

DIVORCE IN THE DRUZE COMMUNITY AS A MINORITY IN THE STATE OF ISRAEL

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Abstract. *In this article I tried to explain about marriage and divorce to members of the Druze community. The marriage procedure is a procedure that requires members of the community to act in accordance with many years of tradition, because there is no complete equality between a man and a woman in all the religions in the world except the Druze religion and the small Druze community that gives both spouses to choose the other side and also to divorce him to choose another and also the possibility of divorcing him because marriage should not continue by force.*

Keywords: *Israel, Druze community, divorce, tradition, religious law*

1. Introduction

In Israel, religious law applies to marriage and divorce to all religions living in Israel. Other personal status matters are usually dealt with in religious courts such as rabbinical courts for Jews, Sharia courts for Muslims, church courts for Christians and religious courts for Druze. Each court operates according to the relevant. This means that in Israel today it is not possible to marry in a non-religious procedure, so the obligation to marry according to religious law has created a number of problems such as civil marriage. In recent years even clerics recognize the difficulties associated with the current situation especially due to the large number of children born to couples who married not in accordance with the religious laws.

This paper was written as part of a doctoral dissertation on the subject of:

Developing a policy for the official mediation between the legal system and the traditional civil justice system: Cultural aspects regarding divorce processes within the Druze community in Israel.

My doctoral dissertation will deal with: the conflict between the religious law and the Druze minority, especially for other ethnic groups in the State of Israel in general, and the penal code in Israel, and especially section 181 of the law.

Research objectives:

(a) To investigate the existing dilemmas regarding the gap between the traditional legal system of the Druze community and the civil law regarding divorce processes among the members of the community in Israel.

(b) To open a new thinking framework for bridging the gap between the traditional legal system of the Druze community and the civil justice system in Israel as well as other religious communities living in Israel.

(c) To investigate the attitudes of the decision makers-namely, the Knesset of Israel - in order to push them into altering 181 of the Penal Code

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Research questions:

(a) What dilemmas exist regarding the gap between the traditional legal system of the Druze community and the civil law regarding divorce processes among the members of the community in Israel?

(b) What components might comprise a new thinking framework for bridging the gap between the traditional legal system of the Druze community and the civil justice system in Israel as well as other religious communities living in Israel?

(c) What are the attitudes of the decision makers - namely, the Knesset of Israel regarding altering 181 of the Penal Code in order to bridge the gap between the traditional legal system of the Druze community and the civil justice system in Israel as well as other religious communities living in Israel.

2. Cultural Background of the Druze community

The Druze are members of a religious community in the Middle East who speak Arabic in a dialect unique to them; almost all Druze live in the geographical area that includes Syria, Lebanon, and northern Israel and a small Druze community in Jordan. They can also be found in various countries around the world, mainly those who migrated from Syria and Lebanon due to the civil wars and the complex situations there. The traditions and habits are common to all Druze in the world whether religious or non-religious, are acceptable to all, this is evident in education, culture and tradition and preservation of positive values, and preservation of moral purity. The Druze are called "sons of grace" or "mowahidon" which means the believing in one God. The Druze religion was made public in 1017 AD and it is based on all religions with different interpretations and also on the philosophical beliefs of the ancient world in both the East and Greece. The Druze religion does not allow for the acceptance of new Druze believers, and the religion is based on logic and common sense. The Druze believe in fate and agree with it in every way of life for better or worse. There is complete secrecy about the religion and the principles of the religion. The Druze believe in God and all the prophets who were sent to preach to humanity the words of God including, Noah, Abraham, Moses, Jesus, and Muhammad peace be upon them. The Druze doctrine is secretive and hidden. In Druze you are either religious or non-religious. Almost all Druze houses have both religious and non-religious members who live together and respect each other; no one imposes rules of conduct on the other because religious have a special ethics in conducts of life including dress-code, food, speech and behavior. A non-religious member of Druze cannot know the principles of the religion. Only a religious Druze person can read in the holy books and be exposed to the religious texts. Druze men cannot marry more than one woman. Women can equally learn the principles of the religion, and are famous for their hospitality, religious patience, loyalty, and providing refuge for the persecuted.

The Druze as mentioned are categorized, as mentioned, into two categories: religious and non-religious. The religious people are allowed to read the religious books, and non-religious who are not allowed to do so. The purpose of this division is to maintain the principles of the religion and keep it secret. Any non-religious person can become a religious person by a simple process, but this would require him to a certain code of conduct.

The Druze have integrated well and are conspicuously prominent in the State of Israel. In general, there are people in important positions and there are also public representatives in the Knesset of Israel and in various bodies in the various areas of life in the country. But the legislation of the Nation Law in 2008 changed the feelings of the

Druze (there is no room to detail in this article). The Druze community is recognized as a community with independent religious status in the country, which strengthens the traditional structure of the community among all Druze.

The Druze community is special both in the religious aspects, customs, way of life, traditions as well as in the traditional dress for the man and the religious woman which characterizes the modesty and respect, as well as the definition of who is a Druze? "Anyone born to two Druze parents (See Hanan Suliman's book that was published by the Ministry of Education in Israel: Guide to the Druze heritage teacher, Ministry of Education Pedagogical Director).

