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Chapter Four:

Feminism, Community, and Law

I. *Feminist Communitarianism: Why Communities Should Matter amid
'Universalism'*

My analysis of legal culture among women feminists entails the need for feminist communitarianism. Feminist communitarianism is not an oxymoron. Feminists and communitarians have ascribed significance to social reciprocity, and have criticized the private-public dichotomy while underscoring a contextually embedded self (Frazer and Lacey 1993). Yet, non feminist communitarians have neglected gender equality for the same reasons that many other (male) political theorists have downplayed the predicament of women, as reflection of male domination in human epistemology and philosophy (Grimshaw 1986; Okin 1989; Okin in Sunstein 1990). The importance that communitarians have attributed to communal public good has not by itself rendered a non- feminist conception of social relations, culture, law, and politics.

Unfortunately, certain communities have deprived women from their basic right to equality. But it has been a severe problem in some communities, certainly not in all communities. It has also been a severe problem of any non-egalitarian human setting. Deprivation of women has not been a necessary conceptual defect of communitarianism. Most communitarians have not justified deprivation of individuals from their rights; contrary- they have yearned to empower individuals, men and women alike, through legitimatization and legalization of their communal ties (Etzioni 1991, 1995a, 1995b; Gutmann 1985, 1992, 1994; Taylor 1994). This means, *inter alia*, more practices of consciousness- raising among women, more

feminine communication among women who have experienced a similar predicament and aware of their conjunct sphere.

Okin's criticism of MacIntyre notwithstanding (Okin 1989), a community may become a friendly sphere of public communication. It may spur mutual help among women in a space which makes such a communication among deprived women the only possibility to challenge injustice, subordination, sexual colonization, and violence (Abu-Lughod 1995; Ferguson 1995; Freedman 1995; Grimshaw 1986; Ruddick 1989; West in Greenberg, Minow, and Roberts 1998). We shall see it in the following analysis. Communities may also be sources of collective resistance in order to attain social rights and deconstruct male domination (Bart 1995; Freedman 1995; E. Honig 1995). There is neither solid empirical evidence nor a theoretical basis for the claim that communities necessarily situate individuals in a non-negotiating, non-empowering, and de-radicalizing space.

Weiss and Friedman have shown in their survey of feminist communities how women can empower each other, despite that feminist communities are not necessarily harmonious (Weiss and Friedman 1995). Conceiving communities as necessarily coercive spaces is highly myopic. Within feminist communities different interactive voices have existed as to the scope and meaning of their boundaries. Do they include only heterosexual women or also lesbians; whether they should include only one ethnicity or multiplicity of ethnic identities etc.. Similarly, which feminist issues should be components in grassroots consciousness-raising? Furthermore, whether and how women should prioritize their ethnic, social class, and other cultural identities in order to constitute feminist communities that narrate a common constitutive

sisterhood (Ferguson 1995). As this chapter and the next chapter exhibit, there are diversity of communitarian solutions in theory and in practice to predicament of women even within coercive communities.

Feminist non- communitarian thinkers have regarded communities in skewed and hyper-skeptical ways. Marxist feminism has presumed that communities are necessarily patriarchal and constitute structures of domination (Hartsock 1983). This may be true in some communities, e.g., religious fundamentalist communities, but such an overwhelming essentialist claim ignores the fact that male domination and violence have existed anywhere in diversity of social structures. Hence, Hartsock's Marxist criticism of male domination has well been addressed against some instances of some communities, including male domination within the proletariat social class (E. Honig 1995; Pateman 1989).

Marxist feminism, however, can not constitute theoretical criticism of communitarianism since it has downplayed the issue of which *teleos* a community generates and how communal practices may assist women to overcome joint problems. There is no necessary contradiction within communitarianism between moral unity and gender equality. Communitarians have had different conceptions of the 'good life' that a community should advance (Barber 1984; MacIntyre 1984, 1988; Sandel 1982, 1996; Unger 1976; Walzer 1983). A careful probing into feminist communities will show below, that as in the case of national minorities (see chapter 3 above) non-ruling communities may generate autonomy within their spaces. Furthermore, examining feminist communities as heterogeneous and multifaceted

settings should prevent us from reducing feminist experiences to essentialist simplicities.

Communitarians have been criticized for encouraging tradition on expense of women's liberty (Okin 1989). I share Okin's criticism of MacIntyre's proclivity to prefer some ancient traditions as bases of justice. But opposing contents of specific traditions does not substantiate a theoretical criticism of communitarianism. It neither entails traditionalism (Unger 1976), nor does it entail an essentialist anti-traditionalist stance, as Okin would like a theory of rights to be. In her all encompassing criticism of traditions, Okin is in fact opposing cultural relativism outside the middle way of individual liberalism. Ironically, the same philosophy of individual liberalism, that according to Okin's study has failed to resolve feminine predicament, is her last resource of (imagined) solutions.

Not all families are patriarchal, and tradition is not necessarily the cause of women's deprivation in the family. Comparative studies have shown that women have severely been domesticated in non- traditional families, whilst in traditional societies women may join the general labor market (Semyonov, Lewin-Epstein, Brahm 1999).

Furthermore, violence against women is not necessarily contingent on tradition. As we shall see, violence against women and children is a general phenomenon, and tradition might be a cause of communal resistance against violence. Minow and Shanley have argued that communitarian- based theories may ignore women's rights. Their criticism applies to instances in which the definition of the communal good contradicts feminine liberty (Minow and Shanley 1997).

But the possibility that tradition will confine women's rights more than any other type of patriarchy is debatable. Furthermore, communitarianism encourages reciprocity and friendship and not (necessarily) coercion through tradition. The empowerment of women to enjoy personal rights is contingent on political culture and on the values being held in the family. Minow and Shanley have in fact framed a neo communitarian approach whilst constructing an argument about relational rights that should be practiced through interaction in the family as a sub-community in which each member has a mutual and equal responsibility (Minow and Shanley 1997). Without conceiving a family as a sub-community what prevents relational interactions from becoming generation of pre-existing male domination?¹ Further, without a communal morality of a family what prevents its collapse and sharp increase in male violence, divorce rates, as has happened in most Western countries and in Israel? Communitarians as Selznick have conceived non-ruling communities as frameworks of solidarity, equality, and sharing. These values should challenge power and make non-ruling communities and sub-communities, families included, less violent, self-preserved, and more just (Selznick 1992).

I share Okin's argument that justice should be a virtue in a family (Okin 1989). But, contrary to Okin's criticism, communitarianism can and should embrace such a notion since mutual affection is contingent on fair and equal sharing between women and men. Hence, through cultivating values of communal reciprocity that transcend

¹ For empirical studies that show male domination within families according to economic, symbolic, and social criteria, see: Okin 1989.

individual utilitarianism, communitarianism may empower women, promote justice, and prevent male violence, as it should.

The same can be said whilst criticizing the liberal defense against communitarianism. As Nussbaum (1999) has elaborated, liberalism has not necessarily been about egoism. Yet, the difficulties of liberalism in challenging human misery of collectivities, as women, may be significantly resolved and at least significantly mitigated through a communitarian theory and practice (Weiss and Friedman 1995). Nussbaum, who has developed a neo-Rawlsian approach to justice, finds that despite her efforts to endorse human search for individual capabilities and free choices, women need the assistance of other women if overcoming their personal predicament is a prime goal.

Nussbaum narrates her argument through the partly told life story of Metha Bai a young Indian widow with two young children. Her caste prohibits women from working outside their home. Metha and her children are dependent on her aging father. Facing a danger of starvation she and her children may die. Nussbaum perceives her as a victim of a traditionalist community, which ignores the universal *dictum* of gender equality and the right of women to work outside their household. Nussbaum would like to provide Metha Bai with capabilities and choices (Nussbaum 1999, 29-54). These can be ingrained, Nussbaum presumes, in universal norms detached from cultural relativism of traditions.

Here Nussbaum fails. First, she imagines as if a desirable norm (women are entitled as men to work where they would like to) has become a universal norm while the

figures in her book show the opposite. Second, she imagines ‘choice’ as a given and objectified notion while people with the same set of norms are making various choices with different meanings rendered to the same choice. Third, she presumes that universalism is in fact being practiced in human life. Fourth, she presumes that communitarianism necessarily sanctifies tradition on the expense of gender equality, yet she learns from Metha’s story the opposite. In 1994 Metha went to a widows’ conference where she applied and received a loan. She returned to her family (Nussbaum 1999, 53-54). Nussbaum has transcended this story to conclude that communities of women do matter, and that communities of “affiliation and empowerment” are vital to gender equality (Nussbaum 1999, 54).

Can universalism suggest a transnational set of self-implemented rights-based principles of gender equality? As I shall exhibit below, whilst referring to comparative empirical studies, male domination and discrimination against women have been evident in cross-national analysis. Furthermore, universalism aims to transcend concrete local definitions of a moral good, and it aims to ignore differences of identities and cultures (Benhabib and Cornell 1994). Since identities are constituted through local practices, and due to their effects, in turn, on generation of practices, universalism evades women’s local experiences and their local legal practices. Within this absence, non-ruling communities may constitute and articulate legal practices in state law and toward state law. These practices substantiate and utilize general egalitarian assertions, in a context of communal good. Hence, non-ruling communities enable individuals with concrete identities to utilize universalism for their benefit.

I argue that if feminists are taken as a community, communitarianism under the critical analysis that I suggest, is the most appropriate theory for comprehending communal life, and it serves the aim of gender equality and justice. The dilemma that this chapter grapples with is whether a communal legal culture of feminists exists, and what does it mean for the future of feminist struggles.

This chapter argues that communal legal culture has been constituted among women feminists through their identity practices, legal consciousness, gender identities, state law, state ideology, legal ideology, and social being. In this context, I argue, liberal feminism has had problematic and even damaging ramifications on feminism, despite some achievements. While liberal feminists, as Okin, have trusted liberal legalism as a force that may generate gender-free societies, my study raises severe doubts as to such aspirations. Since my approach is critical communitarian, this book suggests a comparison between different groups of feminists that have interacted between themselves based on a common moral ground. I show that feminist radical approach may better empower the feminist community facing state domination, male legal ideology, violence, and transnational liberalism in law.

Since a feminist community may be characterized by conflicts and heterogeneity, postmodern fears that communities may hinder identity politics (Young 1995) are focused on women's experiences in some communities but can not constitute a valid criticism of communitarianism in principle. Such a radical criticism of communitarianism from a non-essentialist hyper-individualistic point of view returns to the concept of mutual communication that is open to unassimilated otherness (Young 1995). We shall see that feminist communities may be such a space, in which

different individuals and groups are practicing legal culture in order to change allocation of goods and allocation of power in multifarious avenues.

Gender discrimination is a global phenomenon, widespread in many democracies despite routine egalitarian and liberal assertions in political regimes about gender equality (Crompton and Mann 1986; Guerrers 1997; Hall 1993; Kersten 1996).

Women have been subjugated to men's political and socioeconomic control (Crompton and Mann 1986; Kelly and Weisberg 1993; Rossi 1985). Men have distanced women from centers of political power, and they have formed dominant political cultures (Brown 1995; Butler 1990; Fraser 1995; MacKinnon and Dworkin 1997). Empirical cross-national studies have expounded that only with a few exceptions women have not been part of ruling elite and have been underrepresented in public power foci (Epstein and Coser 1981; Siaroff 2000). Liberal and critical thinkers have contended that in practice women have been discriminated in democracies. While liberal thinkers and liberal feminists would describe it as a problem of discrimination in allocations of public goods (Barry 1995), critical thinkers and radical feminists would describe it as a matter of oppression through power (Young 1990).

Legal cultures have articulated and constituted submission to, reformation in, separation from, and resistance to that reality of men-controlled political settings in modern democracies. This reality has not been propitious for women's expressions of their distinct cultural voices (Gilligan 1982). Men have constructed state law because, as was discussed in chapters one and two above, law has been a major project of states. State law has aspired to control variety of aspects of human life from naming

us through regulation to construction of legal relations and formation of public policies (Bender 1988; Frug in Greenberg, Minow, and Roberts 1998; Mackinnon 1987). Feminists have believed, as we shall see, that jurisprudence should be humanistic and not masculine (West 1987). From Gilligan's concept of a different cultural voice and legal inclusion, to MacKinnon's concept of gender subordination and legal deconstruction, all feminists have believed that gender equality should prevail.

Yet, as we shall see, the variances among feminists have been significant and have been associated with contentions concerning state, law, equality, identities, and strategies to form and apply public policy of gender equality. The notion of 'woman' is by itself constructed, reflected, and generated through feminine multifarious social being, identities, legal consciousness, and practices of identities within a communal context. The lack of one fixed essentialist and objective notion of 'woman' spurs diversity of legal practices. While postmodern feminism has reduced identities to individualized experiences, I find below that a critical communitarian perspective is important for understanding feminist culture (Crenshaw 1993; Cuomo 1998). It includes the tendency of postmodern feminism to grasp the vitality of identity's construction/deconstruction through life experiences (Brown 1995).

Some distinct characteristics notwithstanding, Israel has been comparable in the above mentioned aspects. Thus, women's presence in governments, legislature, Supreme Court, and public administration has always been typified by under representation (Atzmon 1990; Bogoch and Don-Yechiya 1999; Herzog 1994a, 1994b, 1999; Nachmias and Sharfman: 1988).

This chapter is devoted to explicate legal culture among Israeli feminists from a critical communitarian perspective. The next section demystifies myths of egalitarian universalism and suggests a critical analysis of gender discrimination against women in state law. Then I deal with two facets of the feminist community; the third section explicates radical feminist consciousness, identities, and practices, particularly de mobilization of state law, and grassroots activities. The fourth section, preceding the conclusions, is explicating dynamics in state law, violence and equality, and legal mobilization in activities of liberal feminist organizations, which have dominated the feminist community. The conclusions draw lines as to feminists, as a community under state domination and transnational liberalism.

