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Religious Courts

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A. Introduction

1 Religious courts or religious tribunals are state or non-state dispute settlement fora that base their decisions on religion-based material and procedural laws and whose judges are typically members of the particular religious community whose laws the courts apply. While *sharia* courts might be the first of such fora that come to mind when hearing the term 'religious courts', there also exist Christian, Jewish, and Buddhist courts in both the Global North and the Global South. Religious courts may be established and run by the state or by private religious entities that operate outside of the realm of the state. Their jurisdiction ranges from covering religious education or the internal organization of religious communities, to family and inheritance law and, in some countries, criminal law.

2 Constitutions that engage expressly with the establishment of religious courts or with the application of religious law or religious principles in state courts include the constitutions of Afghanistan, Brunei, Ethiopia, Gambia, Indonesia, Iran, Israel, Jordan, Kenya, Malaysia, Maldives, Nigeria, Pakistan, Palestine, Uganda, and Saudi Arabia. Other constitutions are understood to allow for the existence of religious courts through their respective provisions on the → *freedom of conscience and religion or belief* or the → *right to a family life*.

3 This entry engages with religious courts in various countries in Africa, Asia, Europe, the Middle East, and North America. It begins by briefly outlining historical examples of religious courts (Section B). It then deals with the differences between state and non-state religious courts, with questions of judicial review (→ *constitutional remedies*) (Section C) and with the subject matter jurisdiction of religious courts (Section D). Finally, it asks how far the operation of religious courts might violate → *fundamental rights* (Section E).

B. Historical Examples of Religious Courts

4 Jewish, Canon, *sharia*, and Hindu law predate the modern sovereign state and the constitutional domain (Hirschl and Shachar 432), as do the institutions that interpreted and applied these laws. That rulers granted priests and religious institutions autonomy to govern their own affairs and decide about internal disputes in their own tribunals is a phenomenon that we have known at least since classical antiquity. From early on, however, rulers have also allowed religious tribunals to govern ordinary citizens to some extent with regard to criminal and civil law.

5 During the period of the Second Temple of Jerusalem (516 BCE–70 CE), rabbinical courts (*batte din*) were empowered to adjudicate cases among Jews involving criminal, civil, or religious law (Encyclopaedia Britannica).

6 The Roman Emperor Constantine (312–337 CE) later granted the Christian church an important position in the → *administration of justice*. In two pieces of legislation from 318 and 333 CE, he first allowed that any litigant may choose to have their case transferred to a bishop's court and then significantly expanded the powers of the bishops as judges, among others by exempting the decision of a bishop from being subject to appeal (Bateman 4).

7 Following the advent of Islam, in the eighth and ninth century, the Abbasid Caliphate, which governed large parts of North Africa, West Asia, and the Middle East, established a centralized and professionalized judicial system where judges (*qadis*) and their judicial staff employed binding and enforceable Islamic law (Samour 50–51). Later, the Ottoman empire not only operated with state-run *sharia* courts, but under the *millet* practice also granted non-Muslim communities varying degrees of autonomy to govern their communities by their own laws and to establish their own dispute settlement fora (Sezgin 243; Tas 498 et seq). In

some of the countries that emerged after the collapse of the Empire, such as Israel, Palestine, and Greece, religious courts remain in place today.

8 In the eleventh and twelfth century Pope Gregory VII and his successors 'established the Catholic Church as an independent legal authority' and granted it jurisdiction over marriage (Witte and Nichols 362). In several parts of Europe, ecclesiastical courts, which interpreted canon law, gained wide power, often competing with royal courts in regard to jurisdiction. Church courts in England, for instance, in the fourteenth century adopted a practice to hear appeals from the common law courts, which forced the monarch to enact a statute to prevent this practice (Walter 506). In France, '*officialités*', organized by the bishop of each diocese, administered ecclesiastical justice (Walter 508). Their jurisdiction extended to both civil and criminal law, covering family law as well as cases of heresy and blasphemy (Walter 507–508). European settlers also established religious arbitration processes within the churches in North America (Walter 509–10; Benhalim 771–72). Jewish communities in Europe were granted varying degrees of freedom to settle disputes in their own tribunals. In Spain, for instance, the *batte din* had jurisdiction over criminal cases, while in other parts of Europe, they were restricted to questions of ritual only (Encyclopaedia Britannica).

