

INFORMATION SHEET

Freedom of religion or belief and family law



READ AND REFLECT

What is family law?

Family law is a branch of law that governs and regulates rights and responsibilities within the family. In several parts of the world this is dominated by, and largely overlapping with, what is called personal status law. These laws determine an individual's personal and legal status and identity.

Family issues and personal status can be governed by both statutes, rules and regulations, and by court procedures. Sometimes, it is also governed by customary and uncodified laws and practices. Often and to varying degrees, these laws and practices are derived from religious sources. This is particularly the case in countries with an official state religion.

In countries with religious family/personal status laws, each of the officially recognised religious communities will have its own legal system and religious courts that administer these issues. Sometimes, the various sects/denominations within a religious group have their own laws and family courts (e.g., Catholic and Lutheran). In many countries, formalised legal systems developed as a result of the codification of state law by colonial powers. For example, prior to the colonial and Ottoman eras, Sharia law tended to be implemented in more diverse, flexible and pragmatic ways, instead of as a unified, state-enforced code.

In a best-case scenario, a system with state-enforced family/personal status laws for different religious groups may provide for a certain degree of religious pluralism. It enables different religious communities, including recognised minorities, to regulate their family-related legal affairs in conformity with their own religious traditions. Many minority religious communities value religious family/personal status laws, considering the system to provide protection from majoritarian hegemony and assimilation.

The right to freedom of religion or belief and family law

Religious family/personal status laws are often highly problematic for women's rights to equality and non-discrimination. They tend to restrict women's right to freedom of religion or belief, and cause

discrimination based on her religious or belief identity. These laws and courts are often based on a religious interpretation made by male leaders, as well as a traditional, patriarchal understanding of gender roles, providing unequal rights for men and women. Often, they also stem from the state's wish to control the lives of citizens.

Religious family/personal identity law is also problematic for freedom of religion or belief in a very direct sense. Given that there is no single theological understanding of what Christian, Muslim or any other religious family law should require, state enforced religious laws result in women (and men) being legally obliged to comply with religious norms that contradict their personal beliefs.

So, what does freedom of religion or belief have to say about religious family law?

Let's recap what freedom of religion or belief involves:

Every person has the right to have or change their religion or belief. This is an absolute right for the which may never be limited. Coercion in relation to a person's right to have or change their freedom of religion or belief is banned. The right to manifest (practice) religion or belief may be limited under certain circumstances – but only when specific criteria are met. As a reminder, these are:

- When the limitations are prescribed by law.
- ONLY when necessary to protect public safety, public order, public health or morals or the rights or freedoms of others.
- Limitations must be proportionate and non-discriminatory.

No right may be used to try to eliminate other rights. Freedom of religion or belief can, therefore, never be invoked by the state, religious institutions or by an individual to justify violations of the rights and freedoms of others.

Some religious communities wrongly invoke freedom of religion or belief to justify the existence of discriminatory family/personal status laws administered through religious courts. Freedom of religion or belief includes respect for the autonomy of religious communities to organise and institutionalise their internal communal life as part of the right to express, practice and manifest religion or belief. These rights are important, protecting religious communities from state control and interference.

Just like freedom of expression, FORB enables all sorts of beliefs to be held and expressed. It gives religious leaderships the right to formulate and communicate gender equal or gender unequal doctrines and norms, and to organise the institutional life of the faith community in gender equal or unequal ways – for example choosing to only ordain male priests.

However, freedom of religion or belief also provides individuals with rights. Individuals are free to choose what they believe and to live in accordance with their beliefs (whilst respecting the rights and freedoms of others). They may choose to obey or not obey the doctrines and norms propounded by their religious leaderships in their personal lives. This is an essential protection for women.

Critically, freedom of religion or belief includes the right of the individual to protection from coercion in matters of religion. Nothing is more coercive than law. There is, of course, a need for personal status laws and law is inevitably coercive. However, no actor (secular or religious) may use the law to coerce people to follow discriminatory religious or secular norms and justify this with the institutional right to freedom of religion or belief. Individuals should not be legally coerced to follow discriminatory religious norms and should have access to a legal system where non-discriminatory laws are applied.

Family/personal status laws and protection from discrimination

Regulations vary significantly between different religious family/personal status laws. In practice, this means that not all women enjoy the same degree of legal protection. A woman's perceived religious identity therefore determines the degree to which she will be able to enjoy her rights. This is contrary to the principle of non-discrimination that is deeply embedded in the right to freedom of religion or belief. For example, in the same country, one set of family/personal status laws might require a woman to be 18 years old in order to be legally married, whilst another religious community might allow marriage of girls at the age of 13. One family/personal status law may allow women the right to inheritance on equal grounds as men, whilst another might not.

A person who is not perceived as belonging to, or does not wish to identify with, one of the recognized religious communities with family/personal status laws and courts, will fall outside the system. This could apply to atheists or agnostics, non-recognised converts, as well as members of non-recognised religious minorities lacking a legal code and tribunal on these matters. If no optional civil family

law exists in the given country, women from these groups might face obstacles in registering their marriage or be forced to accept the terms of the family law of the majority. An important part of freedom of religion or belief is the protection from discrimination based on religion or belief – regardless of whether you belong to a minority religion, a non-recognised religion or belief, or have no belief at all.

Family/personal status laws and raising children according to religious beliefs

Religious family/personal status laws frequently restrict women's right to freely marry whomever they want. For example, the laws in question may not allow interfaith marriages or marriages across denominations within the same religion. Additionally, these laws often restrict women's opportunity to pass their religious identity on to their children, as it is the husband's religious affiliation that tends to determine which legal regime will apply to the marriage and, consequently, also the official religion of the children. Parents', including mothers', right to raise their children in the religion or belief of their choice is a part of freedom of religion or belief.

Family/personal status laws and coercion to have or change religion or belief

In some contexts, women might find themselves compelled to convert to a religion/denomination with a more lenient family/personal status law in order to obtain a divorce. If they later would like to return to their original religious or belief identity, they may face legal obstacles to doing so. In some religious family/personal status laws, a spouse's conversion may lead to the dissolution of marriage and loss of custody of children. In such cases, women who want to convert might refrain from doing so in order not to lose their children. Freedom of religion or belief includes the individual's protection from any form of coercion and bans all restrictions of the inner freedom – the right to freely have and change your religion or belief - both for women and men.

Family/personal status laws and the right to equality

Religious family/personal status laws related to divorce, custody, guardianship, adoption, and matrimonial rights, often deny women equal treatment compared to men. In some cases, these laws allow for underage marriages of girls and legalise domestic violence against women. Gender-discriminatory legal provisions on family-related issues often have their roots in patriarchal interpretations of religious texts.