II. Women and Men: Equality or a Salad Bowl?

Knowledge in the modern world is an asset that may breed equality. There has been no significant formal gap between years of education among men and women in Israel. It has been possible, however, to find differences in educational orientations. Men have inclined to make up a greater percentage of students in technological fields, while in liberal arts women have been a majority. Yet, in the 1990s the numbers of men and women with academic education were roughly equal.² More women than men earned first (undergraduate) degrees (51.3%). The figures concerning graduate studies were different. Women made up only 41.3% of Israelis who completed

² *Statistical Yearbook of Israel*, No. 45 (1994), Table 22.3: p.639. This trend has not changed heretofore.

graduate programs. Furthermore, most women aged 30-40 years were engaged in household works. It has reflected women's displacement from public life to solely pregnancy and motherhood (Efroni 1980; Izraeli 1992; Semyonov and Kraus 1993; Stier and Lewin-Epstein 1999).³ Thus, men outnumbered women by a rate of 340% in managerial levels.⁴

The subservient status of women in Israel has been empowered through two primary cultural elements: national security and Jewish Orthodoxy. Contrary to Israeli Arab-Palestinian women, most Israeli Jewish women have participated in the generation of the ethos of national security and the ethnocratic state, significantly based on Jewish-Orthodox symbols. These narratives have had effects on women's legal practices. All Israeli women (especially, Arab-Palestinians) were secondary to men in their ability to access public power foci. Yet, as Kimberle Crenshaw has pointed, the intersectional aspect of gender discrimination has been crucial (Crenshaw 1995). Arab-Palestinian women have suffered twice. Firstly due to their nationality, and secondly due to their gender. The same narratives that have discriminated Arab-Palestinian women in comparison to their Jewish counterparts have also generated discrimination of Jewish women in comparison to Jewish men (Lewin-Epstein and Semyonov 1993; Semyonov 1991; Shavit 1992).

³ Yearbook, *Ibid.*, Table 22.3: p.700.

⁴ Yearbook, *Ibid.*, Table 12.18: p.390.

The Jewish-Israeli society has been characterized by a military discourse that has emphasized the unlike roles, which men and women have played. Women in the armed forces have primarily been used in administrative capacities, while in the civilian sphere they have largely been viewed in the context of one-dimensional role, as mothers of future soldiers. The ethos of militarism has framed, in practice, gender stratification by underscoring that inherent biological-physical differences between men and women have 'objectively' necessitated gender differentiation and superiority of men as military fighters (Atzmon 1990; Barzilai 1992; Herzog 1994, 1999; Shohat 1993).

The legal embodiment of compulsory military service has further designed gender stratification and discrimination of women. The duration (regular and reserve) of military service, its conditions, the professional possibilities available for women, and the conditions of advancement to senior military ranks, have lowered women to secondary status in the military. Men have served for longer periods, many professional courses have only been aimed at them, and women's promotion in military ranks has always been inferior to advancement of men. The military has been a male-dominated organization in which women have had to be adjusted as subordinate.

The male-dominated military has epitomized and incited a collective security mentality that has underscored supremacy of national security over social issues and has hampered public debates over gender discrimination and equality (Bar-Tal 1991; Bar-Tal and Antebi 1992; Barzilai 1996; Ventura and Shamir 1990). Hence, women have found it arduous to publicly protest against their deprived status (Hermann:

1995, Herzog: 1994, 1999). Public remonstrance against gender inequality has often been viewed as opposed to the perceived need for 'unity' in the face of grave national security challenges.

Orthodox Judaism has also contributed to discrimination of women. Jewish *Halakic* tradition has largely confiscated public life from women (Boyarin 1997). In Orthodox hermeneutics of Judaism women are meant to take part in family-related matters, and to be marginalized in public life (Boyarin 1997). Reversibly, the HCJ ruled in *Shakdiel* (1987) that women could be elected and appointed to local religious councils.⁵ In *Poraz*, which was ruled later in the same year, it added that women could also serve in municipal bodies involved in elections of municipal Rabbis.⁶ Thus, the Court was motivated by secular values, and ruled against the positions of the Chief Rabbinate and the Orthodox establishment.

In *Shakdiel* and *Poraz*, liberal interpretations in state law were preferred to political arrangements of Orthodox-secular 'status quo'. Accordingly, the Court advocated equality in opportunities for women to serve in public bodies, which render religious services. A reception of American-led liberal values has increased since the 1990s, and has propelled legal assertions as to the importance of gender equality. In 1996, the Law of Equal Salary to Feminine Employee and Male Employee, has formally abolished gender discrimination in salaries and benefits between employees for the same work, and has guaranteed a pay equity. Further, it has constituted an employer's

⁵ HCJ 153/87, *Shakdiel V. the Minister of Religious Affairs* P.D. 42 (2)221

⁶ HCJ 953/87, *Poraz V. The Mayor of Tel-Aviv Yafo*, P.D. 42 (2) 309

duty to provide the employee with any requested information concerning jobs, salaries, and benefits in her/his working-place. It has established that in cases in which an unequal salary for an equal job has been shown the employer should carry the legal burden to disclaim the possibility of gender discrimination.

Enactment of laws against gender discrimination has been a major component in feminists' strains to procreate equality. Sexual harassment has been another issue in this context.

The *Knesset* enacted The Prevention of Sexual Harassment Law- 1998 (hereafter-SHL). While its legislation was initiated by coalition of feminist sociopolitical forces it has not expressively mentioned women. Like other liberal laws the SHL has referred to women and men according to the principle of sameness. Equality in public policy's treatment has been justified through the 'sameness' of women and men. Hence, particular problems of women have not expressively been referred to in the SHL. Liberal feminists, as we shall see below, have not emphasized the potentiality and existence of a separate feminist consciousness and its distinct manifestations. The SHL has been intended to hamper the phenomenon of sexual annoyance of women by defining harassment as a criminal offence and a civil wrong. However, the sameness principle has prevented a specific mentioning of women (for a similar criticism, see: Brown 1995; Butler 1990). The SHL has covered a variety of prohibited acts from repeated remarks about one's sexuality to sexual coercion and violence against men and women alike. Whilst being blind to occurrences of sexual harassment chiefly against women, clause 7b has imposed on employers in a working

place of more than twenty- five employees, a duty to publish a regulated policy that forestalls sexual harassment.

Additionally, legislation has entrenched opportunities for women in the public sector and has constructed a formal space for appointments of women to leading public positions. In 1993, clause 18a in the Governmental Companies Law- 1975 (hereafter-GCL), was enacted. It has ordered ministers to nominate "as possible" members of an "under-represented sex", in directorates of governmental companies, in such a way that "will achieve proper representation" of members- either men or women- which are under-represented in a governmental company. In 1995, that percept has been embodied in the Municipalities Order, and therefore it has constructed a formal space for better representation of both sexes. A more progressive enactment was stipulated in The State Service Law (Nominations) (hereafter-SSL). The Officer of the State Service has formally been authorized to initiate a policy of affirmative action in state's bureaucracy. Affirmative action has been expanded to public companies through clause 96b in The Company Order. Here, the law has been far more reaching. Public companies have been ordered to have at least one public representative from an opposite sex in their directorates, if all the others are from the same sex. All these laws have not mentioned women as a discriminated public, and yet feminist sociopolitical forces initiated them, as we shall see below, and they have been intended to improve women's status.

Affirmative action is a public policy, which is aimed to remedy deprivation through a systematic preference given to underprivileged citizens, while taking into account their communal membership. This public policy is utilized on the expense of citizens

with the same relevant merits who belong to more privileged or less deprived communities (for a somewhat similar definition, see, Jacobs 1998, 726). In similarity to some western democracies, Israeli state law in the 1990s was incrementally unmasking male-dominated stratification (Hing 1998). Notwithstanding, women's ability to enjoy legal acknowledgement of their deprived status has been confined within the structure of political culture and political regime. Let me expound it whilst turning to history.

In the 1950s, state law conceived Jewish nationality as a sufficient melting-pot (Lahav 1993). Gender equality was perceived in state law as a required ethos for an egalitarian society, and as a self-propelled reality within homogenous Jewish nationality. The Woman's Rights Equality Law- 1951 was legislated during the first *Knesset*. It has since been a prominent symbol of gender equality. A circumspect analysis of parliamentary protocols detects the sociopolitical forces that had generated this law and exhibits that Jewish national homogeneity was preferred over feminist interests to underscore a distinct feminine consciousness.

All feminine MKs (members of Knesset), who had participated in these parliamentary deliberations, demanded an overall reform in the deprived status of women, including and particularly- reforms in family law. However, they demanded reforms in the status of Jewish Israeli women, while they were justifying applicability of the *Sharia* on Muslim women.⁷ They articulated state's Zionist perception and advocated the law

⁷ *Protocols of the Knesset*, Vol. 8-9, (3/27/1951) pp. 1455-1459, (6/26- 6/27/1951) pp. 2087-2108, (7/17/1951) pp. 2165-2192.

since Jewish women had actively participated in Zionist struggles, and in the 1948 war (See also, Lahav 1993).

Mk Rachel Kagan (Wizo) [the Women Party], who submitted the bill, proclaimed: "the woman in Israel has patiently waited....she has accepted upon herself all the duties that were imposed upon men, and she has done so due to her good will and in accordance to the laws made by our state."⁸ Then she asserted that her proposal is as important as the Law of Return: "both laws deal with rights' restoration; the Law of Return grants to every Jew...the right to return to his homeland, and the Law of Women Equality intends to grant a female her right to be an equal citizen..."⁹. Mk Ada Mimon (Mapai) who had vigorously supported the proposal asserted how much the state "needs the creative powers and the activities of women in all spheres of life."¹⁰ MK Esther Raziel-Naor (Herut) emphasized the military burden upon women as justifying their demands for equality: "in a state which knows to demand from the woman not less than she demands from a man, maybe even more-because conscription of women is more difficult- in such a state there is an obvious need to pay all attentionfor the solution of this severe problem of equality in rights."¹¹

From a national Zionist perspective of Jewish homogeneity, gender equality was considered as integrated into the Zionist vision. Accordingly, a Jewish state was

⁸ *Ibid*, p. 1455.

⁹ *Ibid*, p. 2087.

¹⁰ *Ibid*, p. 2092.

¹¹ *Ibid*, p. 2098.

erroneously conceived as harmonious sphere in which men and women constituted one national cohesive public with the same political consciousness.

The process of feminist struggles for gender equality in the 1990s has reflected a liberal shift from believing in national homogeneity to recognition of feminine difference, national heterogeneity, and the need of affirmative action. Accordingly, women's predicament, consciousness, and interests may be in opposition to those of men who share the same nationality. Thus, a formal achievement for parliamentary feminists was attained when in 1998 a new law was legislated, The Agency for the Advancement of Women's Status. It has articulated the above-mentioned shift. The law was enacted after a parliamentary conflict with the religious parties, which had rejected the original proposal of the Parliamentary Committee for the Advancement of Women Status (hereafter- the Committee) to enact it as a Basic Law. Its formal importance, however, has rather been significant. The law has recognized women as a deprived public, and it has been aimed to constitute governmental coordination of institutional efforts to form and enforce public policy of gender equality. It has also recognized violence against women as a national problem that should be challenged by state's organs.

Before expounding that this trend of legislation has not addressed significant aspects in women's predicament, let me accentuate another aspect of state law. A process of liberalism, however confined, within the sphere of state law has been articulated in judicial rulings.

One transparent instance was a ruling on the appeal of Israel's Women Network.¹² The HCJ determined that appointment of board members to governmental companies should provide better representation of women. It based its ruling on clause 3A of the GCL (Governmental Companies Law). This clause has in practice required that women with appropriate skills would be appointed to boards of governmental companies in a way that both sexes will have an "appropriate representation." Later, in 1998, the same liberal American-inspired feminist lobby filed a similar legal case, against two other governmental companies. The Court had enforced its previous ruling from 1994 on additional governmental companies and propelled the GCL as its judicial policy.¹³

Courts in democracies would rarely rule in opposition to prevailing public moods, in order to maintain their public status (Jacob et al 1996; Mishler and Sheean 1993). These rulings of the HCJ reflected a society-wide trend. According to a survey conducted during 1991, 60% of Israelis declared that it was necessary to rectify women's status (Dgani 1991). Israel has been part of transnational American-led liberal rhetoric about gender equality. Despite this liberal mood, differences existed among the respondents. Men were less supportive than women were of state policies aimed to enforce gender equality. Men tended to be rhetorically sympathetic to gender equality, but were less approving than women of ways to realize it. Thus, on the issue of advancing gender equality by means of governmental investments in women's occupational training programs, 48.9% of women were in agreement with

¹² HCJ 453/94 *Israel's Women Network V. Israel Government* P.D. 45 (5) 501.

¹³ See below, pp.

such programs as compared to 34.5% of men. With regard to governmental investments in day care facilities to enable women to work in the job market, 71.6% of women were in favor, and only 56.8% of men (Dgani 1991).

Similar results were found on whether the state should pass legislation in support of gender equality: 65.9% of women and only 48.2% of men agreed. Concerning reserving positions for women at work, including in public administration, 52.5% of women were in support as compared to 31.3% of men (Dgani 1991). As already been explored in chapter two above, particularly since the beginning of the 1990s, Israeli political culture has rhetorically emphasized the value of gender equality as part of global trend. Yet, it is very doubtful if the utilization of this value was as widespread.

Can affirmative action significantly hamper gender discrimination against women? There is disagreement over the social and political utility of affirmative action, even according to those who support completely the value of gender equality. Affirmative action legally advances the status of women, in that it allows women to advance in the workplace. However, it focuses on individual rights of women, and not on collective rights of women. Hence, it is possible that the liberal achievement of advancing a woman's status in a public company will prevent the collective advancement of women as a single social community. The fact that an upper-class woman with high academic education has been nominated to a glorious public position does not indicate that the same right to enjoy affirmative action is accessible to most women. It would be the case even if in imaginary world, affirmative action would become applicable in any single working place, since it renders a group-affiliated individual right and not a community's right.

A more severe criticism of affirmative action follows. This policy renders legitimacy to existing social stratification between men and women and among women.

However, the few women who benefited from affirmative action would not use their positions to alter political culture, since the existing political culture had brought them to leadership positions. They will perpetuate the political culture, and the masculine premises, which have led to discrimination of women. Hence, even in countries where affirmative action has been used, studies have reported about women's discrimination (Okin 1989). Furthermore, most women are economically dependent on their husbands. Affirmative action perpetuates such economic subordination, as it serves mainly privileged women and not the all feminine public (Brown 1995; Weisberg 1993).

Nevertheless, critics of affirmative action find it difficult to cope with the possibility that a social change is often incremental. The argument may be that court rulings and parliamentary legislation might be able to incrementally bring about very long-term changes in the position of women. I will investigate this issue later whilst dealing with the achievements and failures of liberal legislation and liberal rulings.

Let me demonstrate the possible ramifications of liberalism on woman's status.

In 1995 the Supreme Court was ruling on the *Alice Miller* case.¹⁴ This legal case did not deal with affirmative action, but it has reflected the liberal approach to the status of women in Israel. Ms. Miller appealed to the HCJ asking to instruct the Air Force

¹⁴ HCJ 4541/94, *Miller V. the Minister of Defense*, P.D. 49 (3) 94.

to examine her in its school of aviation, since she is capable of passing the required tests and be trained as a pilot. The Air Force noted, for its part, the difficulties involved in recruiting and training women as pilots, and particularly in posting women as active combative pilots. In the past the Court preferred not to interfere in the military's decisions regarding training and recruiting military personnel. In 1975 it ruled that the legal system could not impose its opinion on the military.¹⁵

In *Miller*, it could have ruled as it did in 1975. Instead, it decided in her favor. Similar to other Supreme Court rulings of the 1990s, the Court ruled that it would enforce the norm of gender equality. It did not obligate the Air Force to include women among its pilots. However, it did insist that the military accept the right of a woman to be tested by the Air Force for entry into the pilots' training course. In this instance, the Court abolished an unlawful gender-structured policy of the military in one of the strongholds of Israeli male heroism.