According to section 47 of the Kings Order in Council (See The king's speech in the council about the Land of Israel Act 1922-1947), The provisions of personal law shall apply to matters of personal status. Because their order differs from community to community, they wanted to preserve the custom of their ancestors. A rabbinical tribunal or other religious tribunal shall have unique or parallel jurisdiction. As in the Druze religious courts, the law of the courts applies (see The Druze Religious Courts Law, 1962). Regarding the powers under section 4 of the Act, there will be unique powers in three matters and they are: 1. Marriage matters "including the marriage contract, and the "mohar" which is the agreed sum of compensation whether immediate or postponed. 2. Divorce matters "including postponed mohar" and compensation for damages resulting from the divorce. 3. Sacred property. S. 5 of the above law gives the Druze court 3 authority to hear all other matters such as "division of property, alimony, child custody, execution of a will, order of succession, appointment of guardian and more", only if all concerned parties agree to the jurisdiction. If there is no agreement then the jurisdiction passes to the Family Court.

3. The religious judicial system

Throughout their history, the Druze did not enjoy the status of a separate religious community. The Ottoman government was unwilling to grant them this right, and the British Mandate government did not change their legal status either. According to this they were subject to the law of the Muslim judicial system, this is so despite their requests to grant them judicial autonomy and recognized legal status. Despite this, the Ottomans appointed the late Sheikh Muhammad Tarif to be the judge to in cases regarding Druze members and he was also appointed by the Ottomans to be the Druze judge (Kadi) in Lebanon. He died in 1928, and the British Mandate appointed his son Sheikh Salman Tariff in his place. On the other hand, the Druze in Israel were granted independent religious status in a process in which three main stages can be distinguished:

1. In 1957, the Minister of Religions recognized the Druze as an independent religious community by virtue of its authority under the Religious Communities (Organization) Ordinance of 1926.

2. Four years later, in October 1961, the community's spiritual authority was recognized as a religious council with three members, the late Sheikh Amin Tariff from Julis village, who led the Druze community for decades with two other members, the late Sheikh Ahmad Kheir. From the village of Abu Sanan, and the late Sheikh Kamal Moadi from the village of Yarka.

On December 25th, 1962, the Knesset of Israel completed the process of approving the Druze Religious Courts Law. From now on, the members of the community will be tried in matters that fall within the jurisdiction of the religious judicial institutions,

according to sections 4 and 5 of the law, which give unique authority in three matters one of which is marriage to the Druze members only; It also includes the appointment of marriage religious clerks in each village, divorce (the unencumbered divorce act) but includes the immediate and deferred “mohar”, and damages due to divorce that the causing party of the divorce will pay to the other party. The other issues discussed in the court require the consent of the parties concerned, such as alimony, child custody, dissolution of a partnership (division of property), an inheritance order, a will, a guardian's appointment, and the like.

According to a decision of the Druze Religious Council of November 2nd, 1961, the Personal Status Law of the Druze community in Lebanon of 1948 was adopted as the law of the Druze in Israel, according to which the Druze religious courts have the jurisdiction to rule in these issues. This law was also adopted by the Druze in Syria and therefore constitutes the basis of the judgment regarding the personal status of the members of the Druze community in its three geographical concentrations in three countries.

In an article that I published in the book: A window into Druze law A guide to personal status law in the Druze community (Ministry of Justice - Druze Religious Courts: A Window for Druze Law and a Guide to Personal Class Law in the Druze Community, Prepared and Printed by Adv. Kamil Mula, First Edition - January 2016.) about the development of judgment among the Druze throughout history on page 77 I stated that:

“Mr. Menachem Begin, who was a member of the Law and Constitution and Justice Committee (and later the Prime Minister) at a meeting of the committee on June 25, 1962, said:

"I would like to see the Lebanese Druze law, only today I learned that the State of Israel has adopted a Lebanese law, we must know the content of the law"

The next day the translation of the law was prepared and handed to the committee; the committee members went through all the sections and did not reject Lebanese law, meaning that the Constitution and Justice Law Committee adopted the law and ratified it without going through acceptable legislation.

The Druze Religious Council also has the authority under the Druze Religious Courts Law to enact the Personal Status Law and the Rules of Procedure for Druze Religious Courts and to change them and thus there is no legal claim that the personal status law did not pass through the Knesset in the three readings as usual and that the law requires the courts to act in accordance.

In 1964, the religious organization of the Druze community in Israel was completed with the actual establishment of the Druze religious courts.

According to the Personal Status Law, the courts deal with extensive powers that have been strengthened in the Supreme Court case 207/88 Fachar Aladdin (High Justice Court case number 207/99 Saeed Ahmad Fakher Eldin v 1. Druze CA 2. Head of CA, 3. Skeikh N. Halabi, Kadi at the Druze court, 6/8/89), in which judge Bach Strengthened the authority of the Druze religious courts. This was overturned many years later by the Supreme Court Judge Dorner in case 9611\00 Nibal Maraee (Israel High Justice Court case number 9611/00 Nibal Marai v. Marai (4/4/2004) p”d n(3) 321 (1996)) which significantly reduced the powers of the Druze court. The Supreme court in this case also recommended that the powers of the Druze courts and their actions vis-à-vis the community be regulated as opposed to powers that should be within the jurisdiction of the family courts.

4. The right to marry

Article 16 of the Universal Declaration of Human Rights of the World of December 1948 (UN Universal Declaration of Human Rights) states that "any man or woman who has reached the age of maturity may enter into a marriage contract and establish a family, without any limitation on the grounds of race, citizenship or religion. They are entitled to equal rights in the marriage, at the time of the marriage and at the time of their annulment (UN Universal Declaration of Human Rights). Article 23 of the International Covenant on Civil and Political Rights of December 1966 states that "the right to marry and to found a family shall be recognized for a married man and woman (International Covenant on Civil and Political Rights)". The State of Israel has objected to this section stating that personal status is discussed in religious law, in most Western countries the right to marry is recognized as a basic right. The right to a family in Israel is in the realm of the right to dignity, based on the Human Dignity and Liberty Law (Israeli Basic Law: human liberty and dignity, 25.03.1992). The Supreme Court, sitting as the High Court of Justice, ruled that "the right to a family is one of the central foundations of human existence. It derives from the protection of human dignity, from the right to privacy, and from the fulfillment of the principle of autonomy of the will of the individual, which is at the core of the concept of human dignity." The court also ruled that "the hierarchy of constitutional human rights, after protecting the right to life, is the right to a family which gives meaning to life." (Israel High Justice Court 2245/06 Member of Knesset Neta Dvorin & others v IPA & others 2006)

The obligation to marry according to religious law also entails the obligation to divorce according to religious law; marriage and divorce are related to each other. In Israel the residents are required to marry in a religious ceremony, even if they are secular. In this context, it has been argued that the State of Israel is the only democratic state in the world in which the registration of marriage and divorce is exclusively in the hands of religious institutions (Adv. Irit Rosenblum and Shira Hillel, New Family Organization, New Family: Marriage Report in Israel, Trends and Difficulties 2006.). The religious Jewish public finds it difficult to accept and is also exclusive to the Orthodox sect, and only rabbis are allowed to perform marriage ceremonies. It has been argued that it harms religious pluralism and Jews belonging to other denominations, and that the marriage ceremony currently practiced discriminates between men and women, especially with regard to the issue of property and its integration (Prof. Shachar Lifshitz, The Partnership Alliance, The Israel Democracy Institute, Jerusalem, Cheshvan 5767 November 2006). In contrast, the Druze community has no streams. There is one mechanism and it is the Supreme Religious Council and the issue of marriage and divorce is arranged as a binding law for all members of the Druze community and is acceptable to all members of the community and it is rooted since the community appeared in history about a thousand years ago and documented more than five hundred years ago by Sheikh Abdulla Al-Tanukhi, known as "Al Amir Al Sayid" in his book, the marriage and divorce of the Druze (Dr Fuoad Abu Zaki, Al Amir Al Sayid Jamal Aldin Abdalla Altanokhi, 1st edition April 1997 p. 340 – 364).

5. Personal status law for the Druze community

The sage of the generation and the supreme arbiter of the Druze community at all times was the great sheikh "Jamal Al-Din Abdullah al-Tanukhi" who was born in 1417 AD and came from a family that rules the whole of Lebanon and also led the Druze community. He was also referred to as Al Ameer Al-Sayed meaning "The Lord Prince."

He drew the first legislation regarding the personal status of the Druze community – Marriage and divorce in Al Mowahidon (The Personal Status Law of the Druze Community in Israel 1962). On February 24, 1948, the Personal Status Law of the Druze community was enacted in Lebanon (Shiekh Marsel Nasser: Personal status for Druze religion, 1st ed., p. 95-118) Which adopted most of the enactments of the late Amir al-Sayyid and also in accordance with the interpretations of the custom al-Hanafi which is one of the currents in Islam. With the change of parts of it according to the conditions created about 500 years or more later, these laws as stated above were adopted on November 2, 1961 also by the Druze Religious Council and the spiritual leadership of the community, and approved by law in the Constitution and Law Committee of the Knesset, and until these days the Druze Courts rule in accordance to them.

The law is divided into 19 chapters with about 171 sections and they are as follows and briefly:

1. Eligibility for marriage: from section 1 to section 8, which give the Druze court the authority to issue marriage permits to members of the community and to those who have reached the age of marriage to a man and a woman but in exceptional cases there is authority to grant marriage permit to any underage girl under certain conditions. It also prohibits the marriage of minors, and authority to give an older woman up to the age of 21 if there is an opposition from her parents to marry her choice, also the possibility of appointing a guardian relative to the girl whose parents oppose.

2. Prohibited in marriage, from section 9 to section 13 which speak of prohibition of marriage to a married woman and if so they are void, and prohibition of polygamy. In addition, a man is not allowed to return his ex-wife, and he is not allowed to marry her again, and it is defined with whom a man is not allowed to marry and also to whom a woman is forbidden to marry, that is, it is forbidden to marry blood relatives.

3. Marriage Relationship: from Section 14 to Section 19, explains the procedure of drafting the “ketubah” – marriage contract, and the express consents of both spouses to draft the marriage contract on the judge or the person authorized by the judge to be in his place, he is worthy of the position and will follow the instructions of the judge.

4. Marriage Law: from section 20 to section 23: these are the sections dealing with the relationship between the husband and wife and that the husband is immediately liable to compensate his wife for the immediate and delayed “mohar”, and the husband is obligated to pay his wife's alimony from the binding date, and the right of mutual inheritance applies. Also, a woman has no right to demand the deferred mohar unless one of the two conditions of divorce or death is met. And the husband must at home to the wife after the payment of the immediate mohar, and the wife's duty to go with her husband to another locality if possible. The husband must treat his wife with affection and equality and the wife must obey her husband in all constitutional rights arising from marriage.

5. “Mohar”: from section 24 to section 27 which define the mohar which is a monetary amount or a valuable asset without which the marriage contract is not fulfilled. The husband must pay the immediate mohar and if the sum of these expressions is not written as agreed then the judge estimates the sum of the rejected mohar at his discretion and according to the circumstances of the case. The chapter also defines the conditions in case of a separation between the couple at the time of the engagement before the marriage contract, and the amount of the deferred mohar at the time of the separation during the marriage contract and before the wedding.

