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Advantage - mothers?

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Rabbinical and secular courts look into changing a child custody law, worrying women's rights advocates.

A little more than a month ago, representatives from the Rabbinic Courts Administration gathered in Haifa to discuss and learn more about a controversial law regarding child custody following divorce. It was an innocent conference, say its organizers, aimed at examining the relevance of the Tender Years Presumption Law, which was passed in 1967, and "presumes" the mother will look after the child until the age of six unless the court is convinced she is incapable of doing so. "Every year we plan a conference that raises an important issue that has happened over the past year," explains Dr. Mordechai Frishtick, national supervisor for social affairs within the Rabbinic Courts Administration. "In the past, for example, we have examined conversions or the rights of the child, many different subjects. The rights of children are central to our work and we wanted to hear about it from all angles." Secular lawyers, social workers, sociologists and government policy makers were invited to speak at the conference, which also examined international and local studies about the changing role of the father in a child's life. "All the old psychological studies say the mother is the most important figure in the life of a young child and the father is less important," continues Frishtick. "This theory needs to be reevaluated; today there are many fathers who want to raise their children and custody needs to be decided based on what is best for the child. "Fathers need to have more rights or the custody needs to be shared equally. There are development issues that are enhanced by shared custody. It needs to move in the direction of a partnership," he states, adding that the conference was for informational purposes only and "no concrete conclusions were reached on the matter." While the issue of divorce is certainly a hot topic - the Rabbinic Courts Administration reported less than a week ago that the divorce rate is steadily growing with 9,963 divorces in 2006, compared to 9,595 the previous year - women's rights advocates and women embroiled in custody and divorce battles see the impetus to change or cancel the law as a serious threat. "This conference is an alarming development," says Dr. Ruth Halperin-Kaddari, chairwoman of the Rackman Center for the Advancement of the Status of Women, a member of Bar-Ilan University's Faculty of Law and Israel's representative on the UN Committee on the Elimination of Discrimination against Women. "It is all part of a growing trend in the direction of using a new rhetoric of gender equality. In the secular legal arena, there is a growing concept of gender equality and now the language is being used by the rabbinate too," without the internalization of the ideology. The concept of gender equality presented in Western countries has no place in today's Israel, continues Halperin-Kaddari, where women's rights in life-cycle decisions are governed by the religious courts and Halacha, which clearly favors men. "In the Western world, where divorce is a civil legal regulation, it is gender neutral," she elaborates. "There is no question of whether the divorce will be granted, it will always be granted, the question is just when? However, in the case of Jewish law, which is the case in the State of Israel, there is an infrastructure of discrimination against women. In terms of divorce, men have control over the woman's ability to open a new phase in her life. He can move on and start a new family, but for women there is the fear of her future children being considered *mamzerim*. "All talk of gender neutrality is hollow here, it is a false concept." While advocates for the Rabbinic Courts Administration might argue that there are just as many women refusing to accept a *get* as there are men who refuse to give one, Halperin-Kaddari defends the Tender Years Presumption Law from a different angle. "This [law] is the only area in which women have more power than men in divorce disputes," she says. "If this is supported, it will have a serious impact, taking away what little power women do have." MICHAL DOTAN (name has been changed) is one woman

