

# Every Groom and Every Bride:

## A Solution for the Challenges of Marriage in Israel



מרכז מנומדין למשפט יהודי ודמוקרטי  
مركز منومادين للقضاء اليهودي والديمقراطي  
Menomadin Center for Jewish & Democratic Law  
הפקולטה למשפטים  
אוניברסיטת ברא"ילין



2024

...amending the same,  
in cases of the constitution  
administration of a Wakf or  
benefit of Moslems before  
Court.

There shall be an appeal from  
Qadi to the Moslem Religious  
decision shall be final.  
53. The Rabbinical Courts of  
shall have:--

Jewish  
Religious  
Courts.

(i) Exclusive jurisdiction in  
and divorce, alimony and cor  
members of their community or  
as defined in Article 59.

(ii) Jurisdiction in any other  
status of such persons, where  
the action consent to their

(iii) Exclusive jurisdiction in  
the constitution or internal  
Wakf or religious endowment or  
Rabbinical Court according to

Christian  
Religious  
Courts.

54. The Courts of the several  
communities shall have:--

(i) Exclusive jurisdiction in  
and di

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Hila Geffen-Spitz, Ariel Moav-Morvari, Tani Frank, and Elad Caplan

Supervised by Prof. Shahar Lifshitz

Graphic Design: AM Studio

Technical Editing: Araleh Admanit

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[cjdl.contact@biu.ac.il](mailto:cjdl.contact@biu.ac.il)

[judaism.state@shi.org.il](mailto:judaism.state@shi.org.il)



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This policy paper was designed by staff members of the Judaism and State Policy Center at the Shalom Hartman Institute and the Menomadin Center for Jewish and Democratic Law at Bar-Ilan University: Hila Geffen-Spitz, Ariel Moav-Morvari, Tani Frank, and Elad Caplan. In designing this paper, they worked under the supervision of Prof. Shahar Lifshitz and the advice of an advisory committee consisting of experts in the field of marriage and divorce. This diverse team, which operated as a think tank, included Dr. Rawia Aburabia, Dr. Ori Aronson, Vadim Blumin, Keren Horowitz, Prof. Avishalom Westreich, Batya Kahana-Dror, Prof. Ronit Irshai, and Prof. Amihai Radzyner. The think tank held a dozen meetings dealing with the problems that exist in this realm; it also mapped the existing arrangements for establishing spousal relations in Israel and the major solutions proposed in today's public and academic discourse. It should be noted that although this document was written as a product of this process, it does not necessarily reflect the views of the advisory committee.

## **Abstract**

The system of marriage and divorce currently in force in Israel does not meet the country's needs as a Jewish and democratic state. The arrangement on which it is based – subordination of the personal status of all citizens to the religious group to which they belong and the awarding of exclusive powers regarding marriage and divorce to the religious leaders of every religious group – emerged during the British Mandate period based on the considerations of this regime. Based on this arrangement, the State of Israel expanded the powers of the Chief Rabbinate and the rabbinical courts and institutionalized their monopoly over the realm of marriage and divorce, which often finds expression in the adoption of a strict interpretation of Jewish tradition.

The Mandatory system did not take into consideration the needs of the different religious groups, including religious Jews, and certainly did not meet the needs of a sovereign Jewish state. Its adoption by Israel amounts to the state's shirking of its responsibility for its citizens on this issue.

As a result of the existing legal and the judicial situation, the state of Israel continues to deny a fundamental right to a significant portion of its citizens, reducing the ability of couples to wed, to institutionalize their relationship, and to establish families at a time when the institution of marriage is eroding.

The arrangements at the disposal of those who cannot marry but desire to institutionalize their spousal relationship today are usually applied in a non-official or semi-official manner that saddles the spouses with a weighty bureaucratic, evidentiary, and economic burden. This does damage to Israel's status as a sovereign state and to the symbolic recognition of the legitimacy of institutionalizing many such relationships. At the same time, the track that exists for those who can marry involves the forced imposition of a strict interpretation of Jewish law and Jewish tradition, while failing to recognize and negating major Jewish traditions and communities and doing injury to the rights of spouses who belong to other religious communities.

This paper proposes a new way of thinking about marriage and divorce law in Israel, which seeks to maintain the sovereignty of the state and Israeli society's diversity in terms of national belonging, religious outlook, and fundamental ethics as a Jewish and democratic state.