6. Alimony: from section 28 to section 36 which explain the issue of alimony in all situations and interpret them, when the couple encounters them, that the husband owes

his wife and household a living in everything related to food, clothing, footwear, education, medical care, etc. It also allows the judge to add or subtract from the alimony any amount according to the recurring circumstances, and the husband's absence status as a party to determine alimony for the wife, and also the amount of alimony determined for the wife is not negligible after the husband's death is a debt on his inheritance.

7. Disallowing marriage (separations): from section 37 to section 49 are sections special to Druze law and completely different from Muslim law and Jewish law and even contrary to them (Dr Salman Falah: *The Druze in the middle east*, ministry of defence publishing – 2000). Even in some of the above there are differences in the essence of things that this is not the place to elaborate and which talk about the situations the couple finds themselves in with their separation, and they determine how the wife is divorced or how the husband or wife can divorce his or her partner and that the declaration of the man who divorces his wife before two trustworthy witnesses will mean that the woman will be divorced and thus forbidden to him forever. This is relevant to all members of the Druze community. Also the right of a woman to divorce her husband if she learns that he is ill and there is a deformity that interferes with contact and it is not possible to live with him without harming herself, the judge will award her separation when it is proven that the disease has no cure. Even when it is proven to the woman that the man is sexually impotent and there is no cure, in that case she can get the divorce from her husband in court. Or, for example the husband becomes mentally ill, in that case he will receive a year for attempting to heal and cure himself, after which if there was no result she can claim a divorce. There are clauses like 42 to 45 that have no equivalent in Muslim or Jewish law, which talk about the separation between husband and wife by their mutual consent and free will providing that they declare the divorce in front of two witnesses or in the presence of the judge during the hearing, in which case the judge issues a verdict accordingly and approves the divorce. This section is one of the modern liberal sections that Druze jurisprudence upholds, even when the husband is convicted of a prostitution offense the wife has the option to request separation, and vice versa this affects the rights the court rules in favor the parties. Also if the husband is sentenced to more than ten years in prison the wife may request separation after the end of his five years in prison. When the husband disappears or is absent and the wife does not receive alimony from him then after a period of three years she is entitled to request separation. If she would receive alimony from him then after five years she can get a divorce. Even if the husband appears after the divorce the couple are prohibited from each other. Marital life of the couple will be solely with the consent of both the husband and wife, but divorce on the other hand is effected only if one of the spouses so requests. There are other sections too but re to there to protect the rights of the woman and to life with dignity, but the other two sections talk about the attempt to reconcile between the two spouses in conflict over mediators, and if they manage to bring the spouses back into the family according to a new agreement. The issue is a decision that is made in the court and in the authority of the judge who can award a sum of compensation in money that the guilty party will have to pay. The last section of this chapter seeks to protect the wife's rights from the husband's arbitrariness against having an unjust divorce against the wife; if it becomes clear to the judge that the divorce has no justification then the judge will award the wife in addition to the deferred mohar also damages due to the divorce.

8. Waiting period: from section 50 to section 53, this is a period between the death of the husband or the divorce of the wife and her remarriage. A period of four months is required to ensure that the woman is not pregnant. The reasoning behind this is that on

case the woman is found to pregnant, then the child can be assigned to the father who will be responsible for all expenses and alimony for the child.

9. Custody: from section 54 to section 66 which discusses the supervision of children in all sorts of situations.

10. Alimony imposed on the fathers and sons: Sections 67 to section 74 discuss alimony imposed on the father for the benefit of the sons.

11. The alimony imposed on the sons for the benefit of the parents and alimony for close relatives: From section 75 to section 80 which discuss the alimony imposed on the sons for the benefit of the parents, and the relatives.

12. Custodian of minors: from section 81 to section 87 which discuss the issue of guardianship of minors and who has the authority and who raises them.

13. Guardianship of minors and guardianship of minors and those without legal capacity in the estate: from section 88 to section 98 which are guardianship and wills.

14. Authority of the Custodian: From section 99 to section 118 which discuss the activities of the Custodian and all his powers and duties.

15. Disqualification Law: From section 119 to section 125 which discuss in the disqualification law of a person and appoint a guardian with special emphasis.

16. The missing person and the trustee on his property: from section 126 to section 136 which define a missing person whose whereabouts are unknown, whether he is alive or dead, and determine the rights of the trustees and their duties, appoint their disqualification and position, and the judge's authority to declare a missing person ten years after his absence and the passing of his property to the heirs, and more.

17. Pedigree and Paternity: From section 137 to section 144 it is a matter of determining the period of pregnancy and attribution of the newborn to the father and determines the period of pregnancy and pedigree attribution to his father especially when the woman is widowed or divorced.

18. The will and the inheritance: From section 145 to section 169: these are sections that define the will and inheritance and defines who can write a will, especially since Druze law gives full authority to the person writing his will to leave all or part of his estate to a natural heir or a person who is not an heir and not even from the Druze community. This chapter also defines situations of deprivation of rights in a will or inheritance when a person murders the, and also in a will for a charity the mental stability of the person making the will.

19. The person making the will can also register his will before the judge or alternatively before two witnesses. The will must be in writing and before witnesses. The sections also speak about situations where the deceased person dies without leaving a will, in such a case the natural successors will inherit him.

20. Sacred property: from section 170 to section 171: the last two sections discuss the matters of the sacred property and the obligation to exist and replace and utilize it and appoint trustees to it, in accordance with customary practice. The judge is also authorized in any matter that is within his authority and there is no reference to the issue in the sections stated above. Each and every one of these sections has a long explanation that this is not the place to elaborate.