9 In those countries that were colonized by Western states, some colonial powers in the eighteenth and nineteenth century abolished religious criminal law by replacing it with secular criminal codes, but often allowed religious communities to maintain their systems of religious family law and the institutions that administered it (→ *colonization*). After independence, many states maintained the religious family law courts—for instance Indonesia or Nigeria—while others—such as Egypt—abolished them.

C. State-Affiliated and Non-State Religious Courts and Questions of Judicial Review

1. State and Non-State Religious Courts

10 The linkages between religious courts and the state vary strongly from country to country. Some states operate with state-run or state supported religious courts that enjoy either exclusive jurisdiction in a specific area—such as family law—or share their concurrent jurisdiction with secular state courts. While all countries with state-run religious courts also acknowledge the religious law of one or more religious communities, not all states that acknowledge religious law also work with religious state courts. In India, for example, secular state courts interpret and apply religious family law.

(a) State-Affiliated Religious Courts

11 Many states operate with state-run religious courts, whose judges are government appointed → *civil servants*. This is, for instance, the case with rabbinical and *sharia* courts in Israel, the Federal Shariat Court in Pakistan, and the *sharia* courts of appeal in Nigeria, but also in Greece, where the law acknowledges *sharia* courts in the region of Thrace and stipulates that the *mufti*, ie the judge of a *sharia* court, has to be a Greek citizen, because he 'is considered to be a civil servant' (Art. 7 Law No 1920/1991 (Greece)).

12 Judges in these courts may be law school graduates or religious scholars. In Nigeria, judges of the *sharia* courts of appeal may be legal practitioners or scholars of Islamic law (Arts 261(3), 276(3) of the Constitution of the Federal Republic of Nigeria: 29 May 1999 (as Amended to 2011) (Nigeria)). In Pakistan, out of the eight Muslim judges of the Federal

Shariat Court three must be Islamic scholars (*ulema*) (s 203C of the Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as Amended to 2017) (Pak)).

13 Some Southeast Asian states with a majority Buddhist population, like Thailand and Myanmar, operate state-supported Buddhist courts with Buddhist monks as judges alongside the 'regular' court system (Schonthal xviii). Myanmar has a state committee that oversees the election of Buddhist judges and the establishment of Buddhist courts (Schonthal xviii).

(b) Non-State Religious Courts

14 In other countries, religious courts are not run by the state but by (private) religious organizations (→ *non-state justice systems*). The judges in such non-state courts are not civil servants, but clergymen—and in rare cases clergywomen—or religious scholars. Such non-state religious courts frequently benefit from constitutional provisions protecting religious activities. Article 26 (a) and (b) of the Constitution of India: 26 January 1950 (as Amended to 2020) (India), for example, state that 'every religious denomination or any section thereof' enjoys the right 'to establish and maintain institutions for religious and charitable purposes' and 'to manage its own affairs in matters of religion'—a provision that particularly serves non-state *sharia* courts in the country. Article 78 of the Constitution of the Federal Democratic Republic of Ethiopia: 8 December 1994 (Eth) stipulates that 'the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts'.

15 The law of some states recognizes non-state religious courts, for instance when it accepts religious rites performed by a religious institution—so long as certain requirements are fulfilled—as giving effect to a legally recognized marriage with consequences in civil law (Douglas et al 197). In their role as adjudicators solving disputes between the parties, however, non-state religious courts often simply function as informal mediation panels, who may give 'advice' to their parties, but whose decisions are not enforceable by state institutions. In South Africa, for example, religious courts—such as the *beth din* for Jews and the *jamiat-ul-ulama* for Muslims—operate entirely in the private sphere (Rautenbach 147). Their judgements are 'only binding *inter partes*, and dissatisfied parties cannot approach the South African courts to enforce or appeal their findings' (Rautenbach 147). In India, the decisions of the local *sharia* courts, referred to as *dar-ul-qazas*, are nonbinding from the perspective of the state and cannot be directly appealed (on the operation of these courts see Lemons; Hong Tschalaer; Redding). The Indian Supreme Court, in *Vishwa Lochan Madan v Union of India* (2014) (India), held that a *sharia* court is an 'informal justice delivery system with an objective of bringing about amicable settlement between the parties', that has 'no legal status' and that the *fatwa*, ie the decision of such a court, is 'not a decree, not binding on the court or the State or the individual'.