Unfortunately, the Alice Miller's story did not end as happily as it might have been expected. A few weeks after starting her course, the media reported that she was dismissed off the program due to "psychological inappropriateness." Nevertheless, the legal case was of some impact. Following the ruling, internal instructions in the Air Force were altered so to enable its aviation's training course to be open to tens of female applicants. Until 2002, two women were successfully trained as navigators, and one as a battle pilot. Later I analyze whether it has incited a social change in women's status.

¹⁵ HCJ 561/75, *Ashkenazi V. the Minister of Defense*, P.D. 30 (3) 309.

To conclude this section- feminist organizations have had to struggle within a fabric of social and political predicament, in multifarious avenues of legal practices. On the one hand, feminist organizations have had to grapple with a tendency to discriminate, and to displace women, and to challenge economic dependence of women upon men, and frequent events of male violence against women. In 1997 it was reported that 200,000 Israeli women were battered, and only 15,444 criminal investigations were initiated against suspected violent husbands.¹⁶

Empirical evidence has shown that legislation in the 1990s that attempted to impose severe sentences on rapists, and to reduce the severity of domestic male violence and sexual harassment, has had only limited effects on public institutions, including courts' sentences (Bogoch and Don-Yechiya 1999). Thus, liberal legislation and court rulings notwithstanding, the number of women murdered in Israel by their husbands, and lovers or friends, has not changed since the beginning of the 1990s.¹⁷ The number of sexual abused women has been in a constant growth, since the beginning of the 1990s.¹⁸ Despite the SHL, women have suffered from sexual harassment twice as

¹⁶ *Report of the Parliamentary Committee for the Advancement of Woman Status* (1998), p. 57.

¹⁷ *The Israel Women's Network- Information and Data* (1998), p. 81. The figures are based on formal statistics as published by governmental agencies.

¹⁸ *Ibid*, p. 84. In 1992, 562 women arrived to hospitals with violent injuries, including 15 cases of sexual abuse. In 1997, 1410 arrived to hospitals, including 101 women

men, and the percentage of women who reported sexual harassment has increased from 30% in 1994 to 48% in 1997.¹⁹ It may be that the SHL has encouraged more complaints of women against their employers, but the phenomenon of sexual harassment has remained significant.

Moreover, despite the law from 1996, which has asserted pay equity, women have significantly earned less than men. In 1997 and 1998 women earned 30-40% less than men on the same job.²⁰ Despite the fact that women in the civil job market were (in average) with higher academic education than men, they constituted 70% of the minimal wage earners, and were more inclined to unemployment than men.²¹

On the other hand, feminist organizations could have mobilized more sympathetic media coverage, and more liberal rhetoric of gender equality. Such a compound fabric of cultural and institutional ambiguities has inflamed variety of distinct dispositions and practices among feminists who have been focusing on the dilemma how to react and interact with state law.

who suffered sexual abuse. The figures are based on the Ministry of Health's formal reports.

¹⁹ *Ibid*, p. 90-91.

²⁰ *Report of the Parliamentary Committee for the Advancement of Woman Status* (1998), p. 33. The same figures arise from the annual report of the Treasury Office (1997)

²¹ The Israel Women's Network- Information and Data (1998), pp. 33-34, 38, 42.

Feminists have been a non-ruling community. They have shared- as we shall see- common good of gender equality, some common practices, and similar consciousness. They have shared similar predicaments of social being. Feminist organizations have interacted with each other, and so are feminists from various organizations. They have had joint activities, joint forums of discussions, and publications, and a sense of being a community with its own space of practices. The next section dwells on communal legal culture of feminists.

III. On Feminist Epistemology, Legal Action, and Radical Feminism

Feminist epistemology and action have not been a late phenomenon in Israeli political life, despite the rise in quantity and prominence of feminist organizations, which have been inspired by the prominent rise of feminism in American jurisprudence, politics, and philosophy since the 1970s. Historical evidence has pointed to feminist activities during the Yishuv [pre- state] period among Jews and Palestinians (Hassan 1998). The sole successful electoral endeavor of a feminist political party was in the 1950s, when a united list of the Organization of Zionist Women and The Organization for Women's Rights, won one *Knesset* seat. Heretofore, including in national elections 1999, all other attempts of feminist political lists to be elected to the *Knesset* failed.

Overall, political representation of women in the *Knesset* has been low, and it has never exceeded 11%, 13 Mks (Hermann 1998, 83). Political representation of women as Ministers and Deputy-Ministers has been low as well. The number of Ministers has never surpassed three members in the government, and the number of Deputy-Ministers has never exceeded two members in the coalition. Similarly, the number of

women elected for municipal councils and as mayors or heads of municipalities has been much lower than their 51% in the overall population (Abu-Beker 1998; Bezhouwi 1998; Herzog 1994, 1997, 1999; Sharpman 1998; The Israel Women's Network- Information and Data 1998). Comparative studies have shown that out of twenty seven democracies only Japan, Liechtenstein, and South Korea were characterized by smaller percentages of women in the legislatures, whilst only Japan was ranked lower than Israel in percentage of women as cabinet ministers (Siaroff 2000).

Political partisan activities have been a small fraction of the potentiality and practices of feminism. They have demonstrated, however, the challenges facing feminists who aspire to mobilize public resources in a state that has diverted its efforts to issues of nationality, Judaism, and national security. The very limited success of women in procuring political representation has incited activities of feminist grassroots and policy NGOs that have challenged state law. Both these types of NGOs in the feminist community have operated in spheres characterized by a rather harsh male-dominated reality, as explicated above.

Policy organizations have advocated legalistic reforms for the purpose of cultivating women's rights. Their efforts have been focused on institutional foci of state law. Grassroots organizations have been much less involved in institutionalized rights' discourse, and they have been much more active in localities in which state law has rather been conceived as absent: families, centers and shelters for women who were victimized by male violence, and localities of prostitution.

A feminist consciousness says Mrs. Ester Eilam, a conspicuous and out-spoken leader of Israel grassroots feminism, is grounded in practice: "experience builds consciousness. The direction is not linear."²² Eilam has devoted her activities to assist women who were raped or otherwise abused by their male spouses. Rehabilitation of prostitutes has been another focus of her efforts to redeem women from their predicament and constitute a feminist consciousness.

In similarity to, and with some familiarity with Catharine A. Mackinnon's writings, Eilam-led radical feminism has raised epistemological criticism of fashionable liberal feminism. Radical feminism has attempted to consolidate autonomous and separate feminism, which has neither been Marxist nor has it been liberal (compare: Benhabib 1992, 1995; Greenberg, Minow, Roberts 1998). Radical feminists like Eilam have considered state law as predominantly male-made law, due to men's control over state's power foci. Hence, they have considered liberal endeavors to mobilize state law as superfluous.

Eilam has been skeptical of any feminist organization, particularly those aimed to mobilize state law, because she has viewed feminist organizations as composition of compromises that may reduce radical practices to submissive cooperation with the political establishment. However, facing the lack of general and institutionalized interest in resolving women's predicament, radical feminists have considered grass roots feminist organizations as indispensable to the feminist community (Calas and Smircich 1996).

²² *Ester Eilam, Personal interview, February 2, 1999.*

In spring 1972 Eilam established a grass roots feminist organization. In our conversations she has eloquently memorized how she and other radical feminists, like Marsha Friedman, were affected by western, primarily- American, feminism of the 1970s. Values of gender equality and even criticism of male-made state law have been more accepted in Israel since the relative decline of the national security myth: "it was so different and so detached from the matters that were considered to be important for Israelis before the 1973 war."²³

Radical feminism has not been interested in liberal legislation and associated court rulings. Women's subordination to male hegemony- Eilam has claimed whilst using a critical terminology, initially elaborated by Mackinnon (1989)- can not be deconstructed as sociopolitical and legal subjugation without a construction of independent feminist epistemology. Such epistemology should not be contingent on state law, state power, and male terminology. Current state law is male- made, and its mobilization generates acculturation of male's conceptions about the 'objective' and 'natural' subservience of women to men.²⁴ Radical feminism has offered alternative practices based on de-mobilization of state law, and improvement of women's conditions through grass roots social activities in communal localities in which state law has particularly been unhelpful (e.g., saving battered women) and damaging (e.g., helping prostitutes) (Brown 1995; MacKinnon and Dworkin 1997).

²³ *Ibid.*

²⁴ For similar arguments in the theoretical literature, see: Young 1990.

The epistemology of radical feminism has somewhat been affected by Marxist outlook. Legal reforms in state law, it has been argued, do not breed proper solutions to women's social and economic deep problems because they do not alter basic social structures, which enable subjugation of women to be endured (Eilam 1994).²⁵ Liberal reforms have been considered dangerous, because they may enable political elite to evade the need of resolving structural problems of gender-structured society. By using reforms as affirmative action the elite is somewhat mitigating evident problems like sub-representation of women in state bureaucracy, while hidden causes of gender discrimination, like economic dependence of women on men and men's control over culture's formation, remain intact.

A grass-roots conception of legal de-mobilization has conceived liberal NGOs as elite organizations, detached from concrete daily problems of women, and aimed to accomplish personal and bourgeoisie political interests. As Eilam has vigorously phrased it whilst challenging liberal feminists: "they are coming from a bourgeoisie background, of white women with a leisure time."²⁶ Alternatively, radical feminism has attempted to practically help women that have been subjected to male exploitation and abuse. Through grass- roots activities a feminist consciousness is supposed to be constructed. About twenty feminist organizations and centers have operated in Israel in these directions of practically assisting women in their daily problems. Radical feminists mostly established them.

²⁵ For similar arguments in the theoretical literature, see: Brown 1995; Meehan 1995.

²⁶ Personal interview with Eilam.

Radical feminism has aspired to locate women's self-constructed consciousness outside the coercive spheres of male-made state law (Benhabib 1994; Butler 1990; Frug in Greenberg, Minow and Roberts 1998; MacKinnon 1987, 1993; Minow and Shanley 1997; Young 1990). Communication with personal experiences of women and articulations of these experiences as concepts about women's miseries, have been the fundamentals that radical feminists have offered as a basis of a feminist communal action (Benhabib 1995). Policy oriented goals, argued radical feminists against their liberal rivals, are derivatives of the principle of sameness. This principle results in a paradox. Women aspire to be like men, and hence they adopt men's way of thinking and men's modes of behavior. Indeed, policy oriented goals based on presumption of sameness may promote certain facets of gender equality in dimensions like political representation. Yet, due to marginalization of women's concrete and distinct problems, policy-oriented goals based on the sameness principle maintain a separation between the public setting in which women may be (very partially) better off due to liberalism, and the private sphere in which women are subjected to male coercion and violence.

Radical feminism in Israel has shared a similar epistemological, theoretical, and ideological criticism as Mackinnon (1989), Minow (1987), Fraser and Nicholson (1988), and Polan (1982). Mackinnon has criticized state law as male-made law that constitutes state domination. Minow has conceived social grass-roots interactions as an alternative to naive rights' discourse, while Fraser and Nicholson have perceived critical epistemology as a response to entrenched interests of hegemonic and patriarchic power. Polan (1982) has emphasized social class as a cause of gender

discrimination against underprivileged women.²⁷ Hence, Eilam's observations on liberalism and feminism in Israel: "what has happened in the 1980s is the destruction of feminist ideology. Current feminism has become a wholesale feminism. Once, I knew what is feminism. Nowadays, in order to be legitimized, it has become without an essence. The male establishment accepts 'feminism' but what have I gained?"²⁸ Contrary, radicals have been interested in women's daily experiences as grounds for feminist legal consciousness.

Notwithstanding, radical feminism has had its boundaries too. Lesbian consciousness has more clearly been transcended above conventional norms of heterosexual gender, and it has been articulated as a collective protest against patriarchy, which is based on oppressive heterosexual binary configurations (Ault 1996; Rich 1993; Wittig 1993). Radical feminism, as predominantly heterosexual, has definitely not been a lesbian approach to state and law (Abelove et al 1993; Kelly and Weisberg 1993).

Lesbians who have been members in feminist organizations have inclined more vigorously than other feminists to resist prevailing oppressive norms and myths about women's sexuality- as for example, women's passivity and submissiveness (Rubin: 1993). State law, even in its more liberal forms, has imagined and stigmatized women as weak and passive, and the world as heterosexual. Men harass, women are

²⁷ For similar Israeli feminist writings, which have shared ideas of radical feminism, see: Herzog 1999; Berkovitch 1999.

²⁸ *Ibid.*

being harassed, men are active, women are passive, men initiate, women react, men are strong, women are weak, men provide, women are dependent, etc.

The fact that a woman may love another woman, and be her permanent spouse, and the fact that sex does not need to be dominated by men and is not necessarily heterosexual, have often been outside or in the margins of state law. Especially for a lesbian feminist, heterosexuality (penetration and reproduction) is an ideology of male power, which makes feminine characteristics, as pregnancy and motherhood, a cause of discrimination and deprivation of women. Ideology of heterosexuality should be debunked as an exclusive criterion for rights and obligations (Abelove et al 1993; Rich 1993; Seidman 1996). In that sense lesbian feminism has contributed to further evolution of a critical legal consciousness in the feminist community that has deconstructed the patriarchic logic and ideology of state law (Butler 1990; MacKinnon 1989).

In similarity to their counterparts in western countries (Gamson 1996), Israeli lesbian feminists have largely been a distinct group within a larger community of feminists. The dilemma has not been only whether and how to promote a separate organizational maintenance, but also how to constitute a collective identity within the larger community of feminists.

The dilemma how to generate a feminist consciousness, which is conducive to reciprocal relations between women has been controversial within radical feminism (Benhabib 1995; Young 1990). More established radical feminism has searched after autonomous and non- contingent consciousness of femininity. It has done so through

embarking in de-politicization of grass roots activities in various localities. Such radical feminism has deconstructed patriarchic relations in a perceived unified field, in which the battle of sexes is solely gender-stratified.

Radical feminists in Israel have transcended their identity above national security and territorial issues. As Eilam, a dovish protagonist, has explained to me: "if a female settler [in the Occupied Territories, G.B.] is telling me-'yesterday when I traveled back to my home in the territories, I was stoned', I can not sympathize with her because she is talking about a general issue. But if she tells me her emotions, her experience as an individual, I want to listen and I can sympathize with her."²⁹As Martha Minow has suggested (Minow 1987) radical feminism has underscored that private experiences of women should become a feminist consciousness, whilst these experiences can not be grasped by men-made law, liberal and conservative.