6. Marriage in the Druze community

The marriage in the community is special in order and is included in the Personal Status Law for the Druze community in six chapters from the first to the sixth chapter. Sections 1 to 36 speak about the age of the engaging couple and they must be over 18

according to the Marriage Age Law (Israel's Marriage Age Law 1950 and its amendments regarding age of marriage). The sections also prohibit marriage to certain family relatives, and prohibit mix marriage, that is to other religions. And on the negotiations between the man and the woman through intermediaries who are witnesses to the conclusion of the marriage contract by the marriage order on behalf of the Druze religious court which is the sole authority of the Druze community to approve the marriage. The sections also refer to the man's commitment to the woman and that she should be compared to himself, and also the woman's commitment to the man. Also the issue of the "mohar" that will be written in the marriage contract after both parties agree on the amount, and on other issues such as alimony that the husband is obligated to his wife from the time the bond is made.

There are several stages that the couple go through, from initially knowing each other until marriage. The stages are:

6.1 The engagement: if there is acquaintance between the boy and the girl from school or family or friendships between the parents or acquaintance through friends or matchmaking only through the parents and they are not allowed to meet alone in private; The bride's consent must be taken (Dr Nisim Dana: The Druze, Bar Ilan university publishing, Ramat Gan 1998). The communication between the groom and his future bride is done through his parents; after getting to know them, the guy turns to his parents to address the bride's parents with respect. This tradition is long and still continues the same way. The girl will finally have to say whether she agrees or disagrees.

Another option for engaging is that the parents of the groom go according to his wish to the parents of the bride to ask for their consent to the engagement. If the consent is given then they declare them publicly engaged and that they want each other, so that everyone close and far know of this. This is the initial step towards marriage. The woman will not be a man's wife until after the wedding, as I will write in more details later. Since the religious people have always established the order of marriage for us and this has been happening for centuries, we still find that this is the right way to act despite the advancement and modernization that is developing today. Engagement time is a time to know each other and know everything about each other. Furthermore, the nature of each and every one and his mental and health condition and also exchange valuable gifts like gold jewelry and various objects after a period they will determine its length like weeks or months or years and this period ends either in the binding ceremony before the actual marriage or allowing the engagement because the engagement period is not considered marriage. In general, there are no mutual rights as spouses only to know whoever sought the dissolution will lose the gifts he gave to the other party and the court must act under section 26 of the Personal Status Law of the Druze community.

6.2 Aked (the convention): After the engagement period the engaged begin to prepare for the binding ceremony and then there are negotiations (Dr Saib Arekat: Life is negotiation, Alnajah university, Nablus, 2008 p.21) between the parents of the parties regarding the preparation of a furnished apartment and everything else in order to reach agreements in the planning of construction if it is not yet possible to choose an apartment or the color of the furniture or the date of the wedding and those invited after the agreements set a date for the written binding ceremony which is a written commitment to people. The Aked derives religious duties and rights with traditional and religious principles and this is done after receiving written approval from the Druze religious court to confirm that the two do not prevent them from marrying after examination because both are Druze to Druze parents and have no marital relationship and no medical disability

prevents them from marrying. The “aked” is written by one of the marriage orders from which the tribunal is appointed in each village and who operates according to the instructions of the tribunal and with the approval of the tribunal to be conducted by the Kadi (Ministry of Justice - Druze Religious Courts: A Window for Druze Law and a Guide to Personal Class Law in the Druze Community, Prepared and Printed by Adv. Kamil Mula, First Edition - January 2016. P16). The ceremony takes place in front of at least two witnesses from each side who are the witnesses to edit the Aked and with everyone's consent the couple will sign with the witnesses who can also be parents or others. In case one spouse is deaf, then consent is given by allusion or sign. Instructions will be read to the couple from a paper that is prepared by the court and which explains to them what is allowed and what is forbidden and how to act. After signing, a copy of the aked is given to the parties, and two copies are sent to the court. One of the copies that are sent to the court is then sent to the interior ministry by the court, so that the marital status is changed accordingly. From the moment of the aked, the status of the parties is changed to “married” in the interior ministry (Section 24 of the Israeli Personal Status Law). It is important to note that nothing of the above is done without the consent of both parties. From this moment, the woman is considered to be his “waiting” wife. From that moment she will be forbidden to others and also to her husband who is not allowed to marry another and he has to compare her to his soul in every matter and must keep her from everything and also owes alimony to his wife, among them the inheritance law applies if any of them dies prematurely then the other is one of the heirs. The husband must at this stage give her the immediate mohar and alimony (Section 20 of Israeli Personal Status Law). The deferred mohar will be paid to the wife in two situations: the death of the husband or divorce that the husband is guilty of after a verdict is given on the matter, and if no mohar is registered then the deferred mohar in accordance to section 24 of the Druze community personal status law. After the aked the woman is still prohibited for him, until the marriage ceremony after which she moves to live with him as his wife. It is worth noting that after the aked the mother of the woman will become forbidden for him too, and also the woman will become forbidden to her father in law (Dr Nisim Dana: The Druze, Bar Ilan university publishing, Ramat Gan 1998). Therefore, after writing the marriage contract (aked), the groom signs, and the groom and everyone in front of the witnesses, will be given instructions on what is allowed and what is not allowed until the wedding day, and that the groom must visit his bride at her parents' house, especially during the holidays. And the like². The marriage contract document is handwritten in four copies. Copies are handed to the groom, bride and two copies to the court, one of which is sent to the Interior Ministry to change the marital status of single or widowed or divorced.

6.3. **The wedding:** if the bride and groom do not separate after the aked and before the wedding, then after a period of sometimes weeks or months or even years, the parents of both sides declare a wedding date. For the wedding day both the bride and groom's parents invite guests from the village and outside to dine with them in two places one at the groom's parents and the other at the bride's parents. After the meal, the groom's parents ask the guests to accompany them as a delegation to the bride's parents' house, where they kindly and pleasantly ask the bride's parents to take her from the groom's house to the groom's new house in a spectacular and dignified religious ceremony. Then his wife will be allowed for him as long as of course it is by her own free will without coercion and they will give her personal security and treat her justly and give her warmth and love and all that his hand achieves and not deprive her; As for the bride, she must surrender to him and obey him in all his legitimate personal and marital rights and all the

accepted rules of conduct in society apply to them and they are rooted within the Druze community and the wedding ceremony is a religious principle and foundation in marriage and is a custom of the prophets.

7. The status of the Druze woman

The Druze woman enjoys a special status that gives her rights and obligations arising from the foundations of the religion and which were published by the late Al Amir al-Sayed and from the long tradition and culture since the Druze past and present. For generations, three basic principles have been maintained: The first is the preservation of religion, the second the preservation of the females, and the third the preservation of the land, and in addition upheld the principles of honor, pleasant manners, good morals, and exemplary ethics. This took care of the individual and the family and brought good to them and society. Taking care of the woman in the family is a cornerstone of society and building the children in the best way and they are the foundation of society as a whole. If the mother who is the woman in the house does not fulfill her role in educating the children and raising them on the rules and good traditions, then they will deviate in their behavior and move away from values and ethics, therefore and in order to be good one must choose the good woman with morals and ethics and good education. Even when the woman chooses a man, she should examine the good education and traditions etc., because many studies have shown that the behavior at home between a man and a woman affects the children's education and their personality. In the Druze community there are two classes: religious and non-religious who are from all sectors of life and in all villages and families. Within the same house you will find religious and you will find non-religious. This does not interfere with lifestyle because anyone can and may choose his way of life, and they live together with harmony. The Druze woman is also allowed to be religious or non-religious and chooses her future husband at her own free will and can agree to one of dozens who turn to her to get her hands through her parents, so a religious woman will prefer to marry a religious man so there will be equality between the couple³. A non-religious couple can become religious and vice versa religious couples can also become non-religious. And even a woman married to a non-religious man can alone be religious; the social status of a Druze woman is significantly better than the status of her Muslim counterpart, and this is due to the attitude of the Druze religion towards women⁴. The Druze religion gives the Druze woman a respectable status in society, but also imposes strict duties and patterns of behavior on her, with the main idea being the recognition of almost full equality between her and the man (Dr Shakieb Saleh, *History of the Druze*, Bar-Ilan University publishing, Ministry of Defense / Publishing, p. 49.). In all duties and rights the wife can choose for herself her own lifestyle for the benefit of both husband and children. There are also husband's obligations to his wife that should be treated with respect and kindness and grace and hear her and understand her and not to use violence against her whether by conduct, verbal or physical violence, because the woman is a full partner for the man and assists the man in building the house of the residence if there was not one. The woman is the master of her home and her life and the partnership in it will bring happiness and wealth in life and respect and appreciation of all. The woman is the sole decision maker as to who she chooses to be her life partner. If she does not agree then she should not be forced, because at the time of making the aked, the witnesses must ask the woman about her consent to the making of the aked in an explicit manner and in front of the witnesses. She should be of a clear opinion and understand the meaning of things; everything is done according to section 14 of the Personal Status Law as stated above. It is

also not possible to write conditions that are contrary to customs in the aked, such as the period of marriage: it is strictly forbidden to determine a period between the spouses how long they will live together because the marriage is intended for life, because after all, the purpose of marriage is to establish a home with family and children. It is forbidden to wed a girl to a person who is not Druze. The reason behind this is to maintain the core of the Druze minority, and to keep the Druze identity.

The Druze woman has the same right as the man and is entitled to receive property and do with it as she pleases and also to bequeath it to whomever she desires. This right is also granted to the man equally, and can write feces and indicate who enjoys it freely and if she doesn't leave a will then her estate will be divided upon the successors in accordance with the Law of Succession (Israeli Inheritance Law 1965). In addition, the Druze woman can be the guardian of her minor children under section 91 of the Personal Status Law for the Druze community, and all this if she meets the conditions for appointment as a healthy body and soul with a good life and with all civil and adult powers. The woman is entitled to alimony under section 20 of the Personal Status Law from the time of making the written bond "aked" until death or divorce under section 35 of the Personal Status Law. The woman has the right to custody of her children under section 54 of the Personal Status Law if she deserves it and has the ability to care for the children and take care of their needs and if she is legally competent to do so in accordance with section 55 of the Personal Status Law. The Druze woman has the authority to request a divorce from her husband for any reason listed in the Personal Status Law from sections 39 to 49 which we will explain about later. The Druze woman enjoys that she will be the only woman to her husband and this is because polygamy is forbidden by religion and by law in accordance with section 10 of the Personal Status Law. If the husband wants to marry a second wife their marriage is void and forbidden. It is also forbidden to return a divorcee and under section 11 of the Personal Status Act both spouses should accept each other as he/she is and learn about the behavior of each and every one of them and take care to bridge the prejudices each brings from home according to the education he received at home, because every family has different priorities in life and it is not always compatible with the other side. I, as a judge, and from my experience at work for years, give a demonstration of the woman's status as a tree that gives good and delicious fruits, each of us cultivates the tree and guards it and fences it and takes good care of it etc., all in order to get good and delicious fruits. This definition fits the Druze woman because she is the one who brings the good fruits which are the good and beautiful children and grandchildren, and all this thanks to her and the education she gives to those around her. If I was to define who the woman is about then the woman is a mother, sister, grandmother, aunt, granddaughter, wife, daughter, these are the women around each of us and they are the honor of each and every one of us.

8. Divorce in the Druze community

Divorce in the Druze community is well established, according to the late Alamir Al-Sayyid, more than 500 years ago. The divorce between the two spouses is without a return to cohabitation. Once divorced there is no way back. Back in the days there were no religious courts, so the issue was dealt with in houses of prayer. Before ruling, the head of the house of prayer gathers the relevant religious people, and they hear from both spouses, listen to their arguments and try to reconcile and if they cannot be returned as spouses then they are declared as divorced. After the divorce, the divorcee of a person will be forbidden to him forever, no-matter what the reason or the situation is. This tough prohibition stems

from the dignity of the wife as she is not an object in the hand of the man. She is an independent authority and has the right to express her opinion and consent and dignity is also related to her non-return to a husband who does not respect her or care for her or their children; the husband who makes this difficult decision to divorce his wife must know the dangers of divorce and the limitations. If all roads to peace have ended then there is no other option but to divorce, but this is subject to the restrictions stated above. Al Amir al-Sayyid did not allow the separation between the two spouses until after all the reconciliation proceedings between them had been accomplished through mediators from both sides, usually relatives of the husband and relatives of the wife who will work to make peace between them. It is also important to ensure that the divorce was not in a moment of anger, the declaration of divorce on its own does not constitute the disengagement of the marriage bond (Camil Mulla: an article which was published in *Din Vedvarim* beyond open doors, 52 Dec. 2014). There are three cumulative conditions for the divorce deed to exist both on behalf of the husband and on behalf of the wife: The first is the existence of an intention on the part of one of the parties to divorce the other. The second is the determination and tenacity of which of the parties to divorce and there is no room for peace at home. Third, if one of the parties declares the divorce on front of credible witnesses, then the couple will be given a reasonable period of time to consider their steps and return from the rigid position and try to regulate the marriage their marriage by mutual consent, then there is no divorce and they can live together again. But if the attempt is unsuccessful and one of the two spouses insists on divorcing then he\she is not forced to continue the marriage life and the marriage in it ends. Then it's a problem for both of them because they cannot go back together to marriage life forever. The late Amir al-Sayed also gave equality in the divorce to both spouses, and did not give the severance of the marriage relationship in the hands of the man alone who could at any moment sever the marriage bond and divorce his wife, but he also gave the wife the right to divorce her husband, and gave her the same rights that the husband has in ending the marriage, since this is in the substantive law of the Druze religion, and gave her the freedom of will and expression of opinion regarding the marriage with the other party. This is a principled and inherent religious rule in the marriage life of the Druze, and it has a lot of meaning according to the Druze religion and a lot of influence on the status of a child born out of a forced marriage and / or back to a married life between divorced spouses. This child is considered a bastard and the court is unable to approve the annulment of a divorce under sections 37, 38 of the Personal Status Law for members of the Druze community (The Personal Status Law of the Druze Community in Israel 1962). Because according to religious law if the divorce is conducted before two credible witnesses and those two witnesses publish the validity of the divorce after the husband stuck to his position and after trying to reconcile between the two spouses and the reconciliation was unsuccessful and the husband was not illegally unlawfully influenced then the spouses can no longer go back to living a married life together. Likewise the wife can also divorce her husband if she feels she can't continue living with him because of circumstances she will detail before dignitaries or the court. The woman's ability and possibility to resolve the marriage bond (separation) also exists if one of the grounds listed in sections 39 to 45 of the Personal Status Law of the Druze community and Druze law is met. On February 5, 2015, the Supreme Court issued a judgement in Case No. 2535/14 (Israeli High Justice Court case number 2535/14 P. v Druze court in Acco and others, given on 19.5.14), in which it affirmed my ruling in the Druze court. The Supreme court quoted my ruling: "*it is not possible to oblige which of the parties to continue their*

married life by force and necessity and since I am convinced that there is no room for reconciliation between them anymore ... " The Supreme Court affirmed my ruling by rejecting the appeal. In this situation the wife filed for divorce against her husband for reasons written in the statement of claim through a lawyer and adhered to her position of separation and divorce from her husband. The tribunal appointed mediators to reconcile between them and after meetings with both sides outside the court, they came to the conclusion that there was no need to reconcile and bring them back to a marriage life and the mediators announced that they had not been able to bring them back together. The court also tried to save their marriage and bring them back together but unfortunately without success. Both parties submitted their arguments in writing and their words were recorded in the minutes of the meetings of the court. The lawyers also submitted their words and after I was convinced that there was no need to reconcile them I decided to accept the woman's position on separation and a divorce certificate under sections 37 and 38 was issued. There is another possibility to resolve the marriage relationship according to section 42 of the Personal Status Law of the Druze community. The issue takes place in a consensual divorce agreement. This comes into effect when the divorce is announced in the presence of at least two witnesses, and the affirmation of a court judge. Article 42 states: *"The spouses may disconnect the marital relationship by mutual consent. The disconnection of the relationship will take effect upon its declaration in the presence of witnesses and in front of a Kadi (judge) who will confirm in the ruling the release of the relationship between the spouses."* Another option would be according to sections 47, 48 of the Druze community's personal status law, which is a "quarrel and dispute" claim, meaning a claim for domestic peace (a claim for domestic peace will also be under section 23 of the Personal Status Law) and not only for domestic peace but also for divorce if the reconciliation attempt did not succeed. Article 47 states: if a quarrel or dispute arises between the spouses and one of them turns to the Kadi Madhab (judge), the Kadi will appoint an arbitrator from the husband's family and an arbitrator from the wife's family, and if the two families do not have the qualifications required to arbitrate, the Kadi will appoint an arbitrator. The divorce can be due to a quarrel or dispute within the house and not necessarily that the spouse directly applies to the court announces his desire to divorce but there is a dispute over the actual existence of the divorce event. According to section 47 as stated above an arbitrator in this case is a kind of mediator, conciliator and not just an arbitrator. Article 48 provides: "the two arbitrators shall be aware of the causes of the dispute between the spouses and shall endeavor to bring them to reconciliation; if they have failed to reconcile due to non-cooperation and stubbornness of the husband then the judge will break the marriage and payment of all the mohar and also the deferred mohar may be applied. If the reconciliation fails on the part of the woman, the Kadi will rule the expiration of her right from all or part of the rejected mohar. In both cases the Kadi may rule that the spouse responsible for allowing the relationship will pay damages to the other spouse. The results of the efforts of the mediators or arbitrators determine the further discussion and treatment of the tribunal on the issue. According to section 48 above if the arbitrators failed to mediate between the spouses checking who in their opinion was the factor that led to the divorce at the end of the process, if the husband is the cause the husband will pay all or part of the deferred mohar to the wife. If the woman is the cause, the Kadi shall rule on the expiration of her right to all or part of the Mohar, and in both of the above cases, the Kadi may award damages to any of the spouses who have been harmed as a result of this divorce. Basically whoever is guilty will pay. Another possibility is divorce without reason, when the man or woman, announces his desire to