16 States may, however, recognize non-state religious courts as mediation centres so that state civil courts can enforce their decisions. In the United States ('US'), for instance, religious organizations that offer dispute resolution, such as the Jewish Beth Din of America, the Christian Conciliation Service, and the Peacemaker Ministries, benefit from the Federal Arbitration Act (US) and its state counterparts. Similarly, in the United Kingdom ('UK'), the Arbitration Act 1996 (UK) allows people to resolve disputes of a commercial nature through binding arbitration in—religious—tribunals. The London Beth Din and the Muslim Arbitration Tribunal operate within the terms of this act, in relation to property and financial matters—but not family matters (Douglas et al 198).

(c) Mixed Systems

17 Some states operate with both state-run and non-state religious courts. For instance, in Syria, the judges serving in the *sharia* courts are government-appointed, function as civil law judges and are accountable to the ministry of justice (Art. 66 Judicial Authority Law 98/1961 (Syria)). The judges of the Syrian Christian courts, however, are not civil servants but clergymen, who are supervised by Church authorities and not the ministry (Art. 36 Judicial Authority Law 98/1961 (Syria)).

2. Religious Courts' Place in the Judicial System and Questions of Judicial Review

18 The manner in which the state-run religious courts feature in the hierarchies of the judicial system and the degree to which their decisions are subject to judicial review differs. While some countries only maintain religious courts on a first instance level, others operate with appellate religious courts. Israel, for instance, provides for a Grand Rabbinical Court, which serves as an appellate court for the decisions of the regional rabbinical courts. Article 260 et seq and Article 275 of the Constitution of the Federal Republic of Nigeria: 29 May 1999 (as Amended to 2011) (Nigeria) provide for Sharia Courts of Appeal at the state level. Article 137A of the Constitution of the Republic of the Gambia: 8 August 1996 (as Amended to 2017) (Gam) demands the establishment of a Cadi Appeals Panel with 'jurisdiction to hear and determine appeals from judgment of the Cadi Court and from the District Tribunals where Sharia law is involved'. In Syria, appeals to the first instance *sharia* courts go to a *sharia* chamber of the Syrian Court of Cassation (Art. 48 Judicial Authority Law 98/1961: 15 November 1961 (Syria)). Buddhist courts, in South and South East Asia, too, often operate in a pyramidal structure that runs from courts at the temple-level to regional courts and may, for instance in the case of Sri Lanka, even include a national Buddhist high court (Schonthal xvii).

19 In these multi-layer systems, questions arise with regard to the authority of final jurisdiction and judicial review. In the words of Ran Hirschl and Ayelet Shachar (at 434), the question at stake is 'which type of institution—a public court enforcing democratically enacted laws and regulations, or a faith-based tribunal applying religious-based norms and practices—will have the authority to make a final, binding decision'.

20 In Israel, for instance, the Supreme Court has affirmed its supremacy and primacy (→ *supremacy / primacy*) over rabbinical and *sharia* courts and issued rulings curtailing the jurisdiction of these courts. In *Bavli v The Grand Rabbinical Court* (1995) (Isr) the Court held that as all religious tribunals (including the Grand Rabbinical Court) were statutory bodies established by law and funded by the state, all aspects of their judgments were subject to the Supreme Court's review. Similarly, the Nigerian Court of Appeal can revise the decisions of the Nigerian *sharia* courts of appeal (Art 240 of the Constitution of the Federal Republic of Nigeria: 29 May 1999 (as Amended to 2011) (Nigeria)). In several cases, the Nigerian Court of Appeal has established the limits of the jurisdiction of the *sharia* courts of appeal (*Muniga v Muniga* (1997) (Nigeria), *Korau v Korau* (1998) (Nigeria), *Maida v Modu* (2000) (Nigeria)) and the Nigerian Supreme Court has approved these decisions (*Magaji v Matari* (2000) (Nigeria)). Appeals against the judgments of the Federal Shariat Court of Pakistan are treated by a special Shariat Appellate Bench at the Supreme Court (s 203F of the Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as Amended to 2017) (Pak)). The Federal Shariat Court's judgment is then suspended and does not take effect while the appeal case is pending (Lau 160).

