

# RELIGIOUS OBSERVANCE AS A TOOL FOR DOMESTIC VIOLENCE IN CUSTODY DISPUTES BETWEEN HAREDI JEWISH CO-PARENTS

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## ABSTRACT

*Domestic violence victims in Haredi Jewish communities face serious obstacles to leaving their abusers and escaping domestic violence. Leaving their abusers often entails divorce and fierce custody disputes. For many Haredi women who have experienced domestic violence, leaving their abusers also involves leaving their religious sect or even religious observance in general. This paper will explore the dynamics that contribute to these concerns for Haredi Jewish domestic violence survivors and address how courts deciding child custody can inadvertently perpetuate domestic violence. This paper will then recommend changing the courts' analysis in child custody cases to a "friendly religious co-parent" model in order to better protect victims of domestic violence.*

## INTRODUCTION

Domestic violence victims in Haredi<sup>1</sup> Jewish communities face serious obstacles to leaving their abusers. By the time a domestic violence survivor leaves her abuser in these communities, they are likely to be married to their abuser with children in common (Pew Research Center, 2015). The victim may also face significant community pressures to stay with her<sup>2</sup> abuser (Schneerson & Chabad.org, 2001a; Schneerson & Chabad.org, 2001b) and within her specific sect of religious practice (Ruz & Pritchard, 2016). For many of these women, leaving their abusers involves leaving their particular religious sect and, in certain cases, they choose to leave their religious observance in general (Ausch, 2018). Theoretical models relating to domestic violence emphasize that domestic violence is not an individual phenomenon, but derives from "structural relationships of inequality between women and men. . . . It cuts across both the public and the private spheres" (United Nations, 2006). This paper will explore the cultural dynamics that make it difficult for Haredi Jewish individuals to leave an abusive relationship when the victim shares children with the abuser, as well as address how New York State courts deciding child custody can consider religion in a way that does not create additional risks of religious domestic violence.

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<sup>1</sup>"Haredi" signifies "devout" in Hebrew and is used to signify a particular group of traditional Orthodox Jews (Shafran, 2020). It is preferred to the more common, pejorative term "ultra-Orthodox" (Shafran, 2020).

<sup>2</sup> This article will use female pronouns as a default to refer to Haredi Jewish victims of domestic violence, because the overwhelming majority are female.

This paper does not address cases in which child abuse or neglect exist concurrently with domestic violence within a family. Rather, it focuses on custody disputes conducted outside of the realm of child protective services, as part of a divorce or other civil legal action. Specifically, the paper will explore how religious law can be used by abusers to marginalize and control Haredi or formerly Haredi female victims of domestic violence in the context of a custody dispute.

Part One of this paper will discuss the background of religious control as a mechanism of domestic violence and how religious control manifests in the Haredi Jewish community. This type of control will be called “religious domestic violence” in this paper. Part Two of this paper will address the ways in which custody orders given by New York State courts aimed at maintaining religious stability for children create additional difficulties for victims attempting to leave an abusive relationship in which religion figures prominently. Part Three of this paper will recommend changing the best-interest analysis that courts currently employ when considering a child’s religion. This shift will assist in protecting women against religious domestic violence.

## **PