

Columbia University
Graduate School of Arts & Sciences
Human Rights Studies Master of Arts Program

IF I AM NOT FOR MYSELF, WHO WILL BE FOR ME?

*Female Autonomy, Human Rights-Consciousness, and the Right to Exit
From Haredi Communities in Israel*

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Submitted in partial fulfillment of the
requirements for the degree of
Master of Arts

February 2015

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ABSTRACT

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*Female Autonomy, Human Rights-Consciousness, and the Right to Exit
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The “right to exit” refers to the right of individuals to leave (exit) their religious or cultural groups. While not expressly articulated in any international human rights documents, the right to exit from cultural or religious groups is guaranteed by the internationally acknowledged rights to self-determination, freedom of religion, and freedom of movement. In this study, I examine the effects of Israel’s religious policies on women in *Haredi* (ultra-Orthodox) Jewish communities, where women have an exceptionally difficult time asserting autonomy, voicing and remedying grievances, and exiting their marriages and/or community if they wish to. By accommodating the *Haredim*, Israel denies *Haredi* women many rights guaranteed to all Israeli women by virtue of their citizenship. I conclude that Israel must reform its education system to better ensure that all citizens, regardless of religious affiliation are able to: 1. develop *human rights consciousness* and autonomy in childhood, and 2. access social services in adulthood that facilitate the full exercise of their rights as Israeli citizens and human beings, including the right to exit.

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INTRODUCTION

The “right to exit” refers to the right of individuals to leave (exit) their religious or cultural groups. While not expressly articulated in any international human rights documents, the right to exit from cultural or religious groups is guaranteed by the internationally acknowledged rights to self-determination, freedom of religion, and freedom of movement. All of these rights are enshrined in the conventions that comprise the International Bill of Human Rights: the *Universal Declaration of Human Rights*¹ (UDHR, Article 3), the *International Covenant on Civil and Political Rights*² (ICCPR, Articles 1, 12, 18), and the *International Covenant on Economic, Social, and Cultural Rights*³ (ICESCR, Article 1). Numerous human rights scholars and theorists have addressed the “right to exit” from insular religious communities and other involuntary associations. While theorists disagree on the specific nature of the right to exit most point to one

* The title of this paper is the first line from a famous adage by Hillel the Elder (c. 110BCE - 20CE, traditional Jews believe he lived to be 120 years old), one of the most influential leaders in Jewish history. It is understood to mean that individuals must develop their unique selves. Without the ability to develop one’s autonomy, it is impossible to truly know oneself. The full quote is:

"If I am not for myself, who will be for me? But if I am only for myself, who am I? If not now, when?"

1. YAAKOV ASTOR, "Me, Myself and I: Ethics of the Fathers 1:14," Aish, June 5, 2004,

<http://www.aish.com/sp/pg/48893292.html>.

2. STEPHEN G. WALD, "Hillel," in *Encyclopaedia Judaica*, ed. Michael Berenbaum and Fred Skolnik, 2nd ed., vol. 9 (Detroit: Macmillan Reference, 2007), pg. 108, accessed February 9, 2015,

<http://go.galegroup.com/ps/i.do?id=GALE%7CCX2587508948&v=2.1&u=imcpl11111&it=r&p=GVRL&sw=w&asid=4eb4c16cf2ddfe4460b253133bfb8377>

¹ UN GENERAL ASSEMBLY, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 8 December 2014]

² UN GENERAL ASSEMBLY, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 8 December 2014]

³ UN GENERAL ASSEMBLY, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 8 December 2014]

significant barrier: *that those most in need of exit are often those least aware of their resources and rights.*⁴

At its founding, Israel, in order to solidify support for the Zionist movement, came to an agreement (the “Status Quo Agreement”)⁵ with the Orthodox community that *Halakha*⁶ (traditional Jewish Law) would apply to all Jewish Israelis in issues pertaining to family law,⁷ and that the Orthodox would have autonomy in education and religious practice. In this study, I focus upon the effects these accommodations have on women in *Haredi* (ultra-Orthodox) Jewish communities.⁸ My focus on *Haredi* women is not meant to belittle the difficulties faced by all Israelis as a result of Israel’s accommodations for the Orthodox. But by focusing on some of the most vulnerable members of Jewish Israeli society, ultra-Orthodox women and girls, I hope to spotlight the extensive damage caused by Israel’s religious policies.

In Israeli *Haredi* Jewish communities, women have an exceptionally difficult time asserting autonomy, voicing and remedying grievances, and exiting their marriages and/or

⁴ SUSAN MOLLER OKIN, ““Mistresses of Their Own Destiny””: Group Rights, Gender, and Realistic Rights of Exit,” *Ethics* 112, no. 2 (January 2002): pg. 207, doi:10.1086/324645. [hereinafter “Mistresses”]

⁵ More on this in section two. For a detailed history and discussion of the Status Quo Agreement, see: DAPHNE BARAK-EREZ, “Law and Religion Under the Status Quo Model: Between Past Compromises and Constant Change,” *Cardozo Law Review* 30, no. 6 (June 2009), EBSCO.

⁶ Literally means “the way”, the *Halakha* is Jewish religious law based on the written law (the Old Testament) and the oral law (the Talmud). The *Halakha* has been compiled and interpreted by numerous rabbinic scholars over the past 2,000 years, but the *Mishneh Torah*, written by Maimonides in the late 12th century, and the *Shulchan Aruch*, written by Yosef Karo in 1563, remain two of the most influential interpretations.

⁷ In Israel, family law is adjudicated under religious law for all citizens, depending on their religious affiliation. Muslims, Jews, Druze, and Christians (there are 10 recognized denominations) have their own religious court systems that apply religious law in the adjudication of family law cases. For this reason, there is no civil marriage in Israel. Those who wish to marry someone of a different faith or who wish to exclude religion from their marriages are unable to do so. This is a significant social issue in Israel for secular Jews and non-Jewish citizens, who correctly argue that this system violates their fundamental rights to freedom of (and from) religion. For more on this, see: SUSAN M. WEISS and NETTY C. GROSS-HOROWITZ, *Marriage and Divorce in the Jewish State: Israel's Civil War* (Waltham, MA: Brandeis University Press, 2013), Kindle Edition. [hereinafter: “Marriage and Divorce”]

⁸ “*Haredi*” literally means “one who trembles (before God)” and can be used as a noun or adjective. The plural of *Haredi* is *Haredim*. More on the community in section two.

community if they wish to. When *Haredi* women challenge cultural norms or choose to exit, they face a multitude of obstacles, including physical/emotional abuse, loss of access to their children, intimidation, and ostracism.⁹ Rooted in the intensely traditional and insular *Haredi* worldview, these abuses are perpetuated by Israel's failure to fulfill many of its international human rights commitments, particularly those enumerated in the 1979 *Convention to Eliminate all forms of Discrimination Against Women (CEDAW)*¹⁰ and the 1989 *Convention on the Rights of the Child (CRC)*.¹¹ Intended to protect *Haredi* culture from wider secular society, the practical effects of the Status Quo Agreement are detrimental to *Haredi* women, particularly those who challenge their community's gender norms. By accommodating the *Haredim*, Israel denies *Haredi* women many rights guaranteed to all Israeli women by virtue of their citizenship.

This paper has five sections. In the first, I provide an overview of the discourse surrounding the right to exit, arguing that it should be understood as a principally positive right that requires proactivity on the part of states. I then discuss the inherent tension between minority group rights and the rights of individuals. In the second section, I examine the *Haredim* in Israel, providing a brief historical background and explaining how their ultra-conservative worldview disproportionately privileges men. I also provide a brief explanation of Israel's rabbinical courts. In section three, I discuss common impediments to exit faced by *Haredi* women, explaining how the *Haredi* worldview, coupled with state-sanctioned rabbinical courts, systematically violates rights guaranteed to *all* women by Israel's domestic and international legal commitments. In section four, I discuss Israel's consistent failure to respect its domestic and international

⁹ I discuss these obstacles in detail in section three.

¹⁰ UN GENERAL ASSEMBLY, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> [accessed 8 December 2014]

¹¹ UN GENERAL ASSEMBLY, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 8 December 2014]

commitments to women's equality. In section five, I explain how the Israeli education system contributes to the problems facing *Haredi* women. I describe how *Haredi* schools fail to meet international legal standards surrounding the right to education, and deprive girls from developing *human rights-consciousness*, which would allow them to become their own advocates.¹²

I conclude that Israel must reform its education system to better ensure that all citizens, regardless of religious affiliation are able to: 1. develop *human rights consciousness* and autonomy in childhood, and 2. access social services in adulthood that facilitate the full exercise of their rights as Israeli citizens and human beings, including the right to exit involuntary associations.

¹² I use a framework for human rights consciousness discussed in:
SHULAMIT ALMOG AND LOTEM PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine: Rights Consciousness and the Education of Ultra-Orthodox Girls," *Journal of Law and Education* 40, no. 2 (April 2011) [hereinafter "The Ability to Claim and the Opportunity to Imagine"]

I. THE RIGHT TO EXIT

*“It seems...that any liberal defender of the rights of groups should recognize that individuals must be not only formally free but substantively and...equally free to leave their religions or cultures of origin; they must have realistic rights of exit.”*¹³

Some human rights theorists argue that the right to exit is primarily a “negative”¹⁴ one, and thus requires little positive proactivity on the part of states.¹⁵ These theorists argue, *inter alia*, that the mere *physical* ability to leave one’s community is all that states must provide citizens in order to ensure their right to exit. The primary problem with this approach is that it overlooks the impact of emotional, intellectual, and psychological experiences on a person’s ability to exercise her rights and control her own destiny. Thus, this “negative” characterization does not provide for “realistic rights of exit.”¹⁶

If an individual has been a member of a minority religious group since childhood, her *psychological* capacity for exit and awareness of resources could be compromised, even where there are no *physical* barriers to exit. Warnings about, and thus fear of, the secular world, coupled with the threat of communal and divine punishment, can deter individuals from seeking help outside the community or disaffiliating from it.

¹³ OKIN, “Mistresses”, supra note 4, pg. 206

¹⁴ The distinction between positive and negative conceptions of rights is well summarized in:
B. SPIECKER, D. DE RUYTER, and J. STEUTEL, "Taking the Right to Exit Seriously," Theory and Research in Education 4, no. 3 (2006): pg. 314, doi:10.1177/1477878506069102.
“While the right to exit is a negative right, i.e. a right that corresponds with a duty of others not to prevent one from doing ‘x’, and not a right to receive or be assisted to do ‘x’, the negative right of adults implies that they should not be hindered in the development of their ability to exercise whatever the right allows them to. Moreover, according to the Convention on the Rights of the Child, children are entitled to education that is directed to ‘the development of the child’s personality, talents and mental and physical abilities to their fullest potential’. This means, of course, that the right to develop or receive education towards exercising negative rights, in this case the right to exit, is a positive right.”

¹⁵ OKIN, “Mistresses”, supra note 4, pp. 223- 230.
Discussing Joseph Raz, William Galston, and Chandran Kukathas,

¹⁶ *Ibid.*, pg. 207

An adolescent girl faced with the choice of either giving up her education and marrying against her will or leaving her family and her culture of origin may find this choice very far from a convenient opportunity to exit. It may well be such an unbearable choice as to be, in practice, no choice at all.¹⁷

For these reasons, a more robust and nuanced understanding of the right to exit is required when discussing insular religious groups, particularly when those seeking exit are women. I subscribe to a more liberal view of the right to exit – one that obligates states to proactively ensure that all citizens (even members of insular religious groups) can effectively control their own destinies. To make this possible, states must establish concrete strategies to ensure that all citizens are aware of their rights and can effectively exercise them.

i. GROUP RIGHTS

Exploration of the tension between minority group rights and individual rights is important to any discussion of the right to exit. In liberal states, minority religious groups are often granted autonomy in certain legal spheres as a means to preserve the group's culture and protect it from secular influence. Few object to these protections on a theoretical level, but “multicultural accommodation presents a problem...when pro-identity group policies improve the status of identity groups but worsen the status of less powerful group members.”¹⁸ Indeed, “Since virtually all cultures are to some degree patriarchal,”¹⁹ particularly those based in religious ideology, providing autonomy to such groups perpetuates gender inequality and deprives female group members from enjoying many rights guaranteed to women in the wider

¹⁷ OKIN, “Mistresses”, supra note 4, pg. 224

¹⁸ A. SHACHAR, “Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation,” *Journal of Political Philosophy* 6, no. 3 (1998): pg. 286, doi:10.1111/1467-9760.00056 [hereinafter “Group Identity and Women's Rights”]

¹⁹ OKIN, “Mistresses”, supra note 4, pg. 209

society.²⁰

Human rights theorists struggle to develop an appropriate remedy to this tension. Prominent theorist Will Kymlicka advocates for limiting the groups that should be entitled to protections, proposing that “special” rights should be granted only to those groups that espouse gender equality (i.e. those that provide equal access to education, voting rights, etc.)²¹ Susan Moller Okin rejects this solution as ineffective, astutely pointing out that gender inequality is often less overt, and that “In many cultures, strict control of women is enforced in the private sphere” by the authority of men.²²

Indeed, Israeli *Haredi* girls receive a relatively²³ comprehensive *academic* education,²⁴ but it is focused exclusively on work preparedness. *Haredi* girls are expected to fulfill the roles of wife, mother, and breadwinner, all of which are enforced in the private sphere by their husbands and male leadership according to *Halakha*. *Haredi* girls are thus denied the opportunity to develop unique ideas and make autonomous choices about the future.²⁵ Therefore it is clear that requiring minority groups to provide *de jure* gender equality will not necessarily translate into *de facto* equality, as gender roles and sexual norms are enforced in the private sphere and

²⁰ SHACHAR, “Group Identity and Women’s Rights”, supra note 18, pg. 287

²¹ OKIN, “Mistresses”, supra note 4, pg. 208. Referencing Will Kymlicka in: Liberalism, Community, and Culture (Oxford: Clarendon, 1989)

²² SUSAN MOLLER OKIN, "Is Multiculturalism Bad for Women?," in *Is Multiculturalism Bad for Women?*, by Joshua Cohen, Matthew Howard, and Martha Craven Nussbaum (Princeton, NJ: Princeton University Press, 1999), 21.