separate from his partner for no reason, like maybe if the love just ended, he is allowed to do so and the court shall grant the request, because the marriage begins with mutual consent and continues with mutual consent but separate if one spouse expresses his desire to separate and all attempts at mediation did not succeed in establishing peace at home.

The Druze community as already mentioned protects the rights of the wife and compares her with the husband and allows her to act on a separate and independent level in all divorce matters. The Druze legislature was aware of the possibility of husbands who could divorce their wives regardless of a justifiable reason and without any contributory fault, and that is why in such situations we have Article 49 which gives protection to the wife and states that if it becomes clear to the Kadi according to the circumstances of the case, and after hearing all the arguments and proofs, in addition to the deferred mohar she deserves, the court can grant her compensation for damages. Some argue that divorce sometimes before witnesses constitutes a criminal offense under section 181 of the Penal Code. The section states: "breaking marriage contract against the woman's will": If the man breaks the marriage contract without a judgement from the court, he can face a punishment of up to five years imprisonment". The main purpose of this section is to punish and compensate the woman under the "Torts Ordinance" after proof of the tort that exists in section 63 of the above Ordinance. The Supreme Court in his sitting as the High Court of Justice ruled in case number 245\81 (*Court of Appeal case number 245/81 Horiya Sultan v Hasan Sultan*) that: "*the answer also arises from this that the damage, which the enacted law sought to prevent, is not the damage caused as a result of divorce but from a change of status from a married woman to a divorced woman without a court ruling.*" In the Druze system, it is not possible to change the status from a married woman to a divorced without a ruling. The woman remains married until a divorce certificate is issued by the court. The status of the woman remains even if the man has declared a divorce but a divorce certificate has not yet been issued by the court. With this regard, the Supreme Court ruled in case number 2829/03 (Israeli High Justice Court 2829/03 P. v Druze court in Acco and others, given on 16.1.06) from 16/1/2006 the tribunal must issue a divorce judgment and divorce certificate when the tribunal is satisfied that there is no room for peace after all attempts and solicitation to motivate the parties to reconcile between them, and after the divorce certificate is issued the tribunal will hear damages and fines due to both parties under sections 48 and 49 of the Personal Status Act. In order for section 181 of the Divorce Act to exist, three cumulative things must exist: "a valid act of divorce, the woman's disagreement, and the absence of a ruling from a court or a competent court that obliges the woman to allow the marriage." In order for section 181 of the Divorce Act to exist, three cumulative things must exist: "a valid act of divorce, the woman's disagreement, and the absence of a ruling from a court or a competent court that obliges the woman to allow the marriage." The issue of divorce is in the substantive law of the community and I will write on this issue in another article.

9. Summary

In this article I tried to explain about marriage and divorce to members of the Druze community. The marriage procedure is a procedure that requires members of the community to act in accordance with many years of tradition, because there is no complete equality between a man and a woman in all the religions in the world except the Druze religion and the small Druze community that gives both spouses to choose the other side and also to divorce him to choose another and also the possibility of divorcing him because marriage should not continue by force. This leads to the guilty party paying the

other. Divorce is the most undesirable thing in family life and especially when there are small children under adulthood. And we are witnessing today that there are children who grow up with both parents and nevertheless they turn to crime. One might ask, if children with both parents become criminals, what would children with divorced parents become? Especially that mostly the children are thrown into one of them and the other fights to see them, or when the divorced parents fight over the custody of the children; these fights are like ropes that are put around the necks of the children while each parent pulls it to his side without noticing that they are harming their own children. I, as a caddy in the Druze Court of Appeals, do my best to bring the couples back together and overcome all obstacles in their lives. I also do seek the help of mediators and fellow religious people who have the necessary capabilities because this is much better than of destroying the marriage. But, this has to be done without forcing the solution on the parties. It is possible to make peace and it has been proven with me that a large number of cases and after a convincing explanation to both parties I was able to sign a peace agreement and bring them back together to live and raise the children. On the other hand, divorce is sometimes a refuge for freedom when there is oppression on the part of one or both couples against each other and therefore separation is required and a new life with new people sometimes would bring joy and happiness. A new marriage in some cases brings a change in lifestyle and is an opening for hope for the continuation of a dignified life.

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