The concept of a unitary feminist consciousness that supersedes and overshadows other identities has long been contended in feminist literature (Butler 1990). Such a concept has a political advantage from communal perspective of collective action. It enables to consolidate a diversified coalition of women's organizations that will struggle against gender discrimination (Bezhuawi 1998). Yet, crosscutting sociopolitical cleavages have been a major issue of contention in radical feminism. Do African-American females suffer from the same deprivation as white-American females? Are African-American and white American feminists talking the same sociopolitical language? (Crenshaw 1995). Dian Polan (1982) has justly claimed that

²⁹ Personal interview with Eilam.

women have raised different challenges based on the social oppression they have suffered. State law is not necessarily only men-made, because women have always been part of the bourgeoisie power-strongholds in which state law has been framed. Accordingly, resisting state law should not be solely focused on its male portrayal. It should involve demystification of its other social oppressive facets (Brown 1995).

Let us examine the non-harmonious structure of the Israeli feminist community that in similarity to its counterparts in other countries has had multifarious identities and practices. By its composition, the feminist community has been multicultural. It has included lesbians and heterosexuals, Jews and Arab-Palestinians, religious, observant, and secular women, and women with different ethnic origin. Like in western countries the unitary 'nature' of that diverse community has been a myth. Whilst sharing common good of gender equality, and sharing other characteristics that were explored above, different feminist organizations have articulated various concerns, and their composition and leadership have been divided according to lines of nationality, ethnicity, religiosity, and sexual preferences. Radical feminism has been united in its willingness to be systematically critical of state, society, and law as gender-structured phenomena. Yet, it has had various sociopolitical voices. Its unitary facade has constantly been challenged from within the feminist community itself.

In communal feminist debates about legal mobilization and other practices three voices have particularly been important within radical feminism; the voices of oriental (*Mizrachi*) feminists, Arab-Palestinian feminists, and lesbian feminists. All three

voices have opposed the presumption of a unitary feminist consciousness and have generated multicultural feminism with diversity of identities and practices.

Lesbian feminists have inclined to oppose state law more than heterosexual feminists, because it has ignored rights, e.g., property rights that lesbian couples have not been entitled to enjoy due to their homosexuality. Israeli law has negated rights from lesbians, based on hegemonic presumption of heterosexuality in the legal field (Yoval and Spivak 1999). Fears of being disempowered in feminist organizations notwithstanding, in the last twenty years more lesbian feminists have publicly declared that lesbians have to distinctly mobilize social resources for fulfilling their collective needs. One of the most straightforward feminist leaders, Marsha Friedman has proclaimed in 1987: "A lesbian is what I am." Others have called for communal cooperation within and between feminist organizations in order to frame an emphatic political agenda to lesbians. Heterosexuality, nonetheless, has been hegemonic in the feminist community.

Most feminists and most of their organizations, liberal and radical alike have had grave hesitations whether to publicly assist in mobilizing distinct public support for resolving lesbians' problems. They have been fearful of stigmatization as homosexuals and have attempted to evade the relevance of lesbians for the feminist struggles. Lesbian feminists have shared the general sense of women's subjugation and the need to collectively struggle against gender discrimination. Nevertheless, heterosexual feminists have reduced the significance of lesbian partnership in the core ideas of the feminist community.

Hence, lesbians could not gain prominence in general feminist organizations. They have experienced a dilemma how to practice their lesbian identity. Being part of larger feminist organizations may prevent them from raising their distinct voice, while operating apart as lesbians may harm their ability to be effective. Heterosexual feminists have often preferred not to cooperate with lesbians, fearing it may inflict damage on their ability to mobilize resources and change conditions. Even radical feminist leaders have preferred to appear as representatives of heterosexual 'normal' women. Identification with symbols of 'insanity' and 'abnormality' has been considered as a menace to organizational ability to consolidate a strong sociopolitical feminist coalition, and to generate a social change.³⁰

The political isolation of lesbians has been severe. The Committee has only rarely discussed the status of lesbians in law, politics, and society. During 196 sessions which the Committee held between July 1996 and January 1999, problems concerning lesbians were discussed only twice.³¹ Feminists, including radical feminists, were utterly embarrassed when I was asking them about their desire to promote lesbians' interests. Heterosexual 'normality', however constructed, has dictated fears of many feminists of trying to be committed to represent all women, including homosexuals. Applying Foucault's terms (Gordon 1980), the ideology of heterosexuality which has been the basis of discipline in the feminist community has dictated marginalization and disempowerment of lesbians.

³⁰ In personal interviews with feminists, they have clarified to me that they are 'not lesbians'.

³¹ Based on the unpublished roster of the Committee found in the *Knesset's Archive*.

Lesbian feminists have inclined to be radical due to their criticism of heterosexuality as an exclusive and binary ordering ideology of state, law, politics, and society (Butler 1990). However, lesbians and heterosexual radical feminists have experienced despair and even alienation from state law as a constitutive force of patriarchy. This sense of communal affiliation has not only imposed limits, as explored above, but also rendered lesbians a confined space to express some of their concerns as a partial escape from their epistemological and practical isolation.

National identities have affected feminism in Israel. Jewish feminists have rather been prominent in their activities for generating a vigorous peace process between Israel, the Arab countries, and the Palestinians in the territories.³² For liberals peace has been a matter of proper public policy. In contrast, radical feminists in theoretical and philosophical writings have conceived war as essentially a male-made phenomenon. Accordingly, opposition to wars and to militarism has been a constitutive component in feminist construction of collective consciousness.

Particularly, for Israeli Jewish feminists- both radical and dovish liberal feminists- strivings for Arab-Israeli-Palestinian peace have mirrored efforts to overcome an intersectional paradox of being a victim as a woman, and being an executor as an Israeli Jew. While radical feminists have been preoccupied with grass roots activities in order to constitute an alternative feminist consciousness, liberal feminists who were

³² *Personal interview (through phone conversation) with MK Noami Hazan, February 2, 1999.*

part of the establishment, like MK Naomi Hazan, and MK Yael Dayan,, in addition to extra-parliamentary liberal female activists, have joined forces to establish and navigate groups as 'Women in Black' and 'Voice of Peace' aimed to affect national decision-making processes.³³

The Arab-Palestinian voice has somewhat been different. As minority members, most Palestinian feminists have conceived internal colonialism as their main threat.

Coercion has not exclusively been identified with patriarchy and economic power of men, but also with religion and Zionist suppression of Palestinian national sentiments. Religion has also meant subjugation of Palestinian women in a traditional society, often a Muslim society that has perceived women as subordinate. In extreme, but not necessarily in rare cases, Palestinian women had to struggle with threats of being killed due to 'family honor' (*Al-Sharaf*) (Shalhoub-Kevorkian 1998).³⁴

They have suffered a double discrimination since religion and nationality have marginalized them among the Jewish society. Various Palestinian feminists have emphasized different aspects of their misery- some have underscored the national Palestinian aspect, and others- the pure gender issue (Amal Alsana 1996; Al-Fanar 1992; Esmeir 1999). Overwhelmingly, however, Palestinian feminism has been aimed to develop a distinct gender-state concept, from a radical perspective, while

³³ Personal interview with MK Naomi Hazan; Personal interview with *Dr. Dafna Lamish*, January 20, 1999.

³⁴ Also: Personal interview with *Ms. Manar Hassan*, February 15, 1999.

Jewish radical feminism has more inclined to develop a unified, cross-national, and autonomous concept of gender.

This is how Palestinian feminists have conceived feminism whilst parliamentary elections were looming. Pay attention to the efforts to use Palestinian nationalism for struggling against internal communal patriarchy:

"The political parties of the Palestinian sector within the 1948 borders have started their preparations for the elections for the Knesset....they need us and they count on the women's support, that virtually will obey the men's dictations....Due to such a grim reality we in 'Al-Fanar' think that it is time that we, Palestinian women, will express our interests, and use them for our benefits and for the benefit of our society....Therefore we call to every Palestinian woman, not to vote for a candidate who refuses to condemn the crimes of 'honor', and who refuses to act to remove these crimes from our society, and who refuses to remove other phenomena of woman's oppression."(Al-Fanar 1991, in Noga 1992).

Al-Fanar has not been only a Palestinian organization, but also a radical feminist organization that has sustained legal struggles against subordination of Palestinian women to domestic violence. It has been focused on evaporation a communal habitue that has constructed men as responsible for preserving family's "purity" and "honor" (*Al-Sharaf*) and legitimated the killing of women who were suspected in improper sexual relations (Shalhoub-Kevorkian 1998).

Palestinian feminists have resisted Zionism as a source of internal colonialism, yet they have mobilized state law for providing legal assistance in their struggles against the Muslim religious establishment. Thus, *Al-Fanar* has asked the assistance of the police and attorney general to investigate in 1991 and 1995 expressions of one of the prominent religious Muslim personalities in Israel, who had vocally supported murders of Arab women residing in Israel, due to suspicions of irresponsible sexual behavior. The Attorney General promptly rejected the possibility of initiating a criminal investigation, despite a proximate and tangible menace that such verbal assertions of a senior Muslim personality may spur murders of women. In his legal opinion advocating non-intervention in communal life, the argument of the Attorney General has not been of legal pluralism and cultural relativity. Non-intervention was justified due to the liberal principle of freedom of expression.³⁵

Such rhetoric of individual rights, which has marginalized plurality of cultural meanings that may be given to the same behavior in different communal conjunctions, has been very problematic. The Attorney General supposes to initiate criminal investigations in instances in which ‘freedom of expression’ may clearly incite murders. It has particularly been the Attorney General’s formal policy following the assassination of PM Yitzak Rabin in November 4, 1995.³⁶ State law, however, has

³⁵ Correspondence between *Al-Fanar* and the office of the Attorney General, 15.7.1991, 25.7.1991, 11.8. 1991, 20.8.1991, 5.9.1991. For obvious reasons I prefer to keep the name of the senior Arab-Palestinian personality, confidential.

³⁶ Correspondence between *Al-Fanar* and the office of the Attorney General, December 12, 1995.

been affected by coalitions of sociopolitical forces that have rendered the Muslim religious establishment a supremacy over Palestinian women and their feminist organizations.

In chapter 3 above I have expounded the political interests beyond the state's strategy that has been aimed to legalize the minority as religious groups, and monitor its multifarious sociopolitical and legal practices through cooperation with the religious Muslim establishment. Hence, *Al-Fanar* has demanded to separate all religions from the state, to demolish the *Sharia* monopoly of Muslim women's life, and more specifically to formally establish procedures of civil marriages (Hassan 1995).

Al-Fanar has aspired to privatize nationality, as a Palestinian NGO, and to challenge the male-dominated communal setting, as a feminist NGO (Hassan 1995). The liberal language of legislation in the 1990s could not offer solutions because it ignored the specific needs of Palestinian women. Palestinian feminism has yearned to narrow the religious autonomy given in state law to the *Sharia*. That autonomy has been challenged by national Palestinian secularism, which has deconstructed Jewish Zionist hegemony and its endorsed communal Muslim religious autonomy. Dissension from state (Zionist) ideology and legal ideology of a 'Jewish and democratic' state notwithstanding, state law has been mobilized to change Palestinian women's predicament within their community. Feminism, secularism, and Palestinian nationality have been inseparable in this epistemology that has resented male dominance, religion, and Zionism as one phenomenon.

Palestinian feminist legal consciousness has differentiated between instrumentality of state law, on the one hand, and its immoral legal ideology, on the other hand.

Accordingly, mobilization of state law has been localized and textualized. It has not been capitulated in terms of international law and universal language of human rights. But rather, due to women's subservience, mobilization of state law should be used locally for the benefit of Palestinian women residing in Israel without accepting the legal ideology of a 'Jewish and democratic' state (Hassan 1995). In similarity to- and sometimes in cooperation with- radical Jewish feminists, Palestinian radical feminists have largely believed in grass roots activities, while policy goals have been considered hard to achieve due to state ideology, and irrelevant for the resolution of daily severe problem of Palestinian women. Grass roots feminist NGOs among Palestinians have been fairly prominent, primarily helping to halt violence against and assisting battered women.

Radical Palestinian feminism has not necessarily considered Jewish liberal mobilization of state law as futile since it may generate secularization of the Israeli legal setting, and hence may incite more state's intervention in the religious Muslim autonomy.³⁷ While the elite of male Muslim jurists has aspired to preserve the status quo, an unexpected communal coalition of feminist forces was created. Liberal Jewish feminists, particularly members in The Israel's Women Network, and radical Palestinian feminists from *Al-Fanar*, were cooperating against the *Sharia* courts.³⁸

³⁷ Personal interview with Ms. Manar Hassan.

³⁸ Ibid. Also, *personal interview with Attorney Rachel Benziman*, Chief Legal Consultant, The Israel Women's Network, 1/28/1999. For explication of the Kaddies

There is no one type of communal legal action, and there is no one unified communal purpose for the same type of legal action in the very same feminist community.

Communities provide spaces of autonomy. For Jewish liberal feminists the struggle against the *Kaddies* has been a pace in a fight against religious dominance in the Zionist state. Palestinian feminists have viewed it as serving the purpose of liberalizing women in the Palestinian community. For the Jewish liberal feminists the encounter with the *Sharia* courts has been aimed to mobilize Arab-Palestinian support for The Israel Women's Network. Yet, for Palestinian feminists it was supposed to empower feminist secularism at cross-national and inter communal level. For liberal Jewish feminists, state law has been a language aimed to promote individual liberalism, for Palestinian feminists, however, it has been a language aimed to generate state's protection against male brutality, and a method to subdue the religious Muslim establishment within the Arab-Palestinian community.

Therefore, cooperation between Israeli Arab-Palestinian and Jewish women has been problematic. Legal consciousness in the feminist community has been very sensitive to multicultural contingencies, and the feminist NGOs whilst interacted with each other, have been divided according to national lines. *Noga*, the main journal of Israeli feminism, has reported of several instances of vocal splits between feminists from the two nationalities who debated together their agendas, aspired to unite efforts, and yet

attitudes, see chapter 3. Also, *personal interview with Chief Kaddy Ahmed Natur*, 1/31/1999.

have failed to sustain a permanent and established cooperation (see e.g., Giora 1996; Ashkar 1997).