²³ *Haredi* girls receive a *relatively* comprehensive academic education compared to their male counterparts, but not compared to girls in non-*Haredi* schools. *Haredi* boys typically cease learning secular subjects after the 8th grade. In 2008, Israel passed the Unique Cultural Educational Institutions Act, which exempted *Haredi* boys’ high schools from teaching any secular subjects while still receiving state funding. Attempts have been made to overturn this law, but progress is slow. For more information, see:

"Ministry of Education Delays Implementation of Core Curriculum in Ultra-Orthodox Schools," HIDDUSH, November 15, 2014, http://hiddush.org/article-6676-0-Core_of_the_Core_Curriculum_Chewed_up_Spit_out.aspx.

²⁴ ALMOG AND PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine", supra note 12

²⁵ Ibid.

inculcated in childhood in the home and at school. The private nature of female subordination, coupled with the insularity of minority religious groups, effectively silences women's needs and renders their struggles invisible to the liberal state.

Family law and education are the two areas in which minority religious groups (such as the *Haredim*) most often vie for autonomy from the state and these social spheres have a major impact on the way gender roles are learned and enforced. Male leadership is often threatened by female autonomy because it could jeopardize group viability and maintenance of the group's traditions. Family law governs issues of matrimony, child custody, divorce, and property ownership; religious jurisdiction in this arena guarantees that tradition will determine the fundamentals of group member validity (i.e. legitimate vs. illegitimate children) and women's status in the community (i.e. married, divorced, widowed).²⁶

Religious jurisdiction over education guarantees that children will be instilled with the group's worldview and ensures that strict insularity will be maintained. Minority religious schools often prevent children from developing an adequate level of autonomy, as they typically refrain from teaching about alternative ideologies, human rights, and what citizenship means in a liberal state.²⁷ In this way, group members are fully prepared to perpetuate the group's traditions by the time they reach adulthood. Such is the case in *Haredi* communities.

While many *Haredi* children become adults who fully embrace the community's worldview, those who fail to do so have an exceptionally difficult time. Women who challenge the community's social norms face an especially trying set of challenges, as the group's traditions do not provide channels for voicing grievances, participating in leadership, or changing

²⁶ SHACHAR, "Group Identity and Women's Rights", supra note 18, pg. 294

²⁷ SPIECKER, DE RUYTER, AND STEUTEL, "Taking the Right to Exit Seriously", supra note 14, pg. 319

the status quo.²⁸ Exit from the group is often the only option for women who wish to live in an alternative way, but is not always possible or realistic. By controlling the education of children and the adjudication of family law, group leaders ensure that exit will be both difficult and undesirable, especially for female members.

²⁸ I discuss these realities in detail in section three.

II. THE *HAREDIM* IN ISRAEL

*“only when “modern” Jews came into being, ultra-Orthodox Jews came into being too...something important had changed in their attitudes toward themselves, toward other Jews, and toward Judaism itself. They now viewed themselves as different: purebred Jews, not like all those other mutts. They viewed other Jews as sellouts, imposters, and-most important-as a constant danger. And they viewed their Judaism as fixed, frozen, unchangeable by virtue of being perfect. Outside of history.”*²⁹

i. BACKGROUND

The *Haredim* in Israel are not a homogeneous group. “*Haredi* Judaism” is an umbrella term encompassing a large variety of ultra-Orthodox Jewish groups, including numerous Hasidic³⁰ sects as well as non-Hasidic *Ashkenazim*, *Sephardim*, and *Mizrahim* (Jews from Europe, the Middle-East/North Africa, and Asia, respectively).³¹ While each group has a unique set of cultural customs, all share an exceptionally traditional understanding of what it means to be Jewish. *Haredi* Jews follow a strict interpretation of *Halakha*, a fact that has made their communities intensely insular, patriarchal, and anti-modern.

Haredi Judaism arose in the 19th Century in negative response to the *Haskalah*³² (Jewish enlightenment), which saw many Jews advocating reform to better align Judaism with wider modernization in the west.³³ Despite *Haredi* Judaism’s relatively recent arrival in the Jewish

²⁹ NOAH J. EFRON, *Real Jews: Secular Versus Ultra-Orthodox and the Struggle for Jewish Identity in Israel* (New York: Basic Books, 2003), Kindle Edition. (Locations 459-460). [hereinafter *Real Jews*]

³⁰ *Hasidism* arose in 18th century Eastern Europe and there are now thirty major *Hasidic* sects along with over one hundred smaller sects throughout the world. *Hasidic Haredim* differ from non-*Hasidic Haredim* in their emphasis on Jewish mysticism (*kabbalah*). Each sect follows a religious leader (called a *Rebbe*), whom adherents believe has a direct connection to God. For more information, see:

JOSEPH BERGER, *The Pious Ones: The World of Hasidim and Their Battles with America*, 1st ed. (New York: HarperCollins Publishers, 2014).

³¹ RABBI RACHEL M. SOLOMIN, "Sephardic, Ashkenazic, Mizrahi Jews: Jewish Ethnic Diversity," My Jewish Learning, accessed February 05, 2015, http://www.myjewishlearning.com/beliefs/Theology/Who_is_a_Jew/Types_of_Jews/Ethnic_Diversity.shtml.

³² EFRON, *Real Jews*, supra note 29, locations 401-414

³³ *Ibid.*

world, the *Haredim* believe that theirs is the most authentic version of Judaism and that integration or assimilation with secular society is a threat to their traditions. Most *Haredi* Jews live in exclusively *Haredi* neighborhoods, send their children to *Haredi* schools, follow authoritative rabbis, and aim for minimal interaction with secular society, as they believe that “innovation is forbidden by the Torah.”³⁴

At the time of Israel’s founding, many *Haredi* groups were opposed to the Zionist project and resisted Israeli statehood.³⁵ In order to rally the support necessary for statehood, Orthodox and ultra-Orthodox Jews were guaranteed a high level of group autonomy and Orthodox Judaism was to be the only state-sanctioned version of Judaism in Israel. David Ben-Gurion’s Status Quo Agreement made a wide range of promises to the Orthodox in exchange for political support:

... that the Jewish Sabbath would be the official day of rest in the country, that kitchens in schools, museums, and other public buildings would be kosher, that all efforts would be made to ensure that traditional Jewish matrimony laws were enacted ("to prevent, heaven forbid, any schism within the Jewish people"), and that the ultra-Orthodox would have full autonomy in educating their children.³⁶

When Ben-Gurion agreed to these accommodations, the ultra-Orthodox comprised a relatively small portion of the population, and while he did not believe Israel should be an Orthodox or theocratic state, he felt that the *Haredim* would eventually assimilate and disappear.

Uri Avneri, a left-leaning journalist and politician who knew Ben-Gurion well and served in the Knesset with him [explained]... ‘We both felt that it was acceptable to give the religious what they wanted because they were in any case dying off. It never occurred to either of us that this primitivism would survive for another generation.’³⁷

³⁴ EFRON, *Real Jews*, supra note 29, Locations 460-461.

³⁵ Some *Haredi* groups remain anti-Zionist to this day. Many of them believe that the establishment of the State of Israel violates a Talmudic *Midrash* called “The Three Oaths”, which states, *inter alia*, that Jews should not use force to settle in Israel or rebel against the nations of the world.

JOSHUA GERSTEIN, "The Land of Israel and the Three Oaths," The Times of Israel - Blogs, July 18, 2014, <http://blogs.timesofisrael.com/the-land-of-israel-and-the-three-oaths/>.

³⁶ EFRON, *Real Jews*, supra note 29, Locations 755-757.

³⁷ *Ibid.*, Locations 1028-1032.

Avneri and Ben-Gurion's prediction was mistaken, and in the ensuing decades, Israel's *Haredi* accommodations have allowed *Haredi* leaders to influence (and sometimes inhibit) secular societal progress while ensuring that *Haredi* society remains insular and autonomous. Attempts to reform the Agreement are consistently greeted with protests and backlash from the *Haredim*, and tension between secular and *Haredi* Jewish society is increasing. The *Haredim* now comprise approximately 10% of the Israeli population³⁸, and the community is growing rapidly. *Haredi* women have 6.5 children on average – the highest birth rate of any other demographic in Israel.³⁹ As of 2013, 32% of Israeli first graders were *Haredi*, a fact that Israeli leaders reasonably see as a threat to the democratic future of the state unless *Haredi* children are “integrated into society.”⁴⁰

Israel's status as a *Jewish* democratic state complicates the typical paradigm of minority group accommodation within a liberal state. While Israel's Orthodox accommodations certainly serve to protect the *Haredim's* group rights, they also serve a political purpose. In exchange for the Status Quo Agreement, Israel was able to galvanize political support for the Zionist cause among Orthodox communities. The significant growth of the *Haredi* community since 1948 has only strengthened the groups' political power. *Haredi* political support is invaluable today, as the *Haredim* vote as a bloc and consistently align with the party that grants them the most autonomy. For this reason, any deviation from the Agreement is politically risky.

³⁸ ARI M. PALTIEL, *Estimation of the Size and Vital Rates of the Haredi (Ultra-orthodox) Population in Israel for the Purpose of Long-range Population Projections*, working paper no. 7.3 (Rome: Joint Eurostat/UNECE Work Session on Demographic Projections, 2013), pg. 12, http://www.unece.org/fileadmin/DAM/stats/documents/ece/ces/ge.11/2013/WP_7.3.pdf

³⁹ *Ibid.*, pg. 9

⁴⁰ "Bennett: 32% of Grade 1 Students Are Haredim, Israel Will Not Survive without Their Integration," THE JERUSALEM POST, October 14, 2013, <http://www.jpost.com/Diplomacy-and-Politics/Bennett-32-percent-of-grade-1-students-are-haredim-Israel-will-not-survive-without-their-integration-328663>.

Their active interests are so highly circumscribed – money for religious education, the upholding of Halakha where possible – that their votes are more fungible than those of anyone else. They amount to a big special-interest group, and outside the realm of their special interests, they're easy. They can govern with the Right or with the Left.⁴¹

ii. HALAKHA AND MALE PRIVILEGE

The *Haredim* are a prime example of an insular religious group to which gender inequality is fundamental. Gender inequality within *Haredi* Judaism is a relic of another time, the one reflected in *Halakha* – to which the *Haredim* give complete reverence. Traditional Judaism is greatly concerned with distinctions and separateness (i.e. Shabbat vs. weekdays, kosher vs. *treyf*, clean vs. unclean, etc.). For this reason, gender divisions are central to the majority of observance and ritual.⁴² Men and women occupy separate spaces both physically and spiritually and are forbidden from making physical contact unless they are married to one another.⁴³ *Halakha* grants men significant privilege, and the *Haredi* interpretation is unrivaled in its stringency. The gender inequality inherent in the *Haredi* worldview affects all aspects of women's lives in the private and public spheres.

A *Haredi* woman is required to embody the principle of *tzniut* (modesty), which applies to all spheres of her life. She is forbidden from an exhaustive list of activities and behaviors that are considered immodest, including speaking (giving speeches) or singing in front of men,⁴⁴

⁴¹ EFRON, *Real Jews*, supra note 29, locations 891-892.

⁴² Orthodox Judaism is primarily concerned with daily adherence to God's 613 *mitzvot* (commandments). Many of the *mitzvot* are gender specific, and only three are obligatory for women: *nerot* (lighting candles), *challah* (separating a portion of dough), and *niddah* (ritual immersion after the end of a woman's menstrual period). Women are exempt from fulfilling all time-bound *mitzvot* (i.e. praying three times daily), as their expected primary responsibilities concern the home and caring for children.