D. Subject Matter Jurisdiction of Religious Courts

21 Religious courts in different parts of the world have different subject matter jurisdiction, ranging from criminal law and family law to a large number of other specific issues.

1. Criminal Law

22 A number of states—in particular Islamic states and states that have endorsed Islam as their state religion (→ *express recognition of deity in constitutions*)—allow religious state courts to apply religion-based criminal law. Pakistan, for instance, in its Hudood Ordinances from 1979 (Pak), punishes crimes such as illicit sexual behaviour, theft, and the consumption of intoxicants harshly, with stoning, amputation of limbs, or whipping and has these laws applied by state criminal courts. The Pakistani Federal Shariat Court 'may call for and examine the record of any case decided by any criminal court under any law relating to the enforcement of *Hudood*' (s 203DD(1) of the Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as Amended to 2017) (Pak)). Similarly, in the Malaysian state of Kelantan, the Syariah Criminal Code (II) Bill 1993 (as Amended to 2015) (Malay) outlines *hudud* offences and the corresponding punishments and provides for the establishment of a special Syariah Trial Court (in addition to the regular *sharia* courts) to apply these laws.

2. Family Law and Personal Status

23 Other states allow religious courts to adjudicate on matters of personal status and family and inheritance law, such as → *marriage* and divorce, guardianship, adoption, inheritance, and the like. The role of the courts in this regard may be to grant a specific status (eg by terminating a marriage) or to help the parties to resolve a dispute (Douglas et al 196). In Jordan, Kenya, Lebanon, Nigeria, Palestine, Syria, Uganda, and the United Arab Emirates, for example, *sharia* courts handle family law matters (see, for instance, Art. 105 of the Constitution of The Hashemite Kingdom of Jordan: 1 January 1952 (as Amended to 2016) (Jordan), Art. 170 of the Constitution of Kenya: 27 August 2010 (Kenya) and Arts 262(2) and 277 of the Constitution of the Federal Republic of Nigeria: 29 May 1999 (as Amended to 2011) (Nigeria)). In Israel, rabbinical and *sharia* courts have exclusive jurisdiction in matters regarding marriage and divorce of members of their respective religious communities (for the rabbinical courts, see s 1 of the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law 5713-1953 (Isr)). In other matters related to family law, they exercise concurrent jurisdiction with the civil courts (Maoz 158; Scolnicov 737; Sezgin 245). Catholic tribunals in Portugal, Malta, Italy, and Spain under the terms of agreements with the → *Holy See*, may annul marriages conducted in Catholic churches (Leigh 11).

3. Other Aspects of Law

24 A large number of states allow religious tribunals to adjudicate matters related to the internal administration of the religious communities. This includes, for example, the right to decide upon the expulsion of members or the withdrawal of priests' licences. In Germany, Article 140 of the Basic Law of the Federal Republic of Germany: May 23, 1949 (as Amended to 2017) (Ger), in conjunction with Article 137(3) of the Weimar Constitution: 11 August 1919 (→ *Weimar Constitution (1919)*) guarantees religious communities the right to autonomy and to 'administer their own affairs'. German churches have used this autonomy to establish their own detailed internal legal systems, which operate in parallel with state

law (Robbers 159). Church matters settled in these religious courts are not reviewed by state courts (Robbers 150).

25 Several states also hold arrangements under concordats with the Holy See covering religious education in state schools. These arrangements might stipulate that religious education teachers require a licence from the local diocesan authorities and that such a licence may be withdrawn for breaches of canon law (Leigh 20).

26 Beyond that, religious tribunals may also adjudicate on other issues, such as religious status, conversion, or commercial and property disputes (with regard to England and Wales, see Douglas et al 199).

27 In Jordan, religious courts also have jurisdiction in matters of *diya* or 'blood money', ie financial compensations for the victim (or heirs of the victim) in cases of murder, bodily harm, or property damage (Art. 105 of the Constitution of The Hashemite Kingdom of Jordan: 1 January 1952 (as Amended to 2016) (Jordan)).