Over the years, different efforts have been made in Israeli civil society, in academia, and in the political realm to achieve solutions for the hardships of marriage and divorce in Israel. The two leading proposals to this end are based on two primary models:

- a) **The single civil-framework model:** Creating a single normative civic umbrella for marriage in Israel, while disconnecting the official system of marriage and divorce in Israel from the marriage of the religious.
- b) **The two-track model:** A model that leaves intact the religious monopoly over marriage and divorce, but that at the same time creates a substitute in the form of civil marriage through an alternative legal framework, like that of the "Spousal Covenant" (Brit Hazugiut).

These suggestions provide many solutions to major problems. However, in

light of the significant developments that have occurred in Israeli society over the years, and in light of the political, social, and religious changes that have occurred since the formulation of these proposals – and in addition to thinking about other solutions – there is a clear a need to reconsider and improve these solutions and to adapt them to the existing reality.

In addition to these suggestions, we are proposing a new solution, based on both the creation of a uniform framework for all citizens of the state of Israel by establishing a marriage administration and registry, and a system for conducting and dissolving marriages based on a multi-track model, by issuing permits and granting communities the ability to establish tracks for civil and religious marriage. This plan combines the advantages of the model of an exclusive civil framework for marriage with those of the two-track model, while also attempting to walk between the raindrops and to contend with the major disadvantages of each. The main points of the model are as follows:



**Establishment of a uniform administrative system** including a detailed registry of those conducting the authorized marriage, the personal details of the spouses, and the particulars of their obligations in dissolving the marriage.



**Expansion of the tracks by issuing permits to conduct weddings in different communities**, including conducting non-religious civil marriages and establishing a variety of religious options in addition to those that exist today.



**Establishment of additional courts for dissolving marriages.** In addition to the existing courts, and along with the Court of Family Matters, which will serve as an instance for civil divorces, it will also be possible to establish courts for arbitration for the dissolution of marriages conducted by different communities.

Until a new arrangement that provides a comprehensive solution in the realm of marriage and divorce is established, it will be necessary to take pragmatic and concrete measures to reduce the harm experienced by couples whose rights

are now being negatively impacted. Therefore, in addition to overall systemic solutions, this document presents several possible specific and concrete measures for improving the situation: encouraging religious solutions, such as prenuptial agreements; developing municipal solutions, such as municipal spousal registries; instituting measures to ease civil marriage abroad; and expanding the Spousal Covenant to cover all spouses who are currently not able to marry.

Together, these measures constitute a mosaic. However, each one, individually, can serve as a significant milestone on the path of development of an effective policy for solving the hardships of marriage and divorce in Israel. In addition to these measures, which offer solutions to various problems, we suggest focusing on one major pragmatic policy measure that we propose as an initial infrastructure-related measure:



**Regulating the registry of common-law spouses** and allowing them the option to register in a special civic registry in a way that equalizes their status to that of married couples with regard to the system of duties and rights that apply to them and relieve them of the bureaucratic burden they face under the current legal situation. This measure would increase the ability of spouses who cannot wed in Israel today (accounting for at least half-a-million citizens) to realize many of their rights; it would also leave behind an open horizon facilitating the development of broad solutions.

The advantages of this proposal lie in its regulation of an existing practice that is known to the general public and the fact that it stands to solve a large part of the problems existing today, with an emphasis on reducing the gaps between married couples and common-law spouses and reducing the bureaucratic burden on spouses who choose this institution. There is no question that a large number of couples in Israel today live as common-law spouses without their marriage being registered. Overall, these couples are not recognized as married according to Torah law, including all of the halakhic implications of this status. Adopting this proposal, therefore, will not result in a new halakhic or social reality, but rather in the recognition and regulation of the existing reality and therefore in an

improvement in the status quo, based on a partial solution for those seeking state recognition of their spousal relations.

This proposal also offers an institutional advantage, as it results in a partial regulation of the current uncertainty surrounding the status of unmarried common-law spouses. Enabling these common-law spouses to register as such without getting married will reduce the lack of clarity surrounding the status of these couples that currently exists among Israeli administrative authorities and in the Israeli legal system.



פרק פח.

נשואין וגירושין (רישום)

פקודה הקובעת הוראות לרישום נשואין וגירושין.

[23 בספטמבר, 1929]

1. פקודה זו תקרא פקודת הנשואין והגירושין (רישום).

2. בפקודה זו יהא למונח הבא הפירוש דלקמן, מלבד אם ענין הכתוב יחייב פירוש אחר —