Feminist scholars have condemned communitarianism due to the damage that multiplicity of communities may infringe upon women's efforts to collaborate in their struggles for gender equality (Okin 1989). Nonetheless, multiculturalism inside a feminist community, as in Israel, enables to establish joint efforts that may be implemented whilst recognizing various and distinct needs. Such multiculturalism, however, has not easily been translated into joint practices. An Israeli- Palestinian feminist, Mrs. Iman Kandalphat-Irani, who explained her attitude toward feminist organizational collaboration with Jewish women, has accused: "the cooperation in those "joint" organizations is not actual. The organizations usually reflect the general inequality between Israeli Jews and Arabs. The Jews expect us to be involved in joint activity without emphasizing our national identity or our social problems. They want us to become Israelis according to their own concepts. Therefore, our aim is to go back to separate frameworks, in which it is possible to preserve and develop our Arab-Palestinian identity, and maybe a cooperation will be in the future." (Ashkar 1997).

From all the severe problems that Arab-Palestinian women have suffered, like coercive marriages, and minor marriages, the 'killing of honor' has been one of the most challenging. Patriarchy in the Arab-Palestinian community has been based on male guardianship of female's and the family's honor and purity. If honor and purity have been breached, killing the female, which has 'betrayed' her family, has been justified as a means to restore values. Men have been the judges and the executors,

and based on interpretations of the *Koran*, and the *Chadith*, women have always been under suspicions of behaving 'sexually irresponsibly'.

Male paternalism has been a means to attain control and maintain patriarchy (*Al-Fanar* 1991; Shalhoub-Kevorkian 1998; Rabinovich 1995). Naila Awad, the director of *Al-Badil*, an Israeli Palestinian feminist organization, has protested against the use of the term 'family honor' in such a context. She has attempted to deconstruct its social essence: "Everybody has his/her honor, and it is a private matter, and nobody can decide about another person's honor. No murder can be legitimized. The term 'family honor' has meant to enable men to control women, in this case Arab women." (Benbenisti 1998, 23-24). Alike other Israeli Arab-Palestinian feminists she has criticized the unwillingness of state's officials to fight those murders. Being a Palestinian in her national identity, Awad has criticized the ethnocentric attitudes of the Jewish Israeli society, and has argued for the need of Palestinian women to generate their own internal struggles against male violence. Yet, she has been practical, and has asked for intervention of state law in preventing killings, and punishing murderers. Controversy among Arab-Palestinian feminists as to the degree in which cross-national feminist epistemology and unified action are plausible notwithstanding, they have rather been united in expectations of state's intervention in order to hamper male violence against women.

Having a distinct voice in the feminist community has not solely been a characteristic of non-Jewish feminists, located outside the national security, Jewish, and Zionist narratives. *Mizrachi* (oriental) Jewish feminists have had a unique say in the overall feminist approaches toward state law. In some similarity to neo-Marxist and ethnic

criticism of autonomous feminist theory that downplays sociocultural contingencies (Crenshaw 1989; Polan 1982), oriental Jewish feminists have underscored that gender differences have been contingent upon ethnic status. Thus, western (*Ashkenazi*) women have been identified as affiliated with the ruling and hegemonic social class. Oriental feminists have articulated their double marginalization, as women and as *Mizrachis* who suffer gender discrimination and economic ethnic-oriented control alike. Accordingly, *Ashkenazi* women could not have been their sociopolitical allies in generating grass roots' feminist consciousness, because *Ashkenazi* women have constituted a significant component in the bourgeois social class that has controlled national power foci and *Mizrachi* women.

The importance of a feminist community to promoting feminist struggles notwithstanding, the ontological meaning of being a woman is neither identical to various groups and individuals nor it is socially autonomous. Feminist consciousness should be differentiated in the context of ethnicity. State law is not only male-dominated; it should not be trusted due to its ethnic hegemonic identity, as well.³⁹ According to oriental feminism, when *Ashkenazi* female soliloquizes about uni-dimensional and unified feminist consciousness she is not only generating gender as holistic sphere. She is narrating a coalition of sociopolitical forces between the oppressors (*Ashkenazi* women) and the oppressed (*Mizrachi* women) that has never existed, and therefore she disguises and reduces her own ethnic hegemony to a conventional trivia that veils control. In similarity to Arab-Palestinian feminists, *Mizrachi* feminists have underscored an irreducible dependence of oriental women on

³⁹ Personal interview with Dr. Enriet Dahan-Kalev, 2/7/1999.

ethnocentric hegemonic culture, which intertwines with their sexual subjugation to men. As Ella Shochat, a critical *Mizrachi* scholar has referred to the feminist community: "acknowledging the existence of contradictions and conflicts should not be perceived as the demolition of the feminist strategy."(Shochat 1995).

In her response to Ester Eilam's leading role in attempting to frame a unified feminist consciousness, Dr. Henriette Dahan-Kalev, an expert on theories of feminism, and a *Mizrachi* prominent feminist, has accused, knowingly using a post-colonial approach referring vigorously to Frantz Fanon's and his decisive support of resistance (Fanon 1970; see also, Nader 1990):

"women who have not played according to the rules of the game that the Ashkenazi women have decided upon (not as Ashkenazis but as part of the ruling elite) are not entitled to recognition and legitimacy, and their right to experience revolt and resistance is taken from them. As if they (the Ashkenazi women) have already made this war, fought for them, and what was left for the *Mizrachi* women to do is to come and enjoy what has been ready. The principle that they have failed to recognize is fundamental to any feminism; the essence of struggle and resistance, the essence of criticism and redefinition, are the crucial elements of empowerment and self-definition."(Dahan-Kalev 1995).

Litigation and legislation that are aimed to improve women's conditions in the military have not been conceived as promoting feminist interests because if the language of state law is adopted, and the military is being embraced as a major social

institution, feminists are legitimating male concepts.⁴⁰ Salient rulings, as Alice Miller, which grant remedies in specific legal cases for several women do not affect the all community, and do not incite a social change in women's status.

Mizrachi feminists have demanded to underscore ethnicity in their oppression as women, and they have underscored the need to articulate ethnicity as part of feminists' efforts to challenge patriarchy.⁴¹ Radical *Ashkenazi* feminists have considered such a concept as interruption to their strivings to conceive women as a unified gender community. Liberal feminists, who have indulged on attempting to utilize individual rights and liberties have looked at such a *Mizrachi* argument as impediment to their efforts to frame a cross-ethnic harmonious action based on the legal language of individual rights.⁴²

For the Ashkenazi radicals, feminist consciousness should transcend ethnicity, while for the liberal feminists, state law should be used as an ethnically autonomous language for promoting public policy. For *Mizrachi* feminists these approaches have reflected and have generated preservation of *Ashkenazi* hegemony in the feminist community. As Dahan-Kalev has so vigorously pointed to me: "the *Ashkenazi*

⁴⁰ *Ibid.*

⁴¹ Personal interview (through phone conversation) with Attorney Neta Amar, Association for Civil Rights, February 1, 1999.

⁴² Personal interview with Meler-Ulchitzki, Chairperson of Israel Women's Network, December 20, 1998, Eilam, and Rachel Benziman, *op.cit.*

women are the oppressors, ...they have economically and politically benefited from the oppression of *Mizrachi* women. White women are oppressing *Mizrachi* women."⁴³ Whilst referring to Fanon (1970) she has accused liberal feminist organizations, like the Israel Women's Network, in recruiting only activists who are *Ashkenazi* and oriental feminists who have aspired to be like *Ashkenazi* women. The latter have neglected their ethnic consciousness. Accordingly she used a Fanon's observation: "there is the rhetoric of Black women who become White women, or the *Mizrachi* women who become *Askenazi* women."⁴⁴

Whilst liberal feminists have been influenced by transnational liberalism, and *Ashkenazi* radical feminists have been affected by American critical feminism, *Mizrachi* oriented feminism has had a clear local and counter-hegemonic voice of social- class protest within the feminist community; a voice that has contextualized radical feminists' consciousness. Following an attempt of *Mizrachi* feminists to establish a separate organization, one of the founders, Mrs. Mira Eliezer, declared: "my enemy is not the Arab, my enemy is the *Ashkenazi*." (Giora 1996). State law, from this perspective, has been an epiphenomenon of basic tensions grounded in ethnic and gender-structured discrimination against *Mizrachi* women. Accordingly, *Mizrachi* feminists have advocated grass roots activities that construct distinct type of feminism.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

The relationships between Arab-Palestinian feminists and their oriental counterparts have been tensed, whilst the two collectivities have faced some different types of distinct challenges. Arab-Palestinian and oriental feminists have underscored that they have been part of more general feminist consciousness embedded in a common morality of gender equality. In practice they have intertwined feminism with different political tactics. Each collectivity has aspired to practice its own distinct identities despite of common expectations to more state's intervention in preventing male violence against women. *Mizrachi* feminists have often been co-opted into the hegemonic narratives. Accordingly, their social status as a distinct collectivity has been less cohesive, and more subjected to general proclivities of the Jewish and Zionist dominant culture. In this context, both types of feminism have emphasized the gap between formal state law that has asserted egalitarianism, and daily practices, which have not reflected these assertions.

Radical feminism, with all its multidimensionality, has opposed militarism. It has conceived armed forces, wars, military actions, and military symbols as products and sources of male hegemony, and as means to preserve patriarchic relations in pre-industrial and industrial societies (Elshtain 1987; Enloe 1983; regarding Israel, Deutch 1994). Militarism has been based on brute coercive force, and on muscularity, and it has rejected debates about lofty issues of social justice, including gender equality. It has been conceived in association with men's 'superiority', as fighters, and with subordination of females, who have been marginalized to give birth and raise children (Peach 1993; Ruddick 1989). Militarism, as Israeli radical feminists have emphasized, has distorted feminist consciousness that should have been independent

from male domination. Furthermore, it has hampered feminist action, all in the name of 'public order' and 'discipline'.

Women's participation in peace activities in Israel and elsewhere has not necessarily been a feminist *dictum*. Demands to withdraw from the territories occupied in 1967 have been endorsed by Israeli feminists, Jewish and Arab-Palestinians. Peace activities, however, have been contingent upon specific interpretations to governmental actions. Hence, these activities neither have necessarily been derivatives of anti-militaristic stance nor have they necessarily been reflections of radical feminism.

Evon Deutch, a prominent feminist publicist, has pointed that organizational efforts of Arab-Palestinian and Jewish Israeli women to protest against the 1967 occupation have not necessarily been a result of feminism. So she wrote: "the fact that the women's peace movement has not adopted a feminist political concept, has hampered the possibility of public expression of their internal world. Women, especially mothers to soldiers have remained in their loneliness.... for the purpose of raising the political feminist consciousness regarding questions of militarism, women status, and peace we have to refer to those subjects not only from local outlooks but from a global perspective, while cooperating with women who act for international peace, and the creation of international feminist movement."(Noga 1994, 23; Shalev 1991).

What has been intrinsic and unique in radical feminism has not been a mere peace activity- even not a globalized peace activity- but the unconditional opposition to militarism as a male product. In that respect, more than issues of peace, war, and

withdrawal from the occupied territories, the issue of women's legal status in the Israeli military has highly been controversial and significant among feminists. This issue is further explored in the following section.

*IV. Liberal Feminism and Law: The Utilities and Costs of Political
Compromises*

Liberal feminism has differed in epistemology and practice from radical feminism. It has not asserted a need to frame an autonomous feminist consciousness. It has rather claimed that women should act toward state law and within the establishment in order to attain individual equality with men while being and striving to be alike men. Sexual differences are given and gender can be equalized if liberals can enlarge constitutional frameworks so to embrace women's voices.⁴⁵ State law should be utilized within the prevalent structure of power relations and national narratives of Zionism, Judaism, and democracy. Involvement in formation and implementation of public policy through legislation and litigation has been considered as a relevant mode of collective action, more than grass roots activities.

"We are working with the system and within the system," has told me Attorney Rachel Benziman, the Chief Legal Consultant of Israel Women's Network. Then, while consciously departing from a utilitarian vantage point, she has elaborated: "legislation necessitates more activity with the establishment. We are working inside

⁴⁵ On feminist literature regarding 'voice', Bilsky 1998.

the establishment...".⁴⁶ In order to promote legislation, which deals with gender equality, the Network has established extra-parliamentary and parliamentary coalitions of feminist-led sociopolitical forces. In a highly rifted, fragmented, and polarized parliament these coalitions should have been multi-partisan and bi-sexual. State law has neither been comprehended as a cohesive state's organ, nor it has been perceived as a fixed set of regulations. But rather, it has been realized as a fragmented fabric, with contradictory endemic tensions and possibilities to attain fairness.

This Gilligan-led concept of cultivating cultural pluralism and facilitating different voices has been influential among Israeli feminists through American academic education and through transnational American-led liberal effects on Israeli society. In all the personal interviews that I conducted with Israeli feminists, the references were made to American feminists. Feminists in the US, in other Western countries, and in Israel have conceived liberal pluralism as a convenient framework for generating gender equality (Gilligan 1982; Taylor, Gilligan, and Sullivan 1995). In Israel, as in Canada, West and North European countries, and the US, liberal pluralism has been associated with feminist political action within state's institutions.

It has been characterized by the Network's [the main liberal feminist NGO in Israel] activities in the Committee. A careful analysis of all the unpublished protocols of the Committee, since its formal establishment as a permanent parliamentary body in

⁴⁶ Personal interview with Attorney Rachel Benziman, January 28, 1999.

1996, reveals several insights.⁴⁷ The Committee could have functioned as a supra-partisan parliamentary committee due to liberal feminist consciousness, significantly generated through the Network. This consciousness has to some extent de-politicized female MKs, and made their partisan affiliations much looser than during parliamentary deliberations in other matters.

It has not resulted only from decline in the power of political parties, particularly occurred and documented since the 1980s, and more ostensibly in the 1990s (Arian 1989; Goldberg 1992; Koren 1998). The importance of this exogenous variable notwithstanding, a deeper dimension has appeared to affect feminist liberal action. Transnational American-led liberalism has had the characteristic of shifting public attention from displaced communities to individual rights (Glendon 1991). On that account, different Mks, often women, could have cooperated as somewhat de-politicized individuals who are interested in molding legislation processes, in defiance of conflicting partisan loyalties. Thus, as Benziman has informed me and as the Committee's protocols have shown, feminist activists who appeared before the Committee along with Mks attempted not to debate controversial issues of war and

⁴⁷ Thanks to Mk Noami Hazan, the Committee's Chairperson, and her assistant, Ms. Hila Bikovitzki, for permitting me to read the original protocols in the Committee's offices in the Knesset, and in the Knesset's archive. Thanks to Mrs. Dana Gordon, the Committee's Manger who assisted me in finding the material. I have respected the request to keep secret several sensitive issues and confidential data concerning the armed forces.

peace and to be focused only on topics constructed as gender issues.⁴⁸ Therefore, judges, parliamentarians, bureaucrats, and feminist activists have considered the Committee as the least political committee in the *Knesset*.⁴⁹ This attitude, however inaccurate, has exhibited that liberal feminism has partially been effective due to its power of legal and sociopolitical mobilization.