⁴³ Mishneh Torah, Sefer Kedushah, Issurei Biah – 21:1
Issurei Biah - Chapter Twenty One - Texts & Writings. Accessed February 04, 2015.
http://www.chabad.org/library/article_cdo/aid/960669/jewish/Issurei-Biah-Chapter-Twenty-One.htm.

⁴⁴ This prohibition is called "*kol isha*"
Mishneh Torah, Sefer Kedushah, Issurei Biah 21:2, Ibid.

touching someone of the opposite sex,⁴⁵ showing her hair⁴⁶, or wearing revealing clothing. In many *Haredi* neighborhoods, the all-male *va'ad hatzius* (modesty patrol) enforces modesty throughout the community, sometimes violently reprimanding women who fail to meet *Halakhic* standards of modesty and piety.⁴⁷ Women and girls in Israel have also been violently prevented from occupying certain public spaces to which *Haredi* men lay claim, including the *Kotel* (western wall)⁴⁸ and even public buses.⁴⁹

The *Haredim* regard themselves as a “scholar’s society,”⁵⁰ and students of holy texts are the most respected members of the community, but the study of Talmud and Torah is only available to men. A *Haredi* Jewish woman’s principal role is to support her husband in his study of Torah and to raise (and usually financially support) their children. The majority of *Haredi* men in Israel claim Torah as their legal occupation, and the state recognizes this as legitimate employment, providing these men and their families extensive social welfare benefits, child support,⁵¹ and exemption from compulsory military service.⁵² Many *Haredi* boys cease learning

⁴⁵ Mishneh Torah, Sefer Kedushah, Issurei Biah 21:1, Ibid.

⁴⁶ Talmud Ketubot 72a, Shulchan Aruch, Orach Chaim, 75:2
Naftali Silberberg, "Why Do Married Women Have to Cover Their Hair?," ASKMOSES, accessed February 05, 2015, <http://www.askmoses.com/en/article/235,2506/Why-do-married-women-have-to-cover-their-hair.html>.

⁴⁷ RUKHL SHAECHTER, "Inside Hasidic Modesty Patrols," The Jewish Daily Forward, December 26, 2012, <http://forward.com/articles/168172/inside-hasidic-modesty-patrols/?p=all%E2%80%A8http%3A%2F%2Fwomenofthewall.org.il%2Fabout%2Flegal-struggle%2F>.

⁴⁸ ISABEL KERSHNER, "Israeli Girl, 8, at Center of Tension Over Religious Extremism," The New York Times, December 27, 2011, http://www.nytimes.com/2011/12/28/world/middleeast/israeli-girl-at-center-of-tension-over-religious-extremism.html?_r=0.

⁴⁹ IZZY LEMBERG AND KEVIN FLOWER, "Israel's 'Rosa Parks' Refuses to Take Back Seat - CNN.com," CNN, December 19, 2011, <http://edition.cnn.com/2011/12/19/world/meast/israel-rosa-parks/index.html>.

⁵⁰ MENACHEM FRIEDMAN, *The Haredi (Ultra-Orthodox) Society - Sources, Trends and Processes* (Jerusalem Institute for Israel Studies, 1991), <http://www.jiis.org/?cmd=publication.7&act=read&id=617>.

⁵¹ LIOR DATTEL AND TAL HERUTI-SOVER, "Israel's Welfare Ministry Vows to Prevent Haredim from Living off Child Benefits," Haaretz.com, July 28, 2013, <http://www.haaretz.com/news/national/.premium-1.538280>.

⁵² In 2012, The Supreme Court of Israel ruled that *Haredi* military exemptions are unconstitutional, and the ruling was greeted with significant backlash from the *Haredim*. Despite the ruling, Israeli leaders are still trying to establish a way to successfully impose the draft on the *Haredim*. For more information, see:

secular subjects after 8th grade,⁵³ and higher education is viewed as a dangerous path towards secularization – “a vehicle for abandoning Torah.”⁵⁴ Because the majority of *Haredi* men study Torah as their full-time profession,⁵⁵ women are expected to be the primary (and usually only) breadwinners.⁵⁶ Thus, *Haredi* women are responsible for both financial security and child rearing – and they are expected to have many children. The *Haredim* are dedicated to fulfilling the commandment to “be fruitful and multiply,” an obligation that precludes the use of contraception of any kind, except in special circumstances with rabbinical approval. Thus, *Haredi* women have very limited control over their own reproduction.⁵⁷

iii. RABBINICAL COURTS

*“Because such maltreatment of women is sanctioned by (state-authorized) rabbinical courts, Israel’s multicultural accommodation policy does more than recognize the autonomy of religious courts in the family law arena. In effect, it also grants these ‘inside’ courts a carte blanche license to subordinate certain group members.”*⁵⁸

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1. RUTH LEVUSH, "Israel: Supreme Court Decision Invalidating the Law on Haredi Military Draft Postponement," Library of Congress, March 2012, <http://www.loc.gov/law/help/haredi-military-draft.php>.
 2. URI REGEV, "The Haredi Draft Law: Problems and Concerns," Hiddush, March 20, 2014, http://hiddush.org/article-2624-0-The_Haredi_Draft_Law_Problems_and_concerns.aspx.

⁵³Supra note 23

⁵⁴ EFRON, *Real Jews*, supra note 29, Locations 991-992

⁵⁵ As of 2011, 52.3% of *Haredi* men were not formally employed.
DAN BEN-DAVID, *A Picture of the Nation: Israel’s Society and Economy in Figures*, publication (Jerusalem: Taub Center for Social Policy Studies in Israel, 2014), pg. 78.

⁵⁶ EFRON, *Real Jews*, supra note 29, Locations 1386-1387
“Under 20 percent of the total income [of a Haredi family] is earned (almost all of this from the woman’s work). Just under 40 percent of the family income comes from the yeshiva and other institutions, which itself comes from government allocations. Another 30-odd percent comes from child allowances.”

⁵⁷ Additionally, *Haredi* women suffer disproportionate health problems due to their high birth rate:
“the death rate from breast cancer among ultra-Orthodox women is 30% higher than the average, and their life expectancy is the lowest in Israel... ‘We conducted a survey through the Prime Minister’s office and discovered a close relationship between the number of children, the age of the mother when she gives birth, and serious health problems’”
"Committee on the Status of Women and Gender Equality Discusses Ultra-Orthodox Women’s Health," HIDDUSH, November 20, 2014, http://hiddush.org/article-6678-0-Committee_on_the_Status_of_Women_and_Gender_Equality_discusses_ultraOrthodox_womens_health.aspx.

⁵⁸ SHACHAR, “Group Identity and Women’s Rights”, supra note 18, pg. 291

As part of Ben-Gurion's accommodations, a system of religious courts was established that have exclusive jurisdiction in issues of marriage and divorce. Every official religious group in Israel operates its own family law courts, but the status quo agreement ensured that Orthodox Judaism would be the only legitimate version of Judaism in the country.⁵⁹ As a result, rabbinical courts⁶⁰ (Jewish religious courts) apply an Orthodox interpretation of *Halakha* in all cases. This system disproportionately burdens women, as *Halakha* privileges men, particularly in marriage and divorce. The situation is especially damaging to *Haredi* women, as their religious and insular upbringing compromises their ability to navigate the legal system advantageously and appeal rabbinical court rulings. Therefore, *Haredi* women who wish to exit the community face not only social impediments but also state-sanctioned legal barriers.

While rabbinical courts have exclusive jurisdiction in marriage and divorce, they have parallel jurisdiction with secular family law courts in matters ancillary to divorce, including child custody, child support, and property division.⁶¹ Jurisdiction is granted to the court in which the case is first filed. This system leads to a phenomenon known as the "race to the courthouse," wherein spouses rush to file with the court which will favor them – men rush to file with the rabbinical court, and women with the secular court.⁶² While this is common in wider Jewish Israeli society, the "race to the courthouse" is rare in *Haredi* communities, as leadership actively discourages *Haredim* from bringing any case to secular authorities, even in particularly

⁵⁹ "Chief Rabbinate of Israel Law (1980)," Israel Law Resource Center, February 2007, <http://www.israelawresourcecenter.org/israelaws/fulltext/chiefrabbinateisrael.htm>.

⁶⁰ Rabbinical court authority was established by the "Jurisdiction of Rabbinical Courts (Marriage and Divorce) Act 1953". For a thorough history and discussion of Israeli Rabbinical Courts, see:

"Israel Judicial Branch: Beit Din & Judges From Bible to Modern Times," JEWISH VIRTUAL LIBRARY, under "In the State of Israel," accessed February 05, 2015, <http://www.jewishvirtuallibrary.org/jsource/Politics/beitdinmod.html#5>.

⁶¹ WEISS AND GROSS-HOROWITZ, *Marriage and Divorce*, supra note 7, Locations 428-430.

⁶² *Ibid.*, Locations 431-432.

egregious cases, including cases of child sexual abuse.⁶³ In this way, most *Haredi* women find themselves at the mercy of a court rooted in patriarchal ideology that does not align with the democratic and progressive ideals of the wider state.

iv. FORCED EXIT

Not all *Haredi* women who seek divorce or legal remedy wish to exit their community, but they run the risk of forcible exit if they turn to secular courts. There is an increasing trend of rabbinical courts attempting to “excommunicate” those who seek secular legal remedy by issuing “Writs of Refusal.”⁶⁴ In a recent case, a *Haredi* woman, “CC,” brought a case against her neighbor to a secular court. When the court ruled in CC’s favor, the defendant turned to a private rabbinical court, which proceeded to threaten the woman with excommunication.

The private rabbinical court issued the petitioner a “Warning” and an “Injunction” ordering her to call off her civil lawsuit and bring her dispute before the rabbinical court, or else be declared as “revolting against the Torah” and an “Informer” and be excommunicated... On the eve of Yom Kippur, the same private court issued a “Writ of Refusal” against the petitioner, excommunicating her family, as threatened.⁶⁵

The Supreme Court of Israel is now considering CC’s case, and it seems likely to rule in her favor. However, it remains unclear whether *Haredi* leadership will respect such a ruling.

Before being brought to the Supreme Court, CC’s case prompted the Attorney General to

⁶³ MIRIAM SHAVIV, "UK Haredi Chief Caught Telling Alleged Victim Not to Tell Police About Abuse," *The Times of Israel*, January 24, 2013, <http://www.timesofisrael.com/uk-haredi-chief-caught-telling-alleged-victim-not-to-tell-police-about-abuse/>.

For more information on the issue of child sexual abuse among the Haredim, see:

MARGAUX CHETRIT, "The Silence Around Sex in the Haredi World - and Its Unfortunate Consequences," *The Jewish Daily Forward*, February 20, 2014, <http://forward.com/articles/192746/the-silence-around-sex-in-the-haredi-world-and-i/?p=all>.

⁶⁴ "Israel Judicial Branch: Beit Din & Judges From Bible to Modern Times," JEWISH VIRTUAL LIBRARY, under "Civil Law in Rabbinical Courts & Writ of Refusal," accessed February 05, 2015, <http://www.jewishvirtuallibrary.org/jsource/Politics/beitdinmod.html#5>.

⁶⁵ "Israel's High Court Unanimously Agrees with Hiddush." HIDDUSH. November 14, 2014. http://hiddush.org/article-6675-0-Israels_High_Court_Unanimously_Agrees_with_Hiddush.aspx.

reaffirm that Writs of Refusal are illegal and criminal, but the rabbinical court has refused to lift the Writ of Refusal against CC.

The petitioner and her family continue to suffer the pains of the illegal Writ of Refusal. Her daughters have been denied registration to school, and it was only....appealing to the Ministry of Education, that finally forced the school to accept them. Her husband has had to leave his synagogue, and her own health has suffered greatly due to the severe stress and heartache.⁶⁶

Rabbinical threats of excommunication underscore the fundamental ideological division between *Haredi* and secular Israeli society, and the *Haredi* disregard for Israel's secular legal system is not marginal. The current Chief Sephardic Rabbi of Jerusalem has been outspoken in his opposition to secular Israeli law, and has publicly claimed that "the state's laws and courts are considered 'gentile.'...that Israel should be ruled by the laws of the Torah, and that continuation of the existence of civil courts and laws represents the '*Sitra Achra*' (an Aramaic term for Satan)."⁶⁷

By threatening excommunication, the rabbinical courts control who is a respectable member of the community. *Haredi* individuals, especially women, find themselves in a bind between a rabbinical court based on patriarchal ideology on the one hand and the risk of excommunication and social ostracism on the other. If a *Haredi* woman chooses to remain in her community and challenge the status quo, she risks forcible exit. So, *Haredi* women are punished if they stay and punished if they exit.

⁶⁶ Ibid.

⁶⁷ RABBI URI REGEV, "It's Time to Retire the Chief Rabbinate," The Jerusalem Post, July 22, 2013, <http://www.jpost.com/Opinion/Op-Ed-Contributors/Its-time-to-retire-the-Chief-Rabbinate-320681>.