28 In Pakistan, the Federal Shariat Court may, either of its own motion or on the petition of a citizen or the Government, 'examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam' (s 203D of the Constitution of the Islamic Republic of Pakistan: 12 April 1973 (as Amended to 2017) (Pak)).

E. Fundamental Rights Concerns

29 The operation of religious courts raises a number of fundamental rights questions. As indicated above, the existence of such courts may be protected by constitutional provisions for the freedom of conscience and religion or belief. Religious freedom is largely perceived —including by international human rights law—to entail the freedom to associate with other likeminded religionists and the self-governance of religious communities (Leigh 8) (→ *group rights*). It remains unclear, however, whether this collective dimension encompasses adjudication as an essential aspect of religious autonomy (Leigh 8). Key international texts dealing with religious autonomy, such as the United Nations ('UN') Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion (1981), do not mention the recognition of religious adjudication as such (Leigh 8). Scholarship has nevertheless argued that the group dimension of the right does entail the right to observe and apply religion-based law and to establish religious courts (Leigh 8, referring to Scolnicov).

30 Some constitutions mention religious adjudication under the right to a family life. For instance, under the heading 'Marital, Personal and Family Rights', Article 34(5) of the Constitution of the Federal Democratic Republic of Ethiopia: 8 December 1994 (Eth) states that '[t]his Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute'.

31 Where religious communities are granted the right to religious adjudication, this right frequently conflicts with other fundamental rights of individuals or communities, including the right to a fair trial (→ *right to a fair trial in administrative law cases*, → *right to a fair trial in civil law cases*, → *right to a fair trial in criminal law cases*), the rights of religious minorities (→ *protection of religious minorities*), and the right to → *equality* between men and women (→ *gender discrimination*).

1. Right to a Fair Trial

32 The UN Human Rights Committee has argued that the right to a fair trial applies to religious courts when these are recognized by the state or entrusted by it with judicial tasks and that the recognition of religious courts can only be compatible with Article 14 of the → *International Covenant on Civil and Political Rights (1966)* when 'proceedings before such courts are limited to minor civil and criminal matters', when they 'meet the basic requirements of fair trial' and when the judgments of such courts 'are validated by State courts in light of the guarantees set out in the Covenant and can be challenged by the parties concerned' (General Comment 32, Art. 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, para. 24).

33 The → *European Court of Human Rights (ECtHR)* has in a number of cases decided upon the adjudication of religious courts in the light of Article 6(1) of the → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)* ('ECHR'), which holds that '[a]ll persons shall be equal before the courts and tribunals' and that 'everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'. The ECtHR has tended to hold that the adjudication of religious courts does not violate Article 6 ECHR when the religious courts are under the supervision of state courts (see for instance *Eskinazi v Turkey* (2005) (ECtHR) and *Müller v Germany* (2011) (ECtHR)). The Court did, however, find violations of Article 6 ECHR in *Launikari v Finland* (2000) (ECtHR), where a minister of the Evangelical Lutheran Church of Finland had faced excessively long proceedings in the church court when challenging his dismissal, in *Sâmbata Bihor Greek Catholic Parish v Romania* (2010) (ECtHR), where the applicant was denied any access to civil courts in favour of a state imposed system of religious arbitration in Romania, in *Pellegrini v Italy* (2001) (ECtHR), where Italian civil courts had endorsed a Vatican ecclesiastical court's decree of nullity of marriage without adequately verifying the ecclesiastical courts' compliance with Article 6 ECHR, and in *Lombardi Vallauri v Italy* (ECtHR) (2009), where the Italian Consiglio di Stato had upheld a doctrine under which the Holy See's decisions could not be challenged in Italian civil courts.

2. Religious Freedom

34 Freedom of religion also includes freedom *from* religion, ie 'the right not to practice any religion and not to live according to the precepts of a given religion' (Sajó and Uitz 917). This right can be infringed in cases where people are forced to make use of a particular religious court and thus have their case settled according to religious procedural and material rules, because no secular alternative or no religious court of their religion is available. Freedom of religion might also be affected in cases in which individuals have converted from one religion to another and are then excluded from approaching the religious courts of the community they converted to. In Jordan, for instance, Muslim converts to Christianity, or other religions, are denied access to the religious courts of these communities (Castellino and Cavanaugh 112–13).