Such collective action has self-inflicted upon the Network, however, not to engage in human issues concerning Palestinian women inside and outside the Green Line. Liberalism world-wide has not only legitimated basic fundamentals of state law, by presuming its interchangeable values and equalizing potentialities, it has also narrowed the ability to evolve an independent feminist epistemology. In essence, liberal feminism world-wide has been utilitarian in its tendency to attain compromises and it has been pragmatist in its adaptability to organizational and cultural constraints (Sandel 1996; Gans 2000). Let us look at the efforts of liberal feminists in Israel in the field of legislation and litigation.

A. Legislation:

⁴⁸ Personal interview with Benziman.

⁴⁹ See for example a meeting between the Committee members and the justices of the Supreme Court, in which most participants, including most of the justices, emphasized the 'professional' and 'non-political' virtues of the Committee, whilst comparing it to other political committees of the Knesset, *Protocols of the Committee*, March 16, 1998, pp. 1-25.

Liberal feminists have conceived two severe and changeable hurdles: structural impediments, and the lack of stimulus for advancement. Absence of sufficient feminist consciousness has been perceived as secondary. Emphasis has been given to bounded legal reforms in state law that have been aimed to generate state's endorsed equality in public spheres. As MK Naomi Hazan has phrased it: "There is no doubt that the central aim of current legislation in the subject of woman's status is the achievement of equality. It has two central components. The first, removing barriers from fulfilling the voting right of a woman. Including in public forums. For example, if a woman can not be *Dayaan* (Rabbinical judge. G.B.)... or a woman can not be the Chief of the Armed Forces, it is a structural barrier, which does not enable the materialization of equality. The second element are stimuli....This is the issue of equalizing differences, affirmative action....But if the purpose is materializing the principle of equality, we see it in practice as removing barriers with [attaining. G.B.] stimulus."⁵⁰

Legal reforms have been perceived as conditioned on women's abilities to infiltrate into male-dominated power foci and alter them. A feminist effect on state law has not been considered as an epistemological matter, but as a behavioral issue. Primarily under conditions of an emerging liberal constitutionalism, like in Israel, women have had to cooperate within the establishment in order to alter state law. Feminization of state law can be done, because state law has not been structurally fixed.

⁵⁰ *Ibid*, p. 11.

Analysis of more than 1,200 pages of unpublished original protocols has pointed that most of the Committee's debates were devoted to policy issues. They included legislation of laws that framed gender equality, budgets that were aimed to endorse policy implementation, coordination of administrative efforts to enforce policies, and promotion of women representation in public bodies. In that sociopolitical and legal fabric extra-parliamentary feminist organizations and a few academic feminist activists were functional to legislation processes. During parliamentary debates over the above-mentioned laws, e.g., the SHL, these organizations and activists were articulating professional knowledge.

Knowledge of state law has been the most salient virtue to be articulated during the Committee's discussions. It is an important source of mobilization and it renders lawyers some ability to alter political spheres (Sarat and Scheingold 1998). Feminist lawyers and legal scholars appeared before the Committee not only in the name of femininity but as experts who had contributed 'know how' in their crony legal domain. In similarity to legal mobilization in Canada, England, France, and the US knowledge of law has been contributive to confined reforms in realms of states' power foci (Epp 1998; McCann 1994).

One of the most heated parliamentary debates was about the SHL. It was intensively promoted by the Network, and phrased with the advice of leading feminist jurists as Professor Ruth Ben-Israel, and Dr. Orit Kamir. The Network was very effective in mobilizing feminist Mks, and even male Mks, as well as the Ministry of Justice, including the Office of the General Prosecutor and Attorney General, to support its

proposal.⁵¹ It is hardly conceivable to think about this law, which has imposed criminal and civil sanctions on sexual harassment, without the overall effects of an emerging liberalism within state law. *Inter alia*, the notion of 'equality' in its liberal individualistic sense has often been mentioned during parliamentary debates; liberal court's rulings, that I will analyze later, were cited; and the American legal experience to subdue the widespread phenomenon of sexual harassment was mentioned as a reference point.

Appearing as an extra-parliamentary feminist organization, representing thousands of women, had enabled the Network to generate power. During parliamentary debates the Network had articulated the most vigorous demands to phrase in law an absolute legal responsibility of employer regarding sexual harassment of his/her employee. Representatives of the Network, as Attorney Rachel Benziman, were determined to make the SHL an educational legal document, which might be used in the course of mobilizing public support of promoting further gender equality.⁵²

Any analysis of legal mobilization should conceptualize it as an interactive process. The female Mks in the Committee mobilized the Network to de politicize the legislation process. Legal professionalism, which was conveyed in the discussions by the Network, had generated consent among rival Mks, including religious men. The

⁵¹ For the debates inside the Committee, see: *Protocols of the Committee*, June 25, 1997; July 8, 1997; July 15, 1997; February 10, 1998; February 17, 1998; March 3, 1998.

⁵² See: *Protocols of the Committee*, February 17, 1998, pp. 20-21.

legal professional dialogue, quite technical in its verbal terms, enabled to form terminological solidarity, shared by various Mks affiliated with rival political parties.

Professionalism and extra-parliamentarianism were also conducive to attempting enforcement of the SHL. Liberal feminism has underscored the need to enforce state laws as part of liberal efforts to attain gender equality (Raday in Izraeli, Friedman, Schrift and Radai 1982). Feminists have been concerned that proper laws may be enacted, and yet their enforcement would be deficient or worst, absent. Referring to the SHL, Mk. Yael Dayan, the Committee's chairperson, expressed such a worry: "I have repeatedly mentioned that women's organizations which have been our partners in the legislation will take upon themselves to work vis-a-vis the employers and assist in implementing this law."⁵³

The SHL has not been the only example of how extra-parliamentary feminist organizations and other liberal feminists have used the emanation of liberal legality in order to mobilize state law and incite legal changes. The processes during legislation of laws that were seen as promoting gender equality were similar- attempting to narrow the spaces between asserted egalitarianism and grimmer realities of women's discrimination by using legislation, policy formation and policy implementation. Such processes have been grounded in a deep belief in the written word, and a faith in scrupulously phrased written constitutional arrangements. The Committee's debates were only rarely an abstract rhetoric. Recurrently, the deliberations were very

⁵³ See: *Protocols of the Committee*, March 3, 1998, p. 7.

technical, about very formal and detailed issues concerning specific legal clauses. Based on that devotion to formalities of constitutional arrangements, attorneys of feminist organizations, governmental attorneys, and Mks could have cooperated, while identities were reduced to the irreducible banality of rhetorical sympathy with women's predicament.

Thus, feminist organizations cooperated in their endeavors to legislate the Law of the Authority for the Advancement of Woman Status- 1998 (hereafter-AAWS). Their general purpose was to institutionalize conditions, which were regarded as conducive to formation of a governmental policy of gender equality. Additionally, the AAWS was aimed to foster coordination between governmental ministries, and to enforce legislation, which sanctifies gender equality and confronts women's discrimination.

The Orthodox religious political parties opposed the law that had symbolized for them national importance bestowed to advancement of women in public life.⁵⁴ They mitigated their opposition after the Committee had consented not to draft the relevant bill as Basic Law. Furthermore, The State's Comptroller Office ardently opposed the establishment of a separate institution that was supposed to receive women's complaints about their gender discrimination.

Despite these constraints a tight cooperation between feminist organizations, which was embedded in professional liberal legal discourse, enabled to enact the AAWS.

⁵⁴ In chapter 5 below I refer to the dichotomy between private and public spheres, which has been prevalent in Orthodoxy, particularly among the ultra-Orthodox public.

This cooperation included *Emuna*, religious Zionist women's organization that became part of the legal action despite opposition of the male-dominated religious political parties. Such an intersectional coalition would have been unfeasible without the reduction of identities to a language of legal formalities and a feminine sympathy. This communal practice, initiated mainly by liberal feminists, could form a behavioral consensus despite diversity of conflictive identities.⁵⁵ As we shall see below, a phenomenon of reduced identities and professional mobilization of law, has had its own significant deficiencies beside the attainment of liberal legislation in a rifted, polarized, and fragmented parliament.

The AAWS has underscored prevention of male- violence against women as its central emblem. More generally, and world wide, an instrumental approach to violence has been central in liberal feminism in its efforts to promote equality as an institutionalized idea in state law. Such an approach, which has opted to eliminate violence through state's regulations, has been flawed since it has ignored the possibility that violence has been a state's phenomenon and should be challenged not through the political establishment but through raising a critical feminist consciousness.

Austin Sarat in his studies of capital punishment has depicted violence as an inherent characteristic of modern state law (Sarat 1999a). Anthony Giddens and Charles Tilly

⁵⁵ For debates regarding the relevant issues, see- *Protocols of the Committee*, December 8, 1997; December 16, 1997; December 23, 1997; January 14, 1998; February 16, 1998.

in their respective studies of modern states have explored ways in which states have used violence as part of their self-legitimization processes (Giddens 1986; Tilly 1995). Violence has been integral to political control and state's hegemony. Louis Althusser has correctly pointed that violence is associated with other means of state's ideological control and coercion (Althusser 1971). Michel Foucault, the notable post-structuralist and post-Marxist thinker has depicted violence through the Marxian percept of bourgeoisie that uses state's power against the proletariat, and has added his own concept of violence as a discursive phenomenon (Gordon 1980). Generally, according to critical observations of states and societies, facets of violence may be culturally contingent, but violence has significantly and invariably been a state's phenomenon.

Catharine Mackinnon in her endeavor to evolve a self contained critical feminist theory, has conceived male violence against women, e.g., rape, as a major component in men's institutionalized and legalized control through the state over women. Thus, state law recognizes in 'rape' only in very particularistic and isolated events, and as a very rare phenomenon. State law is often reluctant to admit that the phenomenon of rape is more widespread, since women are sexually subdued by men even in the context of established legal relationships like heterosexual marriage (MacKinnon 1993).

Contrary, liberal feminism has perceived male violence against women as a cultural autonomous phenomenon, which has not essentially been inherent in the state.

Violence has been perceived as an erroneous cultural derivative of a given physical advantage of (most) men over (most) women. In that context women have presented

weakness; men have presented physical superiority. That self-asserted physical vulnerability of women has been challenged by liberalism through deterring men from committing violence against women. Women have been taken as granted victims in a given sociopolitical setting. Rather than concentrating on developing an independent critical feminist consciousness and economic resources required for women's independent maintenance, women have been eternalized as weak (for further exploration, Chancer 1998). Instead of liberating women, the state and its laws have been expected to solve manifestations of violence, as rape, women's battery, and sexual harassment. Hence, the problematic fascinations of liberal feminism with regulations, budgets, and enforcement of public policy.

Aspirations to consolidate sociopolitical forces for attaining policy reforms have led liberal feminism to appreciate the term 'violence' as antagonizing term, which incites legal mobilization. A liberal feminist campaign against 'violence' has been efficient around the globe in mastering collective efforts to mobilize state law, since everybody may sympathize with terrible experiences of raped females, bitten wives, harassed (women) employees, etc..(Carrado, Loxam and Templar 1996; Eisikovits 1996; Kersten 1996; Marshall 1996; Riggs and O'Leary 1996; Taylor, Gilligan, Sullivan 1995).

The pressures upon politicians to assist in implementing fast and efficient solutions to male violence against women are enormous. Liberal feminists have used these public pressures to spur legislation, which has formally promoted gender equality and has protected women in state law. Prevention of violence has been reduced to regulative efforts, whilst the deep epistemological and sociopolitical sources of violence have

not thoroughly been addressed. Accordingly, and erroneously, the brutalized, humiliated, traumatically invaded woman and the rapist brute man have been taken as given, as individual irregular instances, while the legal 'solutions' have been regarded as obvious.

Thus, during legislation of the AAWS the issue of male violence against women was stripped of its social roots and had been perceived as a policy issue that was solvable through political coordination and enforcement. The opening clause of the AAWS asserts:

"The purposes of this law are to promote the equality between the sexes in Israel, to bring about coordination between the bodies which deal with woman's status in Israel, to promote education, legislation, and enforcement in those areas, to promote activity to prevent violence against women, to offer the government the tools and the information, which are required to achieve those aims, and to establish a central authority [state's authority. G.B.] that will act for the implementation of these fundamentals."

The reference to violence against women in the declarative part (clause 1) of the law, was under contention during the Committee's debates. The critics presumed that it might reduce the emphasis on equality and on the need to form an overall governmental policy concerning gender equality. MK Yael Dayan, the Chairperson, confidently defied such criticism: "the majority here [in the Committee. G.B] are women, but one of the motivations, and we know it, for the legislation of this bill was truly the consensual feeling in this house [the Knesset. G.B] and outside it, that

the society can not tolerate this malady of violence against women.....the general society is not so interested with resolution of discrimination, but it is interested and identify with us regarding the problem of violence. Therefore I would leave it [the reference to violence. G.B] in this clause, and it will affect budgets and all the rest."⁵⁶Rachel Benziman, the Network's attorney was admittedly convinced by such an instrumental argument: "I think that there is a place to separately refer to violence against women because of the meaning of it and because of its educational effect."⁵⁷

The cognition of violence as a non-state's phenomenon and the instrumentality concerning violence aimed to promote opportunities for advancement of women have significantly constituted the liberal feminist approach to military service. For exploring it, I will move to discuss liberal feminism and litigation. As we shall see below, the boundaries between litigation and legislation have been multifarious and blurred.

B. Litigation:

Litigation in courts challenges, among others, the unwillingness of state organs to alter situations. It is an institutionalized method to use judicial discussions and rulings, including when appeals are dismissed, as sources of sociopolitical mobilization and changes. Whether it may produce not solely a legal change, which is a somewhat probable outcome, but also a sociopolitical change, has been a

⁵⁶ *Ibid*, December 8, 1997, p. 21.

⁵⁷ *Ibid*, p. 22.

controversial issue (Feeley and Rubin 1998; McCann 1994; Rosenberg 1991). Particularly, litigation in courts aimed to promote women's status in militaries was helpful in handful of cases in which, e.g., a few American women aspired to be admitted to male-dominated military colleges. Yet, whether and to what degree women's entry to armed forces and combative units has generated gender equality in the overall society, is doubtful.

Military service in Israel as in many other states, like England, France, Germany, and the US, has evidently differentiated between service of men and that of women as inferior (Golan 1997). The terms of military service, including its duration, have been different. *Inter alia*, since the late 1950s, women in Israel have been prohibited from participating in military combative missions. Formally, the military has claimed that physical differences have justified such exclusion. In the 1940s, women were required for battle functions due to high levels of security pressures and siege mentality in the Jewish *Yishuv*. However, even in these periods women were conceived as mothers, men- as fighters (Berkovitch 1999; Lahav 1993).