III. EXIT: REASONS, IMPEDIMENTS, AND CONSEQUENCES

“Accepting as reasonable religious...conceptions of the good that advocate women's inferiority goes against the principle of equality,...undermines the idea of public reason, and detracts from the political legitimacy of the liberal democratic state.”⁶⁸

There is little reliable data on the number of *Haredi* women who exit their communities each year, but “according to government figures, at least 1,300 Israelis left the Haredi world”⁶⁹ between 2013 and 2014. It is reasonable to assume that women make up less than half of that number, as many must first exit their marriages in order to exit their community. Exit from marriage might be adequate for some women, as this assertion of autonomy does not necessarily imply a desire to abandon one’s religious community entirely. Unfortunately, the *Haredi* worldview does not allow much room for female deviation from normative gender roles, and women who seek exit, even simply from marriage, are faced with a multitude of barriers, including loss of child custody, financial insecurity, and social ostracism.⁷⁰ There are various reasons a *Haredi* woman might wish to exit her marriage or community entirely, including domestic abuse, child safety, a non-normative sexual identity, or a lack of religious belief.⁷¹ But

⁶⁸ GILA STOPLER, "The Liberal Bind: The Conflict between Women's Rights and Patriarchal Religion in the Liberal State," *Social Theory and Practice* 31, no. 2 (April 2005): pg. 228 [hereinafter: "The Liberal Bind"]

⁶⁹ YARDENA SCHWARTZ, "Split Identity: The Challenges of Integrating the Growing Numbers of Young Haredim Who Are Adopting a Secular Lifestyle," *The Jerusalem Post Magazine*, May 2, 2014, pg. 13.

⁷⁰ Even in rare cases when women are able to successfully exit and retain custody of their children, they confront significant communal harassment and ostracism. A recent interview underscores the severity of this:

“Mirel had no access to the internet but, through a friend, found her way to Hillel [an NGO, see below note 174], who advised her to seek the divorce in a state court, not a rabbinical one. She gained custody but said she has been harassed. “I get a lot of threats from the community – threats to my life; they said they would kidnap my daughter,” she told me. The day we met, she said she found a small camera planted in her flat.”

JOHN REED, "Saying Goodbye to God: Haredim Apostates," *Financial Times*, July 4, 2014, <http://www.ft.com/intl/cms/s/2/8aa563ec-023d-11e4-ab5b-00144feab7de.html#axzz3Qv6xxjP7>.

⁷¹ LYNN DAVIDMAN AND ARTHUR L. GREIL, "Characters in Search of a Script: The Exit Narratives of Formerly Ultra-Orthodox Jews," *Journal for the Scientific Study of Religion* 46, no. 2 (2007), doi:10.1111/j.1468-5906.2007.00351.x.

the patriarchal *Haredi* worldview, backed by state-sanctioned rabbinical courts, makes exit unrealistic for many *Haredi* women.

i. “CHAINED WOMEN”

Halakha requires women to receive a *get* (a formal release) from their husbands in order to dissolve a marriage. This requirement privileges men, who are permitted to decline a request for a *get* for any reason. The acquisition of a *get* is of crucial importance if a *Haredi* woman wishes to dissolve her marriage, legally remarry, and remain respectable within the community. The state has granted rabbinical courts the legal authority to aggressively pressure recalcitrant husbands to provide a *get*, including imprisonment, but they rarely use these tactics,⁷² as *Halakha* only recognizes a *get* granted by a man’s “free will.”⁷³

A woman whose husband refuses to grant a *get* is called an *agunah* (“chained woman” – chained to her marriage).⁷⁴ Israeli *agunot*⁷⁵ exist in a legal purgatory as they remain legally married under religious law, which in Israel is synonymous with state family law. The facts of a specific case are irrelevant to *Halakha*, and an *agunah* remains legally married even if she no longer resides with her husband and a significant amount of time has passed. As long as her

⁷² WEISS AND GROSS-HOROWITZ, *Marriage and Divorce*, Supra note 7, Locations 2103-2104

⁷³ Mishneh Torah – Sefer Nashim - Gerushin – 1:2

"And if it comes to pass that she does not find favor in his eyes, and he will write a bill of divorce for her, place it in her hand and send her from his home."...."If... she does not find favor in his eyes" - this indicates that he divorces her only on his own initiative. If a woman is divorced against her husband's will, the divorce is invalid. A woman may, however, be divorced either voluntarily or against her will."
Gerushin - Chapter One - Texts & Writings. Accessed February 04, 2015.
http://www.chabad.org/library/article_cdo/aid/957706/jewish/Gerushin-Chapter-One.htm.

⁷⁴ NAFTALI SILBERBERG, "The Agunah - Divorce," Chabad.org, accessed February 05, 2015, http://www.chabad.org/library/article_cdo/aid/613084/jewish/The-Agunah.htm.

⁷⁵ Plural of *agunah*

husband refuses to grant the *get*, she is trapped in the unwanted union and is legally bound to him under state and religious law.⁷⁶

The detrimental impact of an *agunah* status cannot be understated. *Agunot* are forbidden from remarrying until they receive a *get*. If an *agunah* has sexual relations with another man it is adultery and she not only risks her own status but those of any children produced by the adulterous union. Children produced by an *agunah* with a man who is not her husband are labeled *mamzerim* (illegitimate children).⁷⁷ A *mamzer* is forbidden from marrying any non-*mamzer* for ten generations, effectively destroying the entire family's future viability.⁷⁸ The fact that rabbinical court rulings are legally binding in Israel makes the acquisition of a *get* especially urgent. Rabbinical courts maintain a "black-list" of Jewish citizens who are forbidden from marrying in Israel, including *mamzerim* and *agunot*.⁷⁹ Due to the fact that there is no civil marriage in Israel, the estimated 5,000 individuals on this black-list are unable to marry at all,⁸⁰

⁷⁶ It is important to note that men can also be "chained" to their marriages. In cases where a woman refuses to accept a *get*, a man can be "chained" to his marriage. These cases are far less common and are mitigated by the fact that bigamy is permitted for men under *Halakha*, so they remain able to legally re-marry even if dealing with a recalcitrant wife.

Supra note 74, under "Chained Husbands"

⁷⁷ Plural of *Mamzer*.

Deut. 23:3 "A bastard shall not enter the assembly of the Lord; even the tenth generation shall not enter the assembly of the Lord."

ARYEH CITRON, "Permitted Marriages - Parshat Acharei - Mitzvahs & Traditions," CHABAD.ORG, under "Individuals Who May Not Marry Within the Jewish People," accessed February 04, 2015, http://www.chabad.org/library/article_cdo/aid/1226326/jewish/Permitted-Marriages.htm.

⁷⁸ The concept of *mamzerim* differs from the Western understanding of illegitimate children. Children of unwed women are *not* considered *mamzerim*. *Mamzerim* are children that result from a forbidden union under *Halakha*: "A forbidden union is defined for this purpose as one in which the man and woman were forbidden to marry each other. This could be either because the woman was married to someone else at the time of the union, or because they are close relatives." Ibid.

⁷⁹ WEISS AND GROSS-HOROWITZ, *Marriage and Divorce*, supra note 7, Location 2503.

⁸⁰ "Rabbinical Court's Marriage Blacklist May Break Privacy Laws." THE JERUSALEM POST. May 5, 2014. <http://www.jpost.com/Jewish-World/Jewish-Features/Rabbinical-courts-marriage-blacklist-may-break-privacy-laws-351396>. [hereinafter "Marriage Blacklist May Break Privacy Laws"]

as “every couple applying to marry anywhere in Israel is checked against this list.”⁸¹

Furthermore, the rabbinical courts have been known to illegally place individuals on the blacklist without their knowledge, even in cases in which a divorce has been settled and a *get* has been granted.⁸²

While the rabbinical court system violates the rights of *all* Jewish Israeli women, a recent Israeli divorce case illustrates the unique burden placed on *Haredi* women in divorce proceedings: Tikvah married Ze’ev (both pseudonyms) when she was 24 years old after only three dates. She lived with Ze’ev for three months and endured brutal physical and emotional abuse from him during that time. When she became pregnant and Ze’ev began threatening the unborn child, she escaped to her mother’s home and sought divorce. Rabbis and community members discouraged her from reporting the abuse to secular authorities and convinced her to bring her case to the rabbinical court. The rabbinical court refused to impel Ze’ev to grant Tikvah a *get* and claimed there was no “proof” of abuse. Tikvah has now been “chained” to her marriage to Ze’ev for fourteen years, and he remains obstinately opposed to releasing Tikvah from the marriage:

Tikvah cannot marry or have more children, or even go out for coffee with a man, because she does not have a *get*. Her husband, Ze’ev, a man with whom she lived for just three months, has refused to give her a divorce for the last fourteen years. She believes she will die his wife or his widow. After all, Ze’ev has said more than once, she recalls, that he will withhold the *get* “forever.” rabbinical judges have told Ze’ev it would be a *mitzvah* for him to give Tikvah a *get*, but they have refused to order or compel him to do so, although they have the power to put him in jail until he agrees. Though aware that Tikvah’s situation is untenable, the rabbis have disturbingly blamed her for the stalemate and have expressed annoyance with her almost from the beginning of the case. In their litany of complaints: she filed suit in the family court for child support instead of letting the rabbis decide, she left the marriage after only three months, she had been reluctant to tell Ze’ev where their son’s circumcision ceremony would be held, she caused trouble

⁸¹ AKIVA MILLER, "Israel's Marriage Police: An Aberration from Jewish Tradition," +972 Magazine, December 18, 2014, <http://972mag.com/israels-marriage-police-an-aberration-from-jewish-tradition/100251/>.

⁸² THE JERUSALEM POST, “Marriage Blacklist May Break Privacy Laws”, *supra* note 80

over the visitation arrangement, and, most recently, she filed for damages in civil court. “She’s anchoring herself,” the judges wrote with indifference to her suffering in one of the many decisions they have handed down in the case. This is what they and their colleagues tend to say when a woman does not accede to what they think are her husband’s and their reasonable demands.⁸³

Tikvah’s case underscores the fundamental incompatibility between *Halakha* and the principle of gender equality. The prospect of enduring years of legal battles and losing custody of one’s children is a significant deterrent for many *Haredi* women who wish to exit their marriages. Tikvah’s case is unique, in that most *Haredi* women never seek legal remedy from secular courts, if they even pursue divorce at all. In cases where a woman has previously violated *Halakhic* standards of modesty or religiosity, it is less likely that a rabbinical court would put any pressure on a recalcitrant husband to grant her a *get* or permit her to retain custody of her children. In such cases, the woman is viewed as jeopardizing the religiosity of the children, and the rabbinical judges have a vested interest in making an example of women who engage in non-pious behavior.

ii. DOMESTIC ABUSE

*Shalom bayit*⁸⁴ (peace of the home) is one of the most important tenets of traditional Judaism, and rabbinical courts routinely admonish women whom they perceive as disturbing that peace, even in cases where a woman has been subjected to severe abuse.⁸⁵ Furthermore, women

⁸³ WEISS AND GROSS-HOROWITZ, *Marriage and Divorce*, supra note 7, Locations 2100-2110.

⁸⁴ Genesis 18:12-13; Talmud Yevamot 65b.

"Marital Harmony." CHABAD.ORG. Accessed February 04, 2015.

http://www.chabad.org/library/article_cdo/aid/477632/jewish/Marital-Harmony.htm#footnote2a477632.

⁸⁵ In addition to physical and emotional abuse, one form of abuse that is unique to religious communities is spiritual abuse, in which a husband “uses religious ritual to degrade” his wife. For additional information, see:

N. DEHAN AND Z. LEVI, "Spiritual Abuse: An Additional Dimension of Abuse Experienced by Abused Haredi (Ultraorthodox) Jewish Wives," *Violence Against Women* 15, no. 11 (2009), doi:10.1177/1077801209347619.

who report abuse to their rabbis are routinely advised to wait it out and work on the marriage.⁸⁶

Indeed, many *Haredi* women who suffer domestic abuse delay leaving their husbands until their children have married. A recent report revealed the uniquely difficult experiences of *Haredi* abuse victims:

just as secular women find it difficult to break out of the cycle of violence and publicly declare that they are battered women, "the situation in the *Haredi* society is much worse, because it involves defending the religious image and protecting the family at any price – even at the price of violence... respondents said they silently suffered from abuse until they married their smallest child, and only then dared look for a shelter. They feared that treating the problem earlier would harm their children's prospects of marriage. Going to a shelter is considered by many of them as a socially unforgivable act, and therefore they wished to "prepare the ground" for "minimum impact."⁸⁷

Of the numerous state-funded shelters for battered women in Israel, only one, *Bat Melech*,⁸⁸ is specifically setup to serve *Haredi* women, and it routinely turns women away due to lack of space. In some cases, rabbinical courts have revoked child custody from women who took their children to a secular shelter:

It is very hard to be a religious woman in a secular battered women's shelter, and that's why it is so difficult for us to turn women away. Often there is a big-screen television in a central place that can't be avoided, Shabbat [observance] is violated everywhere, they can't eat the food. It is very difficult, and to make things worse, the children's fathers can point to these conditions in a religious court and argue that the mother is taking the children away from a religious lifestyle, and they will risk losing custody. So, many religious women would rather stay in an abusive situation than bring their children to a regular shelter.⁸⁹

⁸⁶ "The rabbis were impossible. The first time I went to a rabbi about the sexual abuse - and it took many years to work up the courage to get the words out - this is what he told me: 'Let him do as he pleases, he'll do it a few times and he'll get it out of his system.'"