35 Furthermore, members of some religious communities might find themselves in a position where they are denied a right to establish a religious court, while other communities are allowed to maintain theirs. In the UK, Canada, and the US, for instance, the operation of *sharia* courts has been fiercely debated (Ashe and Helie; Witte and Nichols), and in some states in the US *sharia* courts have even been banned (Benhalim 774–75; Walter 517), while Christian and Jewish courts have largely remained unchallenged. Here, a striving towards multiculturalist accommodation of religious—minority—communities often clashes with a fear of a loss of national identity and concerns for minorities within the religious communities. While some scholars have made a 'Case for Shari'a Councils' (Witte and Nichols 366) and suggested that states in the global North,

such as the US, introduce a ‘more robust *millet* system in the realm of family law’, in which religious systems would ‘function as semiautonomous entities’ (Nichols 164), other scholars have strongly warned against such approaches (McClain).

36 In *Molla Sali v Greece* (2018) (ECtHR), which dealt with a case of inheritance adjudication by a *sharia* court in the Greek region of Thrace, the ECtHR found a violation of Article 14 ECHR (discrimination on grounds of religion) read in conjunction with Article 1 of Protocol No 1 (protection of one’s possessions), because the applicant, who had been governed according to Muslim succession law, had been treated differently from a person not governed by Muslim law and this differentiation was not reasonably justified. Until 2018 Greek civil courts had regularly referred cases that Muslim citizens had brought before them to the *sharia* courts, whom they regarded as enjoying exclusive jurisdiction (Tsitselikis). A legislative act (Law No 4511/2018 (Greece)), prompted by the *Molla Sali* case rectified this practice by stipulating that the civil courts have jurisdiction for all civil disputes, except for cases where both litigants agree to have their cases adjudicated by a *sharia* court.

37 Courts in South Africa stated that an individual’s right to associate with a religious community must be balanced against the right of that community to exclude non-conformists from it and found that an excommunication order issued by a *beth din* did not prevent the applicant from exercising his religious associational rights and thus did not constitute a violation of fundamental rights (*Taylor v Kurtstag* (2004) (S Afr)).

3. Gender Equality

38 Religious courts also pose significant challenges in terms of the → *rights of women* and sexual minorities. Here, what Ayelet Shachar calls the ‘paradox of multicultural vulnerability’ becomes visible: while ‘multicultural schemes’—granting religious communities the right to settle disputes in religious courts being one of them—‘ensure the decentralization of state power and provide for potentially greater diversity in the public sphere, they do not necessarily promote the interests of *all* group members. Indeed, the same policy that seems attractive when evaluated from an *inter-group* perspective can systematically work to the disadvantage of certain group members from an *intra-group* perspective’ (Shachar 3). Therefore, ‘well-meaning accommodations aimed at mitigating power inequalities between groups may end up reinforcing power hierarchies within them’ (Shachar 4).

(a) Forms of Gender Discrimination in Religious Adjudication

39 Gender discrimination manifests on multiple levels. Firstly, the substantive religion-based law that religious courts apply frequently grants women lesser rights than men, draws on a heteronormative understanding of marriage and does not recognize LGBTIQ+ rights (→ *LGBT rights*). A wide range of examples can be found with regard to religion-based laws regulating marriage and divorce, remarriage after divorce, maintenance, child custody, adoption, and inheritance. Traditional Muslim law, for instance, permits men to have several wives and to divorce their wives unilaterally, but does not grant the same rights to women. Daughters in Islamic law inherit less than their brothers do. Jewish law deems husbands the heirs of their wives, but excludes wives as the heirs of their husband’s estates. It further does not recognize daughters as their fathers’ heirs if there are surviving sons or male descendants of sons. Nor does it recognize a mother—or her family—as the heir of her deceased child.