With the establishment of the state, and increasing confidence in its strength, gender discrimination in military service has become more salient and patronizing. Male discrimination against women has been exhibited as physically protecting vulnerable women and (future) mothers (Berkovitch 1999). Within the armed forces, women have been briefly trained, and mobilized within a separate and under-privileged framework of the Women Corps. Most women have served in marginal clerical functions, as taken-for-granted auxiliaries to men. Since the end of the 1980s, under

the liberal rhetoric of gender equality, formal legal conditions have become more conducive to claims advocating gender equality in the military service.

Legal prohibitions, which were enacted in 1952 and prevented women's military service in selective courses and selective functions, were abolished in 1987.⁵⁸

Furthermore, in 1992, Basic Law: Human Dignity and Freedom was enacted, and could have been interpreted in ways that generated more gender equality, including in the military. Despite such a formal progression, women in the military have largely been discriminated and dominated by men. Surveys in the 1980s and 1990s have detected high percentage of sexual harassment committed by male officers against subordinated female soldiers. Additionally, selective combatant units have been closed to women, despite a bounded inclination since the end of the 1980s to allow women to take part in more functions in field units e.g., as instructors.⁵⁹

These conditions of ingrained discrimination amid limited progression have led to frustrations among female activists. The very few female Mks could not establish effective sociopolitical coalitions against gender discrimination in the military.

Muscularity has been considered as a male privilege, and the military as a male domain. Undeterred by military violence, they have aspired to render women the

⁵⁸ See: *Security Service Regulations (Women Functions in Obligatory Military Service)- 1952*.

⁵⁹ For these surveys see reports in the Committee's discussions- *Committee's Protocols*, April 4, 1995, pp. 15, 19, 23-24.

same right as men to become licensed killers, but they were refused. The military, as a major organization of male dominance, has opposed reforms.

In turn, during the Committee's debates, feminist activists expected from female Mks to initiate an appeal to the Supreme Court against the armed forces in order to spur reforms. From a liberal perspective, the presumption was that if the Network could have won one salient legal case in the Supreme Court, it might have altered women's status in the military with positive ramifications on gender equality in the overall society. Ms. Alice Miller was the proper appellant in the right time. Salient judicial cases do not just happen. They are part of a social and political process of legal mobilization.

Miller's appeal to the HCJ, asking to be examined for admission to the Air-Force's school of aviation, was upheld and has become a legal landmark, widely cited since its publication in 1995. A sense of legal victory among the feminist community has since been prevalent. Fervent letters of congratulations to the Network's lawyers, Attorney Neta Ziv and Attorney Rachel Benziman, were sent from feminists all over the country.⁶⁰ The community of feminists celebrated its spectacular legal victory, which has since become part of its legal consciousness, widely referred to in feminist struggles. Even radical feminists have admitted that whilst the ruling would not significantly improve the feminine predicament, it was a symbolic defeat to the male-led military. They have since considered the ruling as a reference point to underscore the limited advantage and numerous disadvantages of liberal feminism. Debating

⁶⁰ See- the Network's files concerning the case, in the Network offices in Jerusalem.

Miller's case has become a mode of communication among feminists who as community's members have generated common denominators through the ruling.

Scholars of mobilization have underscored the relevance of legal texts to generation of public support (McCann 1994; Epp 1998), while students of courts and sociopolitical changes have emphasized the relevance of legal texts to attainment of a desirable ruling (Epstein and Kobylka 1992; Rosenberg 1991; Segal 1998). Both these non-communitarian approaches have diminished the importance of legal texts as communal resources of internal mutual support and some solidarity among community members. Communities, not only pressure groups, use construction of legal texts in the process of mobilization.

The appeal of Miller was well selected. Being a pilot has not demanded as physical strength as required in army's field units. Ms. Miller was physically and mentally healthy. Additionally, she has been an avionics engineer with a civil pilot's license.

Her appeal was well constructed based on the legal terminological environment. In the midst of Israel's liberal Americanized period it would have publicly seen preposterous to dismiss her appeal. Miller did not ask the Court to impose herself as a pilot. But rather, she asked the Court to recognize her right to enjoy an opportunity for becoming a pilot, if she could overcome one of the roughest and highly demanding course in the Israeli military. She had aspired to be like a man in men's world. The timing of the appeal was favorable to her- during the peace process, when the probability of war was not seriously looming. The appeal was thoughtfully prepared and competently utilized state law. It included detailed citations from

previous Court's rulings in which the Court had ordered gender equality in the public service⁶¹. The appeal referred to comparative literature, mainly regarding the North American and West European experiences, and has mentioned service of women as combatant pilots in western militaries. Its language was carefully drafted- it used only formal legal terminology regarding gender equality in state law.

Miller's request was accordingly constructed as a derivative of the current legal liberal trend in state law. The Court was not asked to make constitutional revolutions. But rather, the legal arguments underscored the insensibility of discriminating women when physical strength is not significantly required, and when the appellant is a healthy and competent candidate. Serving in a combative field unit, the legal argument stated, might be a different legal matter.⁶²

Expectations among liberal feminists of further mobilization of state law notwithstanding, Miller case has generated a social change only in its narrow sense. Following the Court ruling, the military has altered its internal policy. Specific formal instructions have been given to the Air Force's school of aviation to admit any female that has complied with the relevant requirements for training. These instructions have clearly stated that women have not been prohibited from crossing international borders, and participating in combative functions.⁶³ Dozens of women

⁶¹ *Ibid.*

⁶² Outline of legal arguments before the Court.

⁶³ Because of secrecy limitations I do not refer to the specific internal command given in writing in July 1996.

were admitted to training in six years following the ruling, almost all of them could not pass the preliminary stages, and three have become in 1999- 2001 pilots. The commanders in the air force's bases were instructed to establish separate showers, and to adapt housing and other services to the presence of women as pilots.⁶⁴

Subsequent to *Miller*, increasing feminist pressures have been imposed to enable women to serve in combatant units in combative functions. The image of women in the military may have slightly changed. Thus, another evidence of a limited social change has been the participation of the Women Corps' Commander in military planning of the High Command, concerning human resources. Prior to *Miller*, she could not participate in these sessions. Liberals may claim that an observable improvement has been attained- a step toward gender equality in a society in which the military has been a prominent sociopolitical institution.

There have been other aspects of the liberal solemnization concerning Miller case. First, the ruling could have been utilized as a rhetorical base for empowering future litigation in courts and it might have invigorated more judicial rulings favoring gender equality. This expectation has primarily been evident among liberal feminist attorneys, who have aspired to construct Miller ruling as a guiding precedent.⁶⁵ Indeed, since 1995 Miller ruling has widely been cited in court decisions regarding equality and particularly concerning gender equality. Yet, no proofs exist, heretofore, whether the ruling has incited any further legal change, let alone any dramatic social

⁶⁴ *Ibid.*

⁶⁵ Personal interview with Attorney Rachel Benziman.

change in women's status. This is another paradox of liberal utilization of state law. Its few successes notwithstanding, it is doubtful whether the feminist community has largely benefited from it (for a similar criticism in a comparative context, see: Brown 1995; MacKinnon 1993).

Second, *Miller* could have been used to deter governmental authorities, including the military, from evading and forestalling parliamentary initiatives to promote gender equality. Empirical evidence points that female Mks were using it during their negotiations with governmental officials and in their proposals for legislation.⁶⁶ Such a rhetorical and symbolic mobilization that had imported the Court's ruling into parliamentary debates enabled female Mks to urge governmental authorities to positively respond to liberal feminist queries.

Third, the importance of judicial victories should not be completely diminished. They can be used as communal sources of organizational mobilization. Michael McCann (1994) has previously made this argument concerning pressure groups. Following McCann, and yet from a critical communitarian perspective, I find that state law and communal organizational interests may intertwine. The win in Court has increased the number of members in the Network, has further empowered the legal department of the Network, as a crucial branch, and has assisted in tightening relations of the Network with female MKs. Thus, when the *Knesset* reviewed whether the Court's

⁶⁶ See for example debates in the Committee about further legislating laws which impose equality in the military, *Committee's Protocols*, December 29, 1998, pp. 19, 37.

order in *Miller* was implemented, the female MKs and Network's lawyers clarified to military officials that further appeal to the Supreme Court would be considered, if its order would not be completely utilized.⁶⁷

Moreover, *Miller* has strengthened the communal tendency to battle in Court for gender equality in the military. In practice, after *Miller* case, other instances of potential litigation were discussed in the Network. Thus, a woman that wanted to be trained in the most prestigious and physically demanding commando unit of '*Sayeret Matkal*'. But unlike *Miller*, no 'strong legal cause' was detected. The Network's attorneys presumed that due to the high physical demands of the commando unit such an appeal would most probably be dismissed, whilst the Court would justly differentiate between men and women.⁶⁸ Due to its focus on the political establishment and state law, liberal feminism has been eager to celebrate victories, not necessarily struggles.

My criticism, however, underscores additional aspect. The empirical evidence as to the success of liberal feminism in generating a social change in women's status is slim. It is reasonable to assume that a few women may succeed in the future and become battle pilots. But it is a marginal social utility comparing to the social price paid for proving that women are capable of being as violent (militaristic) as men. Though, even if women become as violent as men, it is doubtful whether it may

⁶⁷ *Committee's Protocols*, June 23, 1998.

⁶⁸ Personal interviews with Attorney Rivka Meller- Ulchizki, the Network's Chairperson, December 20, 1998, and with Attorney Rachel Benziman.

reform the structure of sociopolitical power. As explored above, militarism, in most societies, is men's social asset due to the construct of militarism as male muscularity. Hence, gender discrimination in the Israeli military has prevailed after Miller case, and in some respects has even been aggravated.

The Air Force has only partially complied with the ruling. While it has initiated programs for men to join the Force and turn pilots, women were selected for the course only if they had asked for it. The military has presumed that men may be better pilots, because of their natural physical advantages, and due to possibilities of pregnancy and motherhood among women in young ages. Based on these utilitarian calculations of expected investments in candidates, comparing to the probability of their military service for a long time as pilots, the Air Force has granted men a clear preference in the recruitment process.⁶⁹ Women, however physically and mentally competent, have been perceived as mothers. From a militaristic, i.e., male perspective, women should provide fighters with a support, they should nurse and breed the next generation of fighters, but combat is men's art (Peach 1997).

⁶⁹ Confidential military sources in the Air Force. The main argument was that most women, in significantly greater percentage than men, would not physically be able to be combative pilots due to the heavy pressures of fighting on the body. Accordingly, giving equal efforts to recruit men and women would have been considered as irrational. The same argument was made during the committee debate in 1998. Due to censorship restrictions I am unable to refer to names and concrete protocols.

Following *Miller* the Air Force's Command has presumed that it has been enforced to recruit a few good women on the expense of a few better men, nothing more.⁷⁰

Reports in the Committee, however defied by the Air Force's officials, have also pointed to degradation of women during the training.⁷¹ There is no ample empirical evidence to claim that Miller case has rectified women's status in the military and in the overall society. More women will become pilots, even combative pilots, more women will serve in field units, even in combative field units, and the Chief Commander of the Women's Corps has gained more say in military decision making processes. Moreover, in November 1999 the military considered to equalize the duration of compulsory military service to Jewish men and women (2.5 years).⁷² But what is the social meaning of these self-celebrated gains for the feminist community?

Vigorous attempts of liberal feminists to use legalistic rhetoric and gain a few victories in a male-dominated sphere may slightly change the military. Yet, these attempts may legitimize the overall male structure of the military. Efforts made by liberal feminists to adapt, and to be adapted to constitutional structures through litigation and legislation entail the costs of not challenging the male-dominated logic of the constitutional setting. Liberal feminism has preferred a legalistic case-solving, like in *Miller* to initiating social reforms that will liberate women from economic

⁷⁰ *Committee's protocols*, December 28, 1998, p. 15. I refrain from direct citations due to censorship limitations on discussions regarding pilots' training.

⁷¹ *Ibid.*

⁷² *Yediot Hacharonot*, November 11, 1999, 20.

dependence on men. It has preferred selective achievements in state law to cultivating, through grass roots activities, a communal feminist consciousness.

Critical communitarianism evaluates liberal efforts whilst looking at feminist collective good. Feminist strivings to enact 'affirmative action' in the public job market have demonstrated liberal achievements and failures. Endeavors to ensure female representation in public bodies have been typical of liberal feminism in several principal and meaningful ways. First, the efforts to enact affirmative action have not been a conflict over improvement of women's sociopolitical predicament but a struggle for enlarging women's say in elitist bodies. Second, affirmative action has been an effort to promote the ability of women to compete with men within the bureaucracy and political establishment. In these spheres liberal feminism could have exhibited high rates of success since the basic sociopolitical structure of gender relations has not been under risk of being drastically altered.

Third, affirmative action has articulated a liberal presumption as if women should be alike men and not constitute a separate feminist consciousness. Fourth, affirmative action has not been grounded in critical ideology and critical theory, but it has been based on pragmatist views of gender relations, which have preferred adaptation to hegemonic structures to reforms of those structures. Fifth, affirmative action could have been instrumental for women in the middle class and upper class who have had the professional capabilities to compete with men on elitist jobs. However, it could not socially empower under-privileged women.

Let us return to the Israeli scene. Liberal feminism has yearned to use litigation, arguing for affirmative action, as a means to narrowing the space between the GCL (Governmental Companies Law) and reality. In reality, boards of Governmental Companies were not inclined to nominate women as directors. Academic education among Israeli women rose dramatically, and women have been as educated as men. Yet, in many governmental companies, all board members were men. Hence, the Network appealed to the Supreme Court. In the first legal case in 1994 the Network appealed against the Ministry of Transportation and against a governmental company under its authority.⁷³ The appeal attempted to narrow the gap between self-declared state's egalitarianism, and the absence of women in elitist bodies.

The file's protocol exposes how the Network mobilized liberal law, used its language, so as to assist in promoting women in elitist bodies. Fifteen men were members in the company's board under review. The Minister decided to nominate additional member, a man, while none of the twenty- five women in the upper ranks of the Ministry, all of them with proper academic training, was even considered for this position. The appeal was grounded in the GCL, and the Court was not called to rule dramatically, but it was asked to apply the principle of affirmative action, "as a special and temporary arrangement" in accordance to state law.⁷⁴ Referring to previous Court's rulings, it was asked to render the GCL a broad interpretation, which was aimed to encourage gender equality.⁷⁵

⁷³ HCJ 453/94 *The Israeli Network V. The Israeli Government* P.D. 48 (5) 501.

⁷⁴ Clause 12 to the appeal.

