and images—could not but result in the perpetuation of an inferior status for women.

IV. Conclusion

The foregoing discussion has documented the gap between myth and reality concerning the status of women in Israel. The myth of achieved equality of the sexes in Israel flows from the pioneers' concept of genuine sex equality; it has been nourished by the official ideology, legislative reform, the kibbutz movement and the military. Data provided in the first part of this critique prove that, in reality, Israeli attitudes towards women are traditional, reflecting the bourgeois model developed in the Western world; also that women play a negligible role within Israel's power elite.

The reflection of this state of affairs in the Israeli legal system, analyzed in the second part of this critique has two dimensions. In the first place, the same structure of myth and reality appears in the legal system. The system consists of an impressive superstructure avowing commitment to sex equality and a dubious infrastructure, denying sex equality in the area of marriage and divorce and applying only a narrow concept of sex equality in the areas of labor and welfare legislation. The second dimension concerns the gulf between the principle as presently entrenched in the legal system and actual practice. For, even in those areas where the legal system does guarantee equality the reality still lags behind. The existing laws and regulations are not implemented to achieve the desired goal.

The present erosion of the principles of Zionism, the rise of nationalism and militarism and the ever persisting dilemma of the relationship between state and synagogue have all reinforced the image of the woman as a homemaker who, in addition to maintain-

\textsuperscript{72} Shulamit Aloni, "Divorced Mothers—Considered 'Singles' by Income Tax Authorities," in her column "Outside The Reception Hours," Yediot Acharonot, date unknown (in Hebrew).
ing her traditional sex role, works outside the home to contribute to the family's income and to Israel's labor force. On the other hand, consistent with Israel's Western orientation, the recent challenge to the traditional pattern by the women's liberation movements has resulted in reappraisal of myth and reality within Israel itself. More and more studies are being conducted; pressure is increasing on the Knesset and the courts to correct the present situation. Recently, the Labor Party's Executive Committee yielded to a demand by women's groups and agreed to earmark for women 25% of the Labor Party's candidates in the coming election for convention delegates. However, this is only a beginning and the results still remain to be seen.

Awareness of the problem is one step in the direction of eradicating traditional prejudices. Attempt to implement and amend existing law is another step toward equality. To this writer it appears that only restoration of the original meaning of the principle, accompanied by its consistent application in all aspects of life, may bring reality closer to the myth.