ALLISON KAPLAN SOMMER, "A Different Kind of Valor: Ultra-Orthodox Women Share Their Experience of Abuse and Domestic Violence," Haaretz.com, December 21, 2012, <http://www.haaretz.com/weekend/week-s-end/a-different-kind-of-valor-ultra-orthodox-women-share-their-experience-of-abuse-and-domestic-violence.premium-1.486324>. [hereinafter: "A Different Kind of Valor"]

⁸⁷ TAL FARKASH, "Unique Study Shines Light on Violence Against Haredi Women," Ynet News, June 15, 2012, <http://www.ynetnews.com/articles/0,7340,L-4242090,00.html>.

⁸⁸ "About Us," BAT MELECH, September 24, 2013, <http://batmelech.org/who-we-are/about-us>.

⁸⁹ SOMMER, "A Different Kind of Valor", supra note 86

iv. QUEER IDENTITY

While men and women have very specific and separate roles, the two genders are viewed as incomplete without one another. For this reason, heterosexual partnerships are the only valid expression of romantic love within *Haredi* communities. The idea that two people of the same sex could have a romantic relationship and get married is entirely foreign to the *Haredi* worldview, one in which marriage is viewed as a union of a male Jewish soul to its female Jewish counterpart.⁹⁰ Without these two parts the whole cannot be created. Same-sex relationships, therefore, are seen as a “rejection of the heterosexual union that is viewed as the foundation of human life.”⁹¹

Leviticus 18:22, “Do not lie with a male as one lies with a woman; it is an abhorrence,” is typically cited as proof of God’s condemnation of homosexuality. However, rabbinical scholars agree that this passage applies only to *male* homosexual acts. Various Talmudic and Torah Scholars address lesbianism and distinguish between two types of lesbian activity: lesbian marriage and lesbian sexual acts, specifically *mesolelot* (women rubbing genitals against each other). One might assume that a committed lesbian relationship would be met with more rabbinical approval than casual sex, but this is not the case. The sages had no concept of lesbian love as romantic love between women is never truly addressed in the Torah or any commentary,⁹² and *mesolelot* “is trivialized by the rabbinical tradition as a form of lewd sex play

⁹⁰ ELIYAHU DA VIDAS, "Soul Mates," in *Reishit Chachma*, trans. Simcha H. Benyosef, accessed February 05, 2015, http://www.chabad.org/kabbalah/article_cdo/aid/380433/jewish/Soul-Mates.htm.

⁹¹ ANGELA RICCETTI, "A Break in the Path: Lesbian Relationships and Jewish Law," in *Marriage, Sex, and Family in Judaism*, by Michael J. Broyde and Michael Ausubel (Lanham: Rowman & Littlefield Publishers, 2005), Pg. 264. [hereinafter “A Break in the Path”]

⁹² REENA ZEIDMAN, "Marginal Discourse: Lesbianism in Jewish Law," *Women in Judaism* 1, no. 1 (1997), accessed February 4, 2015, <http://ezproxy.cul.columbia.edu/login?url=http://search.proquest.com.ezproxy.cul.columbia.edu/docview/200924446?accountid=10226>.

that does not fall into the category of legally recognized intercourse.”⁹³ Therefore, majority rabbinical opinion is that a married woman who practices *mesolelot* is permitted to stay with her husband and a single woman will remain eligible to marry in the future.⁹⁴

In this way, a public partnership between two women is much more contemptible than a private sexual relationship. While the leniency surrounding lesbian sexual activity may seem surprisingly permissive, the prohibition against true lesbian relationships is a negation that lesbian love is possible, symbolizing a “disinterest in bonding between women...that it [lesbian sexual activity] matters, that it’s there, that it counts.”⁹⁵ Indeed, such rabbinical leniency underscores the fundamental role of heterosexual marriage and family life in *Haredi* communities. As long as a woman is fulfilling the role of wife and mother, she is permitted (though admittedly not encouraged) to engage in the “lewd sex play” that is queer female sexuality. In this way, the *Haredi* worldview negates the very existence of lesbian *love*, a fact that illustrates the impossibility of being an “out” queer woman in *Haredi* society. In cases like these, exit from the community could be especially beneficial.

Haredi Jews whose sexuality deviates from traditional hetero-normativity have an exceptionally difficult time understanding their identity and role within the community. Having a

⁹³ RICCETTI, “A Break in the Path”, supra note 91

⁹⁴ Mishneh Torah, Sefer Kedushah, Issurei Biah, 21:8 - supra note 43
“Lesbian relations are forbidden...Although this conduct is forbidden, lashes are not given for it, for it is not a specific prohibition and there is no intercourse at all. Therefore such women are not forbidden to marry into the priesthood...nor does a woman become prohibited to her husband because of this, for this is not considered harlotry. It is, however, appropriate to give them stripes for rebellious conduct because they performed a transgression. A man should take precautions with his wife with regard to this matter and should prevent women who are known to engage in such practices from visiting her and her from visiting them.”

⁹⁵ REBECCA T. ALPERT, "In God's Image: Coming to Terms With Leviticus," in *Twice Blessed: On Being Lesbian or Gay and Jewish*, by Christie Balka and Andy Rose (Boston: Beacon Press, 1989).

queer sexuality is surely difficult for *Haredi* individuals of either gender,⁹⁶ but queer *Haredi* women face a disproportionate set of challenges. A queer *Haredi* man would certainly be unable to make his feelings or identity public, but his social and religious privilege would allow him more leeway in exercising autonomy and delaying or avoiding marriage altogether. He might face some community disapproval for failing to marry or have a family but he would remain able to study Torah and participate in community life.

By contrast, a woman's expected role in the community is specific and non-negotiable – that of a wife and mother. Queer *Haredi* women are, therefore, incapable of fulfilling their “God-given” purpose in their community and this inability produces much internal conflict, domestic discord, and social ostracism.⁹⁷ Furthermore, many queer *Haredi* women marry and have children before they recognize their true sexual identities, as 1/3 are married by the age of 19.⁹⁸

Most of the issues that confront straight *Haredi* women seeking exit also apply to queer *Haredi* women, but the difficulties that confront the latter group are uniquely emotional and hard to navigate. If a queer *Haredi* woman seeks divorce and child custody in a rabbinical court, for example, her husband could use his knowledge of her sexual identity against her.⁹⁹ In such cases,

⁹⁶ My reference to the gender binary is not meant to exclude *Haredi* individuals who do not identify with either “male” or “female”, nor is it meant to exclude those who are transgender. Rather, I refer to the binary because *Haredi* Judaism offers no middle ground with regard to gender. It is reasonable to assume that those who identify in a gender-neutral way would have an even more difficult time remaining in their community. There is a dearth of literature available on gender variant people within *Haredi* Judaism. Nicole Thalheimer's work seems to be the exception, though most of her subjects are non- *Haredi*.

NICOLE A. THALHEIMER, *Is the Mechitza Permeable? An Exploratory Study on Navigating Jewish and Transgender Identities*, PhD diss., The Chicago School of Professional Psychology, 2014 (Ann Arbor: UMI Dissertations Publishing, 2015), accessed February 4, 2015, ProQuest Dissertations and Theses.

⁹⁷ RUKHL SHAECHTER, "Haredi and Out of the Closet," *The Jewish Daily Forward*, September 9, 2009, <http://forward.com/articles/113747/haredi-and-out-of-the-closet/>.

⁹⁸ TAL FARKASH, "Are Haredi Women Neglecting Their Health?," *Ynet News*, November 11, 2014, under "Invasive procedures for halachic reasons," <http://www.ynetnews.com/articles/0,7340,L-4590786,00.html>.

⁹⁹ In one recent case, a rabbinical court granted custody to a lesbian woman on the condition that she keep her children away from her female partner. Her ex-husband only agreed to provide her with a *get* if she complied with the court's order.

it is unlikely that a rabbinical court would see her favorably. If she later sought legal remedy in a secular family law court, she might be able to sue her husband for damages, but the rabbinical court would maintain jurisdiction in ancillary matters, including child custody.

The insularity of the *Haredim* means that there is little reliable data available on the prevalence of queer women in *Haredi* society, but the development of numerous Orthodox LGBT organizations indicates that there is a sizeable community. *Hod*, an Israeli-based organization for LGBT *Haredim*, recently reported that over 60% of the men they serve are married and remain in their communities.¹⁰⁰ It is reasonable to assume that the percentage of women who remain married is even higher due to the obstacles they face in divorce proceedings. *Haredi* awareness of LGBT issues is increasing, due in large part to LGBT rights discourse in secular society and internet accessibility.¹⁰¹ Despite this, the prospect of being an out, queer, ultra-Orthodox Jew remains an impossibility, as the *Haredi* worldview lacks the appropriate terms by which to describe non-normative sexualities. *Haredi* leaders remain vocal proponents of “reparative” therapy to “treat” homosexuality,¹⁰² despite the fact that it has been determined to be ineffective and damaging by every reputable psychiatric organization.¹⁰³ When confronted

"Rabbinic Court Tells Lesbian Mother To Keep Children Away From Partner," THE JEWISH DAILY FORWARD, August 26, 2014, <http://forward.com/articles/204685/rabbinic-court-tells-lesbian-mother-to-keep-childr/>.

¹⁰⁰ "Gay Orthodox NGO Says Two-thirds of Its Haredi Contacts Are Married," HAARETZ.COM, June 8, 2014, <http://www.haaretz.com/jewish-world/jewish-world-news/1.597605>.

¹⁰¹ ARIEL, YAAKOV. 2007. "Gay, Orthodox, and Trembling: The Rise of Jewish Orthodox Gay Consciousness, 1970s-2000s." *Journal Of Homosexuality* 52, no. 3/4: 91-109. LGBT Life with Full Text, EBSCOhost (accessed February 5, 2015).

¹⁰² SAM SOKOL, "Agudath Israel Decries NJ Ban on Sexual Conversion Therapy," The Jerusalem Post, August 20, 2013, <http://www.jpost.com/International/Agudath-Israel-decries-NJ-ban-on-sexual-conversion-therapy-323724>.

¹⁰³ See:

1. Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies), Position Statement 200001 (AMERICAN PSYCHIATRIC ASSOCIATION, 2000).
<http://web.archive.org/web/20110407082738/http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200001.aspx>

with the topic of queer individuals, the *Haredim* routinely deny that these identities exist in their communities at all.

Beit Shemesh Mayor Moshe Abutbul...when asked about the presence of homosexuals in the city, said that “we have no such things...Thank God this city is holy and pure.” The mayor said that he “was not involved” in the issue, and it was up to the Health Ministry and the police to “take care of them.”¹⁰⁴

In rare cases where queer *Haredi* women have sought to leave their marriages and their community, they have faced many of the same difficulties as straight women, including husbands who refuse to grant them a *get*. Chani Getter was born into a *Haredi* community in New York, and while she successfully exited, the process was not easy.

Getter knew by age 14 that she was a lesbian, although she didn't realize at the time how unacceptable this would be in her community. “Honestly, I didn't know that we were supposed to love men; I thought we just had to have children with them,” she explained. “That's why I was puzzled when the other girls in *shul* would rush to peek through the *mekhitsa* [the wall separating the men from the women in an Orthodox synagogue]. All I kept thinking was, why do they want to look at the men so much?” Her marriage was fraught with tension, but she tried to make it work...After two years of marriage, Getter confessed her feelings about women to her husband, but he didn't seem fazed by the news. “I think he thought I was joking,” she said. But Getter knew that the marriage couldn't continue, and she asked him for a divorce. He refused, and for three years she remained an *agunah*.¹⁰⁵

Getter retained custody of her children¹⁰⁶ due in large part to the fact that she exited an American *Haredi* community, which does not have a state-sanctioned religious court system to adjudicate its family law disputes. While the *Haredi* worldview is largely consistent (and very connected) around the world, Israel's legal system makes exit especially difficult for *Haredi* women. In this

2. “‘Therapies’ to Change Sexual Orientation Lack Medical Justification and Threaten Health,” PAN AMERICAN HEALTH ORGANIZATION, May 17, 2012, http://www.paho.org/hq/index.php?option=com_content&view=article&id=6803&Itemid=1926.