40 Secondly, the procedural rules that religious courts operate with often discriminate against women too. In many states, only men can serve as judges of religious courts. Traditional Islamic law gives different weights to the testimonies of men and women, thereby drawing on a provision in the Quran that holds, '[c]all to witness two witnesses of your men, if the two are not men, then a man and two women' (Quran 2: 282). The evidence rules for the religious courts in some states implement this inequality. The Pakistani *hudood* ordinances, for instance, in cases of alleged *hudood* offences require the eyewitness evidence of several 'Muslim adult male witnesses' that are 'truthful persons and abstain from major sins' (see for instance on the offence of theft s 7(b) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (Pak)). Similarly, traditional Jewish law does not regard women as fully qualified to give evidence in court.

41 Thirdly, judges' gender-stereotypes often lead to judgments that discriminate against women in a very practical manner. In Israel, for example, women face a much greater risk than men that their spouse will deny them a divorce—a situation that is referred to as *get*-refusal and prevents women from re-marrying within religious practice (Hacker 71). In Pakistan, the introduction of Islamic criminal law has led to a drastic increase in the number of imprisoned women, due to the application of the adultery ordinances (Rehman). In Indonesia, many women find that the grounds for divorce that they present to religious courts do not persuade the judges to grant their petitions and that judges frequently push them to remain in their marriages and give their husbands 'one more chance' (Nurlaelawati 261–62).

(b) States' Responses to Gender Discrimination in Religious Courts

42 Some constitutional and supreme courts have actively engaged with the topic of gender (in)equality and declared that religious courts must abide by constitutional equality provisions. The Constitution of the Republic of South Africa: 18 December 1996 (as Amended to 2012) (S Afr) in Article 39(2) holds that, '[w]hen interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights'. The South African Constitutional Court has confirmed that customary law and tribunals are subject to the general Constitutional equality provisions (*Bhe v Khayelitsha* (2005) (S Afr), *Gumede v President of the Republic of South Africa* (2009) (S Afr), and *Shilubana v Nwamitwa* (2009) (S Afr)).

43 The Israeli Supreme Court dealt with the application of the Equal Rights of Women Act (Isr) to religious courts in *Bavli v Grand Rabbinical Court* (1995) (Isr) and directed religious courts to follow the secular principle of community of property, despite the fact that the same does not exist in Jewish law. The Israeli Supreme Court has also ruled that the rabbinical courts were not authorized to decide on a man's request to prohibit his ex-wife from letting their children spend time with her lesbian partner (*Plonit v Grand Rabbinical Court* (2001) (Isr)). In another case, the Court held that a decision of the Sharia Court of Appeals, that it is not possible to appoint a female arbitrator for divorce proceedings conducted before the religious court, was invalid (*Doe v Supreme Sharia Court of Appeals* (2013) (Isr)).

44 The ECtHR in *Serife Yigit v Turkey* (2010) (ECtHR) held that the non-recognition of the applicant's religious marriage by the Turkish state was justified by the state's aim to give primacy to civil marriages to prevent polygamy and protect women (Leigh 17–18).

45 In some cases, it was international pressure and the activism of women's groups that made the courts of appeal overturn discriminatory judgments. When a *sharia* court in Nigeria in 2002 had found a pregnant woman guilty of adultery and sentenced her to death by stoning (*Amina Lawal v The State* (2003) (Nigeria)), protests were organized in front of Nigerian embassies in different parts of the world and the appeal court acquitted the woman (Sodiq 97).

F. Conclusion

46 Religious courts are an ancient phenomenon that has continued to persist until today. The variety of religious courts across the globe is manifold. There exist state and non-state religious courts, adjudicating according to Jewish, Christian, Muslim, and Buddhist laws. Their jurisdiction ranges from covering internal church affairs only to covering family and inheritance law and even criminal law. While the existence of religious courts may be regarded as protected by respective provisions on freedom of religion, the adjudication of religious courts also poses fundamental rights concerns for individuals, especially women, and groups, especially religious minority communities. The right to a fair trial, the rights of religious minorities and the right to (gender) equality are at stake here. Hence, '[t]he more power a government grants to religious and cultural groups, the more difficult it will be for an individual religionist to access fundamental rights granted by the state' (Helfland 1276). A balancing act is thus necessary in order to adequately govern the operation of religious courts.

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