⁷⁵ *Ibid*, clause 18.

The value of gender equality and the Court's rhetoric about its commitment to apply such a value were used as the main narratives in the appeal.⁷⁶ Women are a deprived group, the Network claimed in its legal arguments before the Court, so the Minister was compelled by the GCL to act in ways that would enable women to become directorates. It was a liberal argument, which had presumed the plausibility of equality in opportunities within state bureaucracy. Justifications for a capacious hermeneutics that imposes the burden of proof upon the Minister were empowered through referring to Western liberal experience, primarily in North America. Accordingly, references were made to Canada, Norway, and the USA.⁷⁷ This way the attorneys could frame their arguments in a broader transnational liberal context, which has often been embraced by Israeli justices and has empowered their own sense of justice in public policy.

The Court upheld the appeal and enforced the GCL, in one of its most celebrated decisions in years. The fact that the judiciary may enforce upon governmental companies a duty to enable women to be nominated as directors had not been recognized before. What has this ruling meant for the community of feminists?

⁷⁶ References were made to several rulings, inter alia, HCJ 104/87 *Nevo V. The Labor Court* P.D. 44 (4) 749, HCJ 153/87 *Shakdiel v. Minister of Religion* P.D. 42 (2) 221, HCJ 1/88, 953/87 *Poraz V. Mayor of Tel Aviv Jaffa*, P.D. 42 (2) 309.

⁷⁷ Outline of Arguments, clauses 11, 17.

Rosenberg (Rosenberg 1991) has analyzed upon which conditions courts yield dramatic rulings that may induce a social change. These are legal precedents that empower courts to incite a change; a scarcity of a strong opposition to an appeal; significant public support of an appeal, namely- a majoritarian mood; and a bureaucratic approbation to utilize the court ruling. All these elements appeared to be present in the Network appeal. As clarified above, the appeal was framed within a larger legal framework of preceding court rulings and legislation; the Network submitted it during Israel's liberal moments characterized by a majoritarian mood, and no organized opposition to the appeal existed. Furthermore, no bureaucratic opposition was evident.

Has any social change occurred following this court ruling? The effect of the 1994 ruling on women's job replacement in the public market might have been significant. See Table 1 (4) below.

-Table 1 (4) about here -

The statistics demonstrates a drastic rise in numbers of women who were nominated as directors in governmental companies. However, there are some basic problems with these figures. The comparison is between 1993 and 1997, while the Court ruling was decided in 1994. The rise might have been occurred, in any case, due to increasing organizational proclivity to use rhetoric of gender equality. These methodological problems notwithstanding, there is little doubt that most of the social change has occurred following the ruling in 1994, and the ruling has left Ministers with a little formal choice but to comply with state law.

Hence, as far as the numbers can tell, the 1994 ruling has had significant effect on women's entrance into elitist positions in governmental companies. The theoretical and empirical questions should be about the communal meaning of such a limited change. Rosenberg's argument should be more carefully constructed. Even under conditions that are conducive to salient judicial rulings with a potentiality of generating social changes, these changes are not necessarily opting to occur in the larger communal dimension. Rosenberg's conditions are necessary for a communal social change, but they are not sufficient. Furthermore, his definition of a social change seems to be debatable. This is where liberalism fails short. Courts may render salient rulings, but they do not necessarily result in communal social reforms.

Before further analysis, let us look at the 1998 ruling in which the Court upheld a similar appeal of the Network. Following the 1994 ruling, the *Knesset*, with intensive involvement of the Network, has altered the SSL, so as to broadly apply the principle of affirmative action to state's civil administration.⁷⁸ The 1998 appeal was based on the SSL, and the HCJ was requested to further apply its ruling in 1994 and to enable women to be selected and nominated to high positions in state's civil service.⁷⁹ Through incrementally using success in previous court rulings liberal feminists have aspired to structure legal text and terminological environment for promotion of equality in opportunities for women.⁸⁰

⁷⁸ Bill Proposal 2381 (1995) p. 368.

⁷⁹ Outline of Arguments, clause 5.

⁸⁰ *Ibid*, clause 11.

A community will rely on written legal texts in ways that allow its interpretations to construct the desired terminological environment. Consequently, state law may turn as a major component in communal habitudes and efforts to advance its interests.

While in 1994, references in the Network's legal arguments were made to European and North American legal settings in 1998 the references were solely made to Israeli legal sources. Liberal feminists acknowledged that state law was more favorable to their purposes than ever before. In thirteen pages of the Network's arguments before the Court, there was no single reference to any legal source other than Israeli state law. Transnational, American-led, liberal rhetoric of gender equality was localized in the communal legal culture. As part of this textual construction of a favorable legal terminology, the concept of affirmative action was more prominent than ever whilst relying on the legal precedent of 1994 and its legislative results.

In 1998, The Network argued: "due to the alteration in the Governmental Companies Law and the ruling of the distinguished Court that this law matters [the 1994 ruling. G.B.], the proportional representation of women in directorates of governmental companies was sharply increased from 2% to 28.8%....".⁸¹ The Network effectively incited a process of a legal change based on its previous success in Court, while it had used legal texts, and empirical evidence concerning the effect of the 1994 ruling on entrance of women into governmental companies. The endeavor of liberal feminist

⁸¹ *Ibid*, clause 15.

attorneys to construct a linear line of legal progression from egalitarian assertions until affirmative action has framed the Court as part of that incremental process.

This process has moved the Court to uphold the appeal and imposes upon the Minister of Industry to seriously consider nomination of a woman to a senior position. The justices constructed a linear line of *stare decisis* and legislation that constitutes affirmative action as a neo-liberal right that renders a woman a legal claim, under specific conditions, due to her affiliation with a deprived collectivity of women.⁸²

The social scope of this legal change is very doubtful from a critical communitarian perspective that looks at the common feminist good. Whilst a few women were nominated to positions in the upper echelons of Israeli economy, most women could not enjoy the fruits of affirmative action in governmental companies and state's civil service. The egalitarian repercussions of women's progression in state bureaucracy on daily life of women, particularly in the under-privileged strata of Israeli society, are far from being proved. While mobilization of state law by policy oriented NGOs, like the Network, has been proven to be somewhat effective at the formal level of statutory and adjudicative assertions, the social costs of such a mobilization have not been less prominent.⁸³

⁸² *Ibid*,

⁸³ Other feminist organizations which participated in mobilization of state law have, *inter alia*, been *Naamat*, the Women's organization of the Histadrut, and *Emuna*, an Orthodox Jewish organization.

Grass roots activities and the empowerment of a separate feminist consciousness have been neglected. The empirical findings which are exhibited above show that in parallel to improvement in representation of women in governmental companies no other improvement has been evident, neither at the political public dimension nor at the grass roots level. Women have been subordinated to men despite a few salient court rulings and a few laws. This communal predicament notwithstanding, mobilization of state law and a liberal feminist cooperation with the political establishment have legitimated the hegemonic patriarchic epistemology that has generated the structure of male domination as a 'given' phenomenon. Liberal feminism has pragmatically hampered only few of the negative repercussions of patriarchy.

The approach of limited legalistic reforms through legitimatization of power's structures has been typical of liberal feminism across the world (Young 1990). In the US and Europe alike, some progression in the status of some women has been prominent in the business' realms, and it has followed post-WW.I. women's participation in national elections and later liberal acknowledgement of gender equality between individuals. Yet, studies which have been more sensitive to the communitarian aspect, have shown that despite women's progression in the business sphere, many women- relatively to men- have significantly been domesticated and displaced from the public sphere (Kersten 1996; Reyes and Shaffer 1997). What modern political regimes have been missing is a legal consciousness that views women as a deprived community and granting it collective rights to be equal to men.

V. Conclusions

This chapter has explored legal culture from a communal perspective of feminists, through delving into their voices, identities, consciousness, and practices. Since this chapter has related to feminists as non-ruling community it could have explored feminists as embedded activists who share common virtues and good, and yet with autonomy for various collective practices of identities toward law. Due to the emphasis upon legal culture I could have looked at a range of practices, compare them, and understand how they relate to state domination, communal good, social being, legal consciousness, and identities.

The diverse epistemological literature about feminism in modernity notwithstanding, the inadequacy of theoretical and empirical analysis of feminist legal consciousness and practices has rather been ostensible. Investigation of a non-American case study, alike Israeli feminists, may contribute to strengthening our relatively frail grasp of communal legal culture as a dimension of gender, and as a potential source of challenges and counter-hegemonic force. The diversity of Israeli feminist experiences and identities, and yet a relative resemblance to feminist practices and identities in the Western sphere, may suggest additional value to this chapter's findings.

Let us accentuate few lessons, and leave more conceptual conclusions to the following chapters. From a communal perspective that underscores interactions between various feminist concepts, identities, and practices, and their contribution to the common feminist good of gender equality, there have been two distinct and comparable feminist approaches to Israeli state law: radical and liberal.

Each of these trends of feminism has not been homogeneous and exclusive. Contrary, each of these empirical-based and theoretical-based trends has sufficiently been heterogeneous as to exhibit how various groups of women in the feminist community, that have shared a common good and other collective characteristics, have inclined to locate themselves and interact with state law through their communal affiliations. Crucial discrepancies in approaches and legal practices notwithstanding, radical and liberal feminists have shared some common elements of gender identity, social being (relative deprivation), legal consciousness (state law is male-dominated, and women have been discriminated in legality), and practices (efforts to attain equality through using organizational activities). Feminists have constituted a community in the communitarian sense of shared public good and crucial collective legal and sociopolitical characteristics, as a feminist consciousness, which have enabled women to be individually constructed through communicating with other women in their feminist community.

A severe and entrenched discrimination of women however, Israeli state law has become more liberal since the 1980s, and has supplied an opportunity to look at the insufficiency of liberalism as a potential liberating transnational and national force. State law and legal ideology have asserted more gender equality and democratic progression as parts of transnational trend of liberalism, mainly propelled by American domination. However, a careful analysis at the community level, has offered more diverse and counter-hegemonic lessons about the meaning of communal legal culture, state law, liberalism, and feminism. Transnational forces, scrutinized and generated in state law and legal ideology have been localized in the communal

legal culture that has rendered its own hermeneutics and its distinct practices to norms that erroneously might be conceived as 'given' within the language of 'globalization'.

Communal legal culture is not a homogenous set of practices. But rather, this notion reflects and focuses on ambiguities, paradoxes, inherent contradictions, multifarious identities, and diversity of reactions to state law like its mobilization, and de mobilization. Radical feminism has underscored community-consciousness and grass roots activities, alienation and apathy toward state law, and disengagement from legal mobilization of state law. Radical feminists have de- mobilized state law because it has been considered as an irreversible male product. Somewhat affected by neo-Marxian and critical feminist concepts of state ideology, legal ideology, and male structural control over state law, they have conceived liberalism as a menace to feminist collective consciousness and collective struggle for gender equality. Such equality could not have been attained through legalism and individual rights, but rather through bottom-up challenges to power structures. Equality has not existed in radical minds as a value of state law, but as a value to be attained whilst de-mobilizing state law and utilizing communal efforts through grass roots' activities within localities untouched by state law (like battered women), and criminalized by state law (as prostitutes).

Referring to the Friedman vs. Cotterrell controversy about legal cultures (Nelken 1997), I conclude that legal cultures are indeed important phenomena in human life. This term capitulates a world of practices toward and inside legal and sociopolitical settings, which neither can be traced through a formal analysis of state law nor through a macro analysis of political cultures. The cultural relevance of that concept

as Friedman has put it, however, legal culture has not been autonomous from state hegemony (and ideology). Critical communitarian approach exhibits that study of power and state hegemony should and can be integrated into comprehension of non-ruling communities and their cultures, as Cotterrell has generally offered.

Thus, Jewish radical feminists have not disobeyed state law, due to their Zionist proclivity. Paradoxically, state law has been ostensible in rhetoric of Israeli Palestinian feminists, who hypothetically were presumed to be the most extreme opponents of the state. The empirical evidence expounded above has suggested that Palestinian feminists have often inclined to demand some intervention of state law through state apparatuses in Palestinian women's life in order to protect them against communal patriarchy. The dichotomy offered in theoretical literature as if legal culture has been different phenomenon from state law and legal ideology is hence too binary and erroneous. From a communal perspective legal culture is not autonomous from state ideology, legal ideology, and state law. What makes a communal legal culture so fascinating to observe and intriguing as to deserve our indulgence, is its paradoxical and simultaneous existence within and outside state law and its ideology.

Liberal feminists have believed that individual civil rights in state law foster gender equality as part of state legality. In this instance of liberal feminism the intimacy of interactions between state ideology, legal ideology, state law, and communal practices has been more evident. They have mainly dealt with legislation, adjudication, budgets' allocations, and policy enforcement. Radicals have conceived state law as male-produced coercive fabric, with low probability of significant structural and cultural reforms. Liberals have perceived state law as inter changeable due to its

meaningful autonomy from other state's power foci. Therefore, they have perceived state law as a significant means to establish grounds for gender equality.

Violence has been a major source of consent and contention. On the one hand, fighting against male violence has been part of the common morality of feminists. On the other hand, while liberals have mobilized violence in their legalistic reforms, radicals have de mobilized it. Since critical communitarianism looks at state domination in communal life, it explicates how various feminist identities have reacted to state's violence in the context of communal legal culture. Liberal feminists have utilized campaigns against male violence and have mobilized military service in ways that have served to maintain their hegemony in the feminist community.

Referring to feminists as a community has enabled us to see identities and practices at the collective level, from alienation and apathy, to grass roots activities, extra-parliamentary action, legislation, adjudication, and legal mobilization of violence. It has also illuminated organizational interests during processes of legal practices. Alternative outlooks, whether a formal analysis of law in books, state perspectives, analysis of individual attitudes and practices or group-affiliated actions, would have exposed only one dimension of legal cultures.

Law from the communal perspective is a multidimensional sphere in which the language of law, its terminological environment, can be a field of cooperation and a battle- field at once. What may seem from a state law's perspective as progression may be seen from a communal perspective as regression. Moreover, while state law

has had some presumptions about women as individuals and as a group, the realities in the community have been quite different.

State law and its ideology have not only been limited in willingness and ability to accommodate diverse feminist expectations, they also imagine 'woman' in a very concrete form. Israeli state law has perceived a 'woman' as a middle class, heterosexual Jewish woman who has the power (e.g., time and money) to resolve problems by utilizing litigation. It has ignored, however, other identities and practices that have been articulated and generated at the feminist communal level. Thus, terms as 'affirmative action', 'sexual harassment', 'violence', 'equality', which have apparently been comprehended and agreed upon in the liberal canon, have been subjected to fierce communal controversies that have articulated and constituted, as communities have often done, multifarious identities.