¹⁰⁴ GAVRIEL FISKE, “No Homosexuals in Beit Shemesh, Mayor Asserts,” The Times of Israel, October 11, 2013, <http://www.timesofisrael.com/no-homosexuals-in-beit-shemesh-mayor-asserts/#ixzz3LY6AdbxF>.

¹⁰⁵ SHAECHTER, “Haredi and Out of the Closet”, supra note 97

¹⁰⁶ Ibid.

way, it is reasonable to assume that the experience of Israeli ultra-Orthodox queer women is more challenging, as “Israeli Orthodox Jews have traditionally been more closed than their American counterparts.”¹⁰⁷

It is clear that *Haredi* women require resources and assistance tailored to their unique needs. The *Haredi* community is not immune to the problems facing secular society, such as domestic abuse and homophobia, both of which are reasons *Haredi* women seek exit from their marriages and/or communities. Israel cannot pretend that a lack of visibility means these problems do not exist, or that accommodations for the *Haredim* absolve the state from its obligations to protect vulnerable citizens.

¹⁰⁷ SARAH WILDMAN, "Slightly Un-Orthodox," *The American Prospect*, December 18, 2005, <http://prospect.org/article/slightly-un-orthodox>.

IV. WOMEN'S RIGHTS IN ISRAEL

Israeli women have been promised protection at the domestic and international legal level, but they continue to lack *de facto* protection in the private sphere, as religious courts have family law jurisdiction and *Halakha* is profoundly incompatible with progressive, democratic values. Secular Israeli courts typically refuse to consider appeals to rabbinical court rulings as they lack jurisdiction in the realm of family law.

i. DOMESTIC PROTECTIONS

Women are provided with comprehensive legal protection at the domestic level and have been promised equal status before the law. Israel's Declaration of Independence was one of the first in the world to guarantee equality on the basis of sex in the provision of social and political rights.

...it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.¹⁰⁸

The 1951 Women's Equal Rights Law¹⁰⁹ guarantees women equality before the law and allows for the invalidation of subsequent legislation that violates that promise of equality. In 2000, the law was amended to include provisions of affirmative action and accommodation, "which had been introduced in case law and legislation as basic principles of the legal system."¹¹⁰ Despite

¹⁰⁸ National Legislative Bodies / National Authorities, Israel: The Declaration of the Establishment of the State of Israel, 14 May 1948, available at: <http://www.refworld.org/docid/3ae6b51910.html> [accessed 5 February 2015]

¹⁰⁹ Women's Equal Rights Law, 5711-1951, Laws of the State of Israel

¹¹⁰ FRANCES RADAY, "Equality, Religion, and Gender In Israel," Jewish Women's Archive, under "Gender Equality Legislation," accessed February 05, 2015, <http://jwa.org/encyclopedia/article/equality-religion-and-gender-in-israel>.

this legal protection, the *Knesset*¹¹¹ expressly excluded issues of marriage and divorce from the promise of equality in order to respect the Status Quo Agreement.¹¹²

Since 1951, the state's commitment to gender equality in the public sphere has been further expressed through numerous statutes and Supreme Court decisions. In 1991, the *Knesset* established The Committee on the Status of Women and Gender Equality, which is committed to "advancing the status of women towards equality in representation, in education and with regards to personal status; preventing discrimination as a result of gender or sexual preference in all spheres; reducing the economic gaps; violence against women."¹¹³ Additionally, there are laws in place that protect women's rights to bodily integrity, equal employment, property, education, and maternal care.¹¹⁴ Despite these comprehensive protections, Israel is ranked 65 out of 142 countries on the World Economic Forum's 2014 Gender Gap Index,¹¹⁵ due in large part to the lack of equality in the private sphere.

The Supreme Court of Israel has established that equality before the law is a fundamental right, but religious values have prevented the introduction of an explicit right to women's equality.¹¹⁶ While Israel lacks a formal constitution, the country's eleven "Basic Laws" largely

¹¹¹ The *Knesset* is the Israeli parliament.

¹¹² RADAY, "Equality, Religion, and Gender in Israel", *Supra* note 110, under "The Private Sphere - Family and Religious Values".

¹¹³ "Committee on the Status of Women and Gender Equality," THE KNESSET, accessed February 05, 2015, http://www.knesset.gov.il/committees/eng/committee_eng.asp?c_id=11.

¹¹⁴ "Israel," OECD SOCIAL INSTITUTIONS & GENDER INDEX, accessed February 05, 2015, http://www.genderindex.org/country/israel#_ftn1.

¹¹⁵ "The Global Gender Gap Report 2014 - Israel," WORLD ECONOMIC FORUM, accessed February 05, 2015, <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=ISR>.

¹¹⁶ GILA STOPLER, "The Liberal Bind", *supra* note 68, pg. 203

"In Israel the right to equality was excluded from the Basic Law Human Dignity and Liberty, which was enacted in 1992 in order to give constitutional status to fundamental human rights. The exclusion of the right to equality was due to the objection of the ultra-Orthodox and the Orthodox religious parties to its incorporation,

serve the same function. The *Knesset's* passage of the *Basic Law: Human Dignity and Liberty* in 1992 introduced explicit human rights discourse within Israel's legal system, but excluded explicit protection for women.¹¹⁷ In 1998, Aharon Barak, former President of the Supreme Court of Israel, stated that the passage of the *Human Dignity and Liberty* law amounted to a "constitutional revolution."¹¹⁸ Thus, the Supreme Court of Israel has the power to determine whether existing or future legislation violates any of the Basic Laws, including that of *Human Dignity and Liberty*. No law, statute, or lower court ruling may conflict with rights protected by any of the Basic Laws. The Supreme Court, therefore, has ruled that decisions based upon *Halakha* are applicable *only when they do not conflict with the state's progressive ideals*.¹¹⁹

ii. INTERNATIONAL LEGAL OBLIGATIONS

Israel is party to an impressive list of international human rights instruments,¹²⁰ but the state has consistently refused to uphold women's rights in the private sphere due to the Status Quo Agreement. Israel is obligated to uphold women's rights under the *Convention to Eliminate all forms of Discrimination Against Women* (CEDAW) and the *International Covenant on Civil*

an objection that was motivated mainly by their concern that guaranteeing the right to equality in a Basic Law would invalidate the religious family laws that discriminate against women."

¹¹⁷ "Basic Law: Human Dignity and Liberty," THE KNESSET, accessed February 04, 2015, http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

¹¹⁸ AHARON BARAK, "A Constitutional Revolution: Israel's Basic Laws," Yale Law School Faculty Scholarship Series, Paper 3697 (January 1, 1993), accessed December 10, 2014, http://digitalcommons.law.yale.edu/fss_papers/3697/.

¹¹⁹ DORON SHULTZINER, "Between Basic Norms and Basic Laws: Human Rights and the Supreme Court in Israel," Jewish Virtual Library, August 2009, under "Human Rights Protection from 1992," http://www.jewishvirtuallibrary.org/jsource/isdf/text/shultziner.html#_ftn15.

¹²⁰ **1.** *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (CAT, 03 Oct 1991), **2.** *International Covenant on Civil and Political Rights* (ICCPR, 03 Oct 1991), **3.** *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 03 Oct 1991), **4.** *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD, 03 Jan 1979), **5.** *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 03 Oct 1991), **6.** *Convention on the Rights of the Child* (CRC, 03 Oct 1991), **7.** *Convention on the Rights of Persons with Disabilities* (CRPD, 28 Sep 2012)

"Israel Homepage," OHCHR, under "Status of Ratifications," accessed February 4, 2015, <http://www.ohchr.org/EN/countries/MENARegion/Pages/ILIndex.aspx>.

and Political Rights (ICCPR). The CEDAW obligates state parties to ensure that women are afforded the same opportunities as men and are protected from gender-based discrimination and violence. Of particular relevance to *Haredi* women are articles 5(a) and 16. Article 5(a) declares:

States Parties shall take all appropriate measures... to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹²¹

When Israel signed and ratified the CEDAW in 1991, the state agreed to address and reform any cultural customs that espouse gender inequality. But by continuing to grant the *Haredim* autonomy in the realms of family law and education, Israel ignores this obligation. Instead, the State *supports* the *Haredim*'s patriarchal worldview and allows it to flourish.

Article 16 of the CEDAW outlines women's rights in regard to marriage and family life. The article is one of the most detailed in the entire Convention (a fact which underscores its importance) and obligates states to ensure equality in marriage, divorce, property, family planning, and child custody – all issues that are typically determined by rabbinical courts according to *Halakha*.

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

¹²¹ CEDAW, Article 5(a), supra note 10.

- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.¹²²

Halakha is clearly incompatible with the rights enumerated in article 16, and Israel refused to agree to them. When Israel signed the Convention, it did so with a reservation that exempted the State from ensuring these rights:

The State of Israel hereby expresses its reservation with regard to article 16 of the Convention, to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article.¹²³

Israel is party to other conventions that grant the same rights for women as article 16 of the CEDAW. Israel ratified the *International Covenant on Civil and Political Rights* (ICCPR) in 1991 as well, and article 23(4) obligates states “to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”¹²⁴ Perhaps unsurprisingly, Israel signed the ICCPR with a reservation to article 23. The state’s consistent refusal to respect these rights sends a clear message that Israel’s commitment to gender equality is not being taken seriously. By failing to agree to article 16 of the CEDAW and article 23(4) of the ICCPR, Israel denies all of its female citizens access to legal remedy from the international community.

¹²² Ibid., Article 16

¹²³ "Declarations, Reservations and Objections to CEDAW," UN WOMEN, under "Israel," accessed December 10, 2014, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

¹²⁴ ICCPR, Article 23(4), *supra* note 2.

In its 2011 report on Israel, the Committee On The Elimination Of Discrimination Against Women (the body that monitors the CEDAW's implementation) expressed concern that Israel had not adequately aligned its domestic legal code with the Convention and had not repealed its reservations:

The Committee is concerned that only some provisions of the Convention have been incorporated into the domestic legal order. The Committee is also concerned about the lack of mechanisms to monitor and ensure the compatibility of domestic laws with the State party's obligations under the Convention... The Committee remains concerned that the State party continues to retain its reservations to articles 7 (b) and 16 of the Convention... The Committee is of the view that the reservation to article 16 is impermissible as it is contrary to the object and purpose of the Convention. It also impinges on other fundamental articles of the Convention, including article 2, and implementation of the principle of substantive equality between women and men in all matters relating to marriage and family relations.¹²⁵

Many United Nations member states have urged Israel to reconsider its reservations to the CEDAW and ICCPR. For example, in Israel's 2013 Universal Periodic Review,¹²⁶ the United States urged Israel to cease privileging ultra-Orthodox Judaism and expressed particular concern for the policy's effect on women:

Evaluate regulations and laws, including those which grant the Orthodox Rabbinate the right to determine policies affecting non-Orthodox Jews and non-Jews, to ensure that they do not discriminate against persons, especially women, based on their religious beliefs or lack thereof.¹²⁷

¹²⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women - Israel*, 16 December 2011, CEDAW/C/ISR/CO/5, available at: <http://www.refworld.org/docid/4eeb62b32.html> [accessed 10 December 2014]

¹²⁶ The Universal Periodic Review (UPR) is a process that analyzes and reviews the human rights records of all UN member states. The UPR is under the auspices of the Human Rights Council and each state is reviewed by its fellow member states. States under review have the opportunity to share steps that have been taken to better uphold human rights within their borders. The UPR was created in 2006 by resolution 60/251:

UN GENERAL ASSEMBLY, Human Rights Council : resolution / adopted by the General Assembly, 3 April 2006, A/RES/60/251, available at: <http://www.refworld.org/docid/4537814814.html> [accessed 6 February 2015]

For more information, see:

"Universal Periodic Review," UNITED NATIONS - OHCHR, accessed February 06, 2015, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

¹²⁷ UN HUMAN RIGHTS COUNCIL, *Report of the Working Group on the Universal Periodic Review : Israel*, 19 December 2013, A/HRC/25/15, available at: <http://www.refworld.org/docid/52f8cb544.html> [accessed 10 December 2014]

The statement above urges Israel to ensure that Orthodox jurisdiction over family law does not discriminate against non-Orthodox Jewish Israeli citizens, particularly women, but excludes *Haredi* women as possible victims of Orthodox rabbinical courts. This exclusion is illustrative of the invisibility of *Haredi* women, even to human rights advocates. Group rights theorist Ayelet Shachar astutely points out that outsiders tend to mistakenly view minority religious groups as homogeneous, forgetting that there are vulnerable populations *within* minority groups. Shachar advocates an approach to group rights that “would recognize that group members are always caught at the intersection of multiple affiliations. They are group members (perhaps holding more than one affiliation) and, at the same time, citizens of the state.”¹²⁸

While Israel has tried to avoid violating the Status Quo Agreement with its reservations to the CEDAW and ICCPR, one international instrument it cannot work around is the *Universal Declaration of Human Rights* (UDHR).¹²⁹ While the UDHR’s status as a declaration (rather than a convention) technically renders it legally non-binding, it is now regarded as customary international law.¹³⁰ Article 16(1) of the UDHR obligates states to respect women’s rights in family law:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.¹³¹

¹²⁸ SHACHAR, “Group Identity and Women’s Rights”, supra note 18, pg. 296

¹²⁹ Supra note 1

¹³⁰ “Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties. According to Article 38(1)(b) of the ICJ [International Court of Justice] Statute, customary international law is one of the sources of international law. Customary international law can be established by showing (1) state practice and (2) *opinio juris*. Put another way, ‘customary international law’ results from a general and consistent practice of states that they follow from a sense of legal obligation.”