who can testify to the unfairness of the rabbinic courts in deciding custody battles. Describing herself simply as an *aguna*, whose husband has refused to grant her a divorce, Dotan believes that the decision passed down by the rabbinic judge in the custody fight with her estranged husband for the rights to their two children shows little consideration for the children themselves. "My son [aged three] wants to go with his father, but my daughter [15 months] wakes up in the night crying and does not want to go with him," explains Dotan. "We separated just after she was born and she does not even know him, she never lived in the same house as him." Dotan recalls the day last Succot, when the baby, suffering from mild pneumonia and a high fever, was forced to leave her mother and go with her father because of the court order stipulating physical custody; in Dotan's case that means one night a week, one weekend in every two, and half of every national holiday with their father. "I'm sure there are good fathers out there but despite that, little children need to be with their mothers, especially if they are very sick," she says, adding there is no way to explain logically to a 15-month-old that she can't be with her mother because a court decided. But trying to explain the situation to her children is only part of Dotan's struggle. Financially ruined and mentally exhausted, she says that during the 18-month fight for the right to have physical custody of her children, her husband presented testimony that she was an unfit mother who purposely left her children alone for long periods of time and was friendly with several drug addicts. "He clearly lied, but they still forced me to undergo psychological evaluations," she says. "The courts should not be allowed to determine custody of children, they do not consider what is good for the child." While Dotan does not dispute that her children should spend time with their father, she believes that the judges need to be more flexible in their verdicts on custody arrangements. HER SITUATION is symptomatic of a legal system that provides no criteria for judges to determine what is in the best interest of the child, says family law expert, attorney Shmuel Moran, a member of the Justice Ministry's Schnitt Committee, appointed well over a year ago to examine the Tender Years Presumption Law and provide recommendations for either abolition or improvements. "The law definitely needs to be changed, but not necessarily abolished," he says, explaining how its language is far too open and does not provide useful guidelines for judges to use as criteria for determining custody cases. "There are no criteria stating what is best for the child, except for this law," continues Moran. "There needs to be something that helps decide what is best for each family; each child must be checked individually." Like Frishtick, Moran points to the changing role of the father in the life of a child and to the growing changes in conjugal roles. "Some women I talk to want their husbands to be more involved in caring for the children even after divorce; it frees up time for them to move on with their lives," he says. "This law has been abolished in most other countries, and there has been a rise in the sharing of responsibilities; that is the direction we are moving in." However, Moran is aware of the argument presented by women's rights advocates and says that any type of abolition of the law needs to come together with other changes to the system. "I believe we need to be careful not to hurt women's rights more than they are already, but today we need to think about what is better for the children," he says, highlighting that in many countries in which the law has already been abolished custody is still granted to the mother in 90 percent of cases. With the Schnitt Committee yet to present its findings, Moran does have one suggestion on how painful custody battles could be avoided: mediation. "I am very much in favor of compulsory mediation," he says. "Listen, I am a lawyer and make money off these cases, but deciding who looks after the children is not a case for the courts, it's an internal family problem. If the family cannot reach an agreement, then they need to go to a professional who can help them reach a compromise." COMPULSORY MEDIATION is also the main focus of the Forum for Our Children's Future, a group promoting father's rights to be custodians of their children, headed by Ya'acov Ben-Yissachar. Himself a father who was embroiled in an ugly legal struggle with his wife over custody of his daughter, Ben-Yissachar describes himself as one of the few fathers to have succeeded in "winning" the custody battle against his wife - he now has physical custody of his daughter, 12. After his experience, Ben-Yissachar says he is now on a crusade to change the whole process by which divorces are accomplished. "If mediation were compulsory," he says, "then 70 percent of the custody cases would finish before they had even started." However, he also believes that joint custody should be the starting point. "I believe in equal custody; all the research shows that equal custody is the best thing for the child," states Ben-Yissachar, who is now studying to be a lawyer. "Just like in a marriage - where both partners have to learn to be flexible - so too after divorce the former couple needs to behave rationally and be flexible with their partners." After describing how wonderful his relationship is right now with his daughter's mother, how harmoniously they planned and executed their daughter's bat mitzva just a week ago, Ben-Yissachar then admits that they are still not yet divorced. Asked why, he says he would not allow the divorce to happen unless his wife agreed to relinquish custody. While Ben-Yissachar and Moran see the recent Rabbinic Courts Administration conference as a positive step to deciding custody of children after divorce, Halperin-Kaddari remains unconvinced: "They [the Rabbinic Courts Administration] are not ready to tackle the real problems. If we were starting from an equal basis, then we could talk about equal divorce negotiations. We would be willing to discuss change, but at this point any changes will give little advantage to women, who will now have to

prove they can be an appropriate custodian."



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