MALCOLM N. SHAW, “Customary International Law,” Cornell University Law School, accessed February 06, 2015, http://www.law.cornell.edu/wex/customary_international_law.

¹³¹ UDHR, Article 16(1), supra note 1.

Israel's refusal to uphold portions of the CEDAW and ICCPR does not excuse the State from respecting international human rights law, including those in the realm of family law. So long as Israel continues to give exclusive jurisdiction to religious officials in family law, the state will be in violation of customary international law.

V. EDUCATION REFORM

“[Proponents of Haredi accommodations] fail to take into account the violation of rights that women, Arabs, homosexuals, converts, and others suffer as a consequence of the application of ...ultra-Orthodox [UO] religious ideology by UO politicians and state officials who are the products of an UO education system that shuns any civic education.”¹³²

Israel’s accommodations for the Orthodox contradict and delegitimize the state’s domestic and international legal commitments to gender equality. By permitting the *Haredim* to remain insular and autonomous the state allows their patriarchal worldview to flourish and denies *Haredi* women the ability to exit their communities. The reversal of *Haredi* accommodations in the realm of family law is politically difficult and unrealistic, and attempts to challenge the status quo have been met with significant backlash.

The balance between respect for minority group rights and respect for individual rights is certainly a delicate one, but Israel should do more to ensure that the protections it offers the *Haredim* do not infringe on the rights of minority group members, namely women and girls. Education reform is a realistic way in which to achieve this balance.

i. EDUCATION RIGHTS IN ISRAEL

Israel is obligated to fulfill the right to education by its domestic and international legal commitments. On the domestic level, numerous statutes and judicial decisions underscore the fundamental importance of education. The *Pupil’s Rights Act* of 2000 outlines the state’s obligation to fulfill the right to education and explicitly references the state’s obligations under the *United Nations Convention on the Rights of the Child* (CRC):

¹³² GILA STOPLER, "The Ultra-Orthodox Community in Israel and the Right to an Exclusively Religious Education," in *Constitutional Secularism in an Age of Religious Revival*, by Susanna Mancini and Michel Rosenfeld (2014), pg. 325, Oxford Scholarship Online. [hereinafter: "The Right to An Exclusively Religious Education"]

The purpose of this Law is to establish principles for the rights of pupils in the spirit of human dignity and the principles of the United Nations Convention on the Rights of the Child... Every child and adolescent in the State of Israel is entitled to education in accordance with the provisions of any law... A district education authority, educational institution, or any person acting on their behalf, shall not discriminate against a pupil for sectarian reasons, for socio-economic reasons, or by reason of political orientation, whether of the child or of his parents.¹³³

Israel has also outlined the purposes and goals of education, which include an explicit commitment to developing children's capacity for autonomy and participation in a democratic society:

The objectives of the State Education are stipulated as follows:... to develop the children's personality, their creativity and talents, to widen their cultural horizons and expose them to artistic experiences, all for the fulfillment of their full capacities as human beings living a life of quality and meaning;... To strengthen judgment and criticism, nurture intellectual curiosity, independent thought and initiation, and develop awareness and alertness to changes and innovations;... To endow equality of opportunities to every child, to enable her to develop in the proper [sic], and create an environment which encourages and supports the different;... To foster involvement in the life of Israeli society, willingness to play social roles and fulfill them with dedication and responsibility, desire for mutual aid, for contribution to the community, for volunteering and for striving for social justice in the State of Israel.¹³⁴

In addition to domestic laws, Israel is party to numerous human rights instruments that guarantee the right to education. In addition to the UDHR, the State is party to the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* and the CRC, both of which frame education as a positive¹³⁵ right that must be proactively fulfilled for all children. Article 28(1) of the CRC and Article 13(2) of the ICESCR provide extensive guidelines for the provision of education, and the articles contain nearly identical language. Both obligate states to

¹³³ Israel, MINISTRY OF EDUCATION, Pupil's Rights Law, May 17, 2007, <http://cms.education.gov.il/EducationCMS/Units/Zchuyot/ChukimVeamanot/Chukim/PupilsRightsLaw.htm>.

¹³⁴ State Education Law, 5713-1953 as found in: MASUA SAGIV, "Controlling the Education of Children in a Liberal Multicultural State - Religious Education in Israel: A Case Study," *Children's Legal Rights Journal* 31, no. 4 (Winter 2011): pg. 60, accessed December 9, 2014, <http://heinonline.org.ezproxy.cul.columbia.edu/HOL/Page?handle=hein.journals/clrj31&id=265>.

¹³⁵ *Supra* note 14

provide free and compulsory primary education,¹³⁶ to provide secondary and higher education that are equally accessible to all,¹³⁷ and to allow private institutions to establish schools, so long as they conform to the state's curriculum.¹³⁸ In addition to outlining obligations in the provision of education, both conventions emphasize that the goal of education, *inter alia*, is to develop a child's personality, autonomy, and understanding of human rights ideals:

Article 13(1) of the ICESCR

The States Parties... agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.¹³⁹

Article 29(1) of the CRC

States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.¹⁴⁰

The international community is in agreement about the important role education plays in shaping a person's autonomy, ability to participate in a democratic society, and understanding of human

¹³⁶ CRC, Article 28(1a), supra note 11; ICESCR, Article 13(1a), supra note 3

¹³⁷ CRC, Article 28(1)(b & c), supra note 11; ICESCR, Article 13(1)(b & c), supra note 3

¹³⁸ CRC, Article 29(2), supra note 11; ICESCR, Article 13(4), supra note 3

¹³⁹ ICESCR, Article 13(1), supra note 3

¹⁴⁰ CRC, Article 29(1), supra note 11

rights. Israel's state education system (public schools) largely meets international and domestic education requirements, but its independent religious schools consistently fail to do so.

ii. HAREDI GIRLS' EDUCATION

Israel's education system is uniquely complex, as each cultural-religious group has separate schools, all of which are at least partially state-funded. The need for education reform in Israel, particularly in the realm of religious education, is a significant social issue.

A stranger that would examine the system of education in Israel, especially religious education, might describe it in one word – chaos. He would not be far from the truth. The area of religious education in the State of Israel is one of the country's most complex issues, possibly without comparison to other modern countries. The reason for this complexity is complex in itself. It has religious, national, historical and economic backgrounds and above all political grounds that account for it.¹⁴¹

The *Haredim* have their own schools and, while their adherence to the state curriculum varies significantly, “human rights and democracy education is excluded from the curricula of the ultra-Orthodox schools for boys and girls.”¹⁴² This exclusion is deliberate, as *Haredi* teachers and leaders fear that the influence of these ideas will “cause the students to doubt the path to which they were educated, and their autonomy might cause them to question this clear path and even to endanger...the preservation of the culture.”¹⁴³ By funding schools that deviate from the established curriculum and omit human rights and civics, Israel violates the ICESCR and the CRC, contributes to the perpetuation of gender inequality, and prevents *Haredi* women from developing the skills necessary to exercise their rights.

¹⁴¹ ASHER MAOZ, "Religious Education in Israel," *University of Detroit Mercy Law Review* 83 (2005): pg. 679, <http://heinonline.org.ezproxy.cul.columbia.edu/HOL/Page?handle=hein.journals/udetmr83&id=701>.

¹⁴² ALMOG AND PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine", *supra* note 12, pg. 279.

¹⁴³ MIRA KARNIELI, "The Faith Is the Pace: Educational Perspectives of Three Women Principals of Jewish, Christian, and Muslim Ultra-Orthodox Schools," *Religious Education: The Official Journal of the Religious Education Association* 109, no. 3 (May 2014): pg. 298, doi:10.1080/00344087.2014.911624. [hereinafter: "Faith is the Pace"]

The state's existing education system doubtlessly has a negative impact on children from all segments of society,¹⁴⁴ but for the purposes of my discussion I will focus on the education of *Haredi* girls. While they receive a relatively comprehensive academic education, *Haredi* girls are denied the ability to develop "human rights-consciousness."¹⁴⁵ This denial renders them incapable of identifying injustices and making autonomous choices. For this reason, *Haredi* girls' education has been called "education for ignorance."¹⁴⁶ It is no wonder that *Haredi* women have a difficult time exiting their communities or objecting to their prescribed roles. Most *Haredi* girls in Israel attend schools in the *Bais Ya'akov* network,¹⁴⁷ the majority of which receive state funding as recognized, but "un-official" schools.¹⁴⁸ These schools are required, generally, to comply with the Israeli core curriculum, so girls receive both secular and religious instruction. Human rights and civics education, however, is excluded, and girls are prohibited

¹⁴⁴See:

1. "Is Anyone Surprised That Only 11% of Israeli Undergraduate Students Are Arab?," THE ISRAEL DEMOCRACY INSTITUTE, accessed February 06, 2015, <http://en.idi.org.il/analysis/articles/is-anyone-surprised-that-only-11-of-israeli-undergraduate-students-are-arab/>.

2. Yuval Albashan, "Israel's School System Fosters Inequality," Haaretz.com, January 15, 2012, <http://www.haaretz.com/print-edition/opinion/israel-s-school-system-fosters-inequality-1.407371>.

¹⁴⁵ ALMOG AND PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine", Section III - "Rights Consciousness of Children", supra note 12.

¹⁴⁶ TAMAR EL-OR, *Educated and Ignorant: Ultraorthodox Jewish Women and Their World* (Boulder: Lynne Rienner Publishers, 1994).

¹⁴⁷ Means "House of Jacob".

¹⁴⁸ ALMOG AND PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine", supra note 12
"The Israeli Compulsory Schooling Law (1949) categorizes each educational institution as Official, Recognized, or Exempt (Sec. 1, 5). The Recognized and Exempt educational institutions, which enjoy substantial or full pedagogic autonomy, are mainly Ultra-Orthodox. The "Bais Ya'akov" Schools are usually Recognized educational institutions."

For a comprehensive overview of the Israeli school system and levels of funding, see:

1. MASUA SAGIV, "Controlling the Education of Children in a Liberal Multicultural State - Religious Education in Israel: A Case Study", supra note 134

2. ZEHAVID GROSS, "State-Religious Education in Israel: Between Tradition and Modernity," *Prospects* 33, no. 2 (June 2003), doi:10.1023/A:1023638728907.

from studying the Talmud, the most important part of *Haredi* boys' education.¹⁴⁹ Interestingly, the comprehensive secular education of *Haredi* girls is not seen as a threat to the patriarchal *Haredi* worldview. The preservation of *Halakhic* norms and gender roles is of paramount importance to *Haredi* schoolteachers, administrators, and leadership,¹⁵⁰ and "women are denied access to the Talmud, which is the source of social power in the ultra-Orthodox world... Thus, according to ultra-Orthodox standards, women cannot be perceived as educated."¹⁵¹

Academic education is certainly not without value, and the education *Haredi* girls receive has allowed some women to work outside their communities¹⁵² and even acquire college degrees. However, the education girls receive does not lead them to create change in their communities:

Ultra-Orthodox women continue to accept the gender inequality a priori. They do not defy the Ultra-Orthodox interpretation of the Halacha (Jewish religious law), which excludes women from the public domain and shapes their subordination. Unlike the educated Jewish women of the nineteenth century, Israeli Ultra-Orthodox women did not turn into agents of social change; they did not use their education in order to scrutinize the basic values of their communities.¹⁵³

Thus, girls' education is a method by which to ensure maintenance of the "scholar's society," which requires women to marry, raise children, and financially support their families while their husbands study holy texts. Indeed, "the primary concern of the ultra-Orthodox education system is to continually stress that a girl's education is meant, first and foremost, to serve the family

¹⁴⁹ Mishneh Torah, Sefer Mada, Talmud Torah 1:13

"Whoever teaches his daughter Torah is like one who teaches her tales and parables." This applies to the Oral Law. [With regard to] the Written Law: at the outset, one should not teach one's daughter. However, if one teaches her, it is not considered as if she was taught idle things."

"Talmud Torah - Chapter One - Texts & Writings," Chabad.org,
http://www.chabad.org/library/article_cdo/aid/910973/jewish/Talmud-Torah-Chapter-One.htm.

¹⁵⁰ KARNIELI, "The Faith Is the Pace", supra note 143

¹⁵¹ ALMOG AND PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine", supra note 12, pg. 283

¹⁵² Ibid., Under Section 5(B): "Opportunity to Imagine"

¹⁵³ Ibid., pg. 284

rather than the girl's personal needs, or her wishes for self fulfillment.”¹⁵⁴ *Haredi* girls are not provided with education to develop personal autonomy and are thus unable to dismantle their community's patriarchal expectations by voicing grievances or exiting entirely. Thus, *Haredi* girls’ education, while academically comprehensive, does not allow them “to make full use of their rights as mature women.”¹⁵⁵

iii. HUMAN RIGHTS - CONSCIOUSNESS

*“If we take the right to exit seriously, civic education not only involves teaching students that they have rights; it also comprises teaching them how to exercise the basic rights, including the right to exit. Next to having knowledge of alternatives to the life one lives, students must know how to assess these alternatives.”*¹⁵⁶

The international community explicitly emphasizes the importance of human rights and civics in education, but Israel allows these topics to be excluded from *Haredi* girls’ schools. This exclusion deprives *Haredi* girls from developing human rights-consciousness, “a process that motivates people to define problems and obstacles in terms of rights [and] often translates into actions and decisions that mobilize rights in society.”¹⁵⁷ When an individual understands her rights, she is able to identify injustices and address them. There are three stages that must occur for a rights-violation to be appropriately addressed:

naming, which occurs when a person identifies a particular experience as injurious;
blaming, which occurs when a person attributes an injury to the fault of another individual or social entity; and
claiming, which occurs when a person with a grievance voices it to the person or entity believed to be responsible and asks for a remedy.¹⁵⁸

¹⁵⁴ Ibid. pg. 275

¹⁵⁵ Ibid. pg. 3

¹⁵⁶ SPIECKER, DE RUYTER, AND STEUTEL, “Taking the Right to Exit Seriously”, supra note 14, pg. 325

¹⁵⁷ ALMOG AND PERRY-HAZAN, “The Ability to Claim and the Opportunity to Imagine”, supra note 12, pg. 285

¹⁵⁸ Ibid., citing a model for human rights-consciousness put forth in:
WILLIAM L.F. FELSTINER, RICHARD L. ABEL, AND AUSTIN SARAT, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming. . .,” *Law & Society Review* 15, no. 3/4 (1980), doi:10.2307/3053505.

If an individual is unable to engage in the first step – to *name* an experience as harmful – no remedy can be achieved and no progress can be made.

When states deny individuals or groups the opportunity to understand their rights, abuses persist, even if the state’s laws prohibit such abuses. Indeed, “human rights are difficult for individuals to adopt as a self-definition in the absence of norms and institutions that take these rights seriously.”¹⁵⁹ In communities where rights are consistently recognized and protected, individuals are more willing to seek remedy. Therefore, an individual’s willingness to advocate for her rights “depends on her experience trying to assert them...if these rights are treated as insignificant, she may chose [sic] to give up and no longer think about her grievances in terms of rights.”¹⁶⁰ In addition to rights-consciousness, individuals need to develop autonomy in order to effectively weigh competing ideologies. According to theorists Ben Spiecker, Doret De Ruyter and Jan Steutel, children must develop a minimum level of autonomy (what they call “autarchy”) in order to exercise the right to exit.

people need to be at least autarchic, that is self-determining and morally accountable, in order to be able to exercise their right to exit. Since this right is a civic freedom right, the state has the right and duty to ensure that children will be able to develop into autarchic persons. Therefore, our claim is that school education should aim for minimal autonomy and that such education should be compulsory.¹⁶¹

The importance of the development of rights-consciousness and autonomy during childhood cannot be understated, as childhood experiences fundamentally shape self-perception

¹⁵⁹ Ibid. pg. 288

¹⁶⁰ Ibid., quoting Salley Engle Merry in:

SALLY ENGLE MERRY, “Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence,” *Human Rights Quarterly* 25, no. 2 (2003), doi:10.1353/hrq.2003.0020.

¹⁶¹ SPIECKER, DE RUYTER, AND STEUTEL, “Taking the Right to Exit Seriously”, *supra* note 14, pg. 313

in adulthood.¹⁶² While human rights education for adult *Haredi* women might be worthwhile in some cases, it is "unlikely to be effective if the child was earlier taught about its own unworthiness because the child happens to be female."¹⁶³ *Haredi* girls' education deprives students from the knowledge necessary to become their own advocates. In this way, *Haredi* girls' education is truly "education for ignorance,"¹⁶⁴ as it prepares students to fulfill their role in *Haredi* society (that of wife, mother, and breadwinner), but not in the wider society as autonomous Israeli citizens.

iv. RELIGIOUS EDUCATION IN THE LIBERAL STATE

Israel's educational accommodation for the *Haredim*, "which combines a high degree of funding with no supervision"¹⁶⁵ is not comparable to religious education accommodations in other liberal states, or even to those which have an official state religion. Gila Stopler articulates this point well by comparing Israel to the United States and Malaysia. The USA's explicit church-state separation means private religious schools typically do not receive state funding. By contrast, the official Muslim character of Malaysia means that religious educational content is closely monitored in order to prevent extremism and ensure ideological solidarity.

The close ties between the Orthodox Jewish religion and the state make Israel similar in various ways to other countries with thickly established religions, and especially to those that attempt to combine thick establishment with a more than symbolic protection of human rights, such as Malaysia¹⁶⁶

¹⁶² Ibid. pg. 317

¹⁶³ ALMOG AND PERRY-HAZAN, "The Ability to Claim and the Opportunity to Imagine", supra note 12, pg. 289. Quoting Katarina Tomaševski, former UN Special Rapporteur on the right to education in: KATARINA TOMAŠEVSKI, *Education Denied: Costs and Remedies* (New York: Zed Books, 2003).

¹⁶⁴ Supra note 146

¹⁶⁵ STOPLER, "The Right to An Exclusively Religious Education", supra note 132, pg. 312

¹⁶⁶ Ibid., pg. 319

Israel's reluctance to control religious ideology in the way that Malaysia does stems from the fact that such control would go against another important component of Israel's ethos—the liberal component.¹⁶⁷

Stopler distinguishes between two types of liberalism – autonomy liberalism and diversity liberalism. Autonomy liberalism requires states to ensure that individuals develop into autonomous informed citizens who can actively choose the life they desire. Diversity liberalism advocates for complete toleration of minority cultures and asserts that “the liberal state should not educate its citizens or shape their thinking.”¹⁶⁸ Autonomy liberals propose close monitoring of state-funded religious education, while diversity liberals argue that education should not be monitored or funded by the state at all. Stopler astutely points out that neither formulation of liberalism requires the level of educational accommodation that Israel has granted the *Haredim*. So, Israel's education system lacks comparison to any other instance of multi-cultural accommodation in the world.

Israel emerges as a unique hybrid which attempts to reconcile two irreconcilable ideals: on the one hand it gives considerable state power and state funds to its preferred religion – Orthodox Judaism... but on the other hand, and at the same time, it purports to respect liberal ideals such as religious freedom in all areas not directly subject to religious law.¹⁶⁹

Thus, liberalism does not require Israel to provide the *Haredim* with complete educational autonomy and funding. While the *Haredim* are certainly entitled to some degree of group rights, the accommodations they enjoy were granted “on the basis of misguided liberal and multicultural grounds.”¹⁷⁰

¹⁶⁷ Ibid., pg. 321

¹⁶⁸ Ibid., pg. 316

¹⁶⁹ Ibid., pg. 321

¹⁷⁰ Ibid., pg. 325

The *Haredim*'s prominent socio-political power should require that the community adhere to basic educational requirements and they should not "enjoy exemptions from the obligations of citizenship"¹⁷¹ Will Kymlicka argues that groups who exercise political rights should be required to adhere to basic educational requirements.

the only exemption from attending common schools should, according to Kymlicka, be given to small isolationist religious groups, such as the Amish, who completely withdraw from society and do not exercise their political rights.¹⁷²

Indeed, by continuing to deny human rights and civic education to *Haredi* students, the state ensures that future *Haredi* politicians, judges, and other leaders will not have been exposed to alternative modes of thinking.

As long as Israel funds *Haredi* schools, it should require them to provide human rights and civic education. By permitting *Haredi* schools to exclude these crucial topics, the state ensures that *Haredi* citizens, especially women, will remain unable to advocate for themselves, create change in their communities, or successfully exit.

¹⁷¹ Ibid., pg. 324, referencing an argument put forth by Jeff Spinner-Halev in: JEFF SPINNER-HALEV, "Extending Diversity: Religion in Public and Private Education," in *Citizenship in Diverse Societies*, by Will Kymlicka and W. J. Norman (Oxford: Oxford University Press, 2000), Oxford Scholarship.

¹⁷² Ibid., pg. 315

CONCLUSION

It is clear that the legal privilege afforded to Orthodox Judaism in Israel is the fundamental cause of *Haredi* women's inability to assert autonomy and successfully exit. Unfortunately, stripping the Chief Rabbinate of its power is an immense project that does not provide a short-term solution to the problems facing *Haredi* women. For these reasons, NGOs, community leaders, and politicians are wisely working within the established system to provide realistic exit rights for *Haredi* women, through education reform and enhanced social services.¹⁷³

Education reform is the most crucial step to improve *Haredi* women's lives and the provision of realistic exit rights. As discussed in section five, the existence of social services is only helpful if women are first able to *name* experiences as injurious. Without human rights and civic education, *Haredi* women will remain unable to identify rights abuses, access resources, and exit if they wish to. The state should impose core curriculum requirements on *Haredi* schools, not only to improve the lives of vulnerable populations and uphold its international commitments, but also to ensure its democratic future, which currently is threatened by a growing *Haredi* community that is fanatically protective of its autonomy and votes as a bloc.

¹⁷³ There are a growing number of NGOs, activists, and politicians in Israel working for a more pluralistic society which no longer privileges Orthodoxy. While progress has been stagnant and contentious, the increasing mobilization of activists in secular Israeli society is a sign that change is on the horizon. For more information on some of these organizations, see:

1. Hiddush - For Religious Freedom and Equality
"Imagine A Reality - The Hiddush Vision," HIDDUSH, January 30, 2015, http://hiddush.org/article-2090-0-Imagine_A_Reality.aspx.
2. The Israel Democracy Institute
"About IDI," THE ISRAEL DEMOCRACY INSTITUTE, accessed February 06, 2015, <http://en.idi.org.il/about-idi/>.
3. International Coalition for Agunah Rights
"About ICAR," THE INTERNATIONAL COALITION FOR AGUNAH RIGHTS, accessed February 06, 2015, <http://www.icar.org.il/about-icar.html>.
4. New Israel Fund
"About," NEW ISRAEL FUND, accessed February 06, 2015, <http://www.nif.org/about>.

In addition to education reform, the state must take concrete steps to ensure that *Haredi* women can access crucial resources before, during, and after exit. The state should increase funding to existing organizations that help *Haredi* women to ensure that their services are visible and accessible.¹⁷⁴ As discussed in section three, there is only one women's shelter in Israel that caters specifically to *Haredi* women, and the waitlist is extensive.¹⁷⁵ Israel should establish additional shelters and resource centers that serve the unique needs of *Haredi* women, as the prospect of attending a secular shelter is a deterrent for many *Haredi* women who urgently need help.

It is important to note that exit is not an ideal solution to the problems facing *Haredi* women. While it is an important right to uphold and strengthen, exit is often a last resort in situations where one's voice cannot be heard. When *Haredi* children are able to develop adequate autonomy and are exposed to basic democratic ideals, *Haredi* citizens will be better equipped to assert themselves and exercise their rights. Ideally, *Haredi* women would be able to stay in their communities and successfully advocate for change, rendering exit unnecessary.

Israel must send the message that women's rights are important by protecting all women regardless of their religious affiliation. As long as the state refuses to take a firm stance on

¹⁷⁴ Hillel is the only organization in Israel that helps ex-*Haredim* transition into secular society.

"We believe that all people have the right to choose the lifestyle they want, and we therefore never try to convince anybody to change their lifestyle - we only help those who have already made an independent decision to become less religious. Leaving the ultra-orthodox world involves tremendous challenges, as those who leave are cut off by their families and communities, and do not have the education needed to get jobs. Hillel is the only organization in Israel dedicated to helping former ultra-orthodox Jews, and as such provides them with a full set of services including psychological counseling, housing, educational scholarships, vocational help, and mentorship"

"Our Mission," HILLEL: THE RIGHT TO CHOOSE, accessed February 06, 2015, <http://www.hillel.org.il/en/about/our-mission>.

For more information on Hillel's invaluable work, see supra note 69, article by Yardena Schwartz

¹⁷⁵ Supra note 86

women's rights to equality, women will continue to be subordinated based on a misguided understanding of religious freedom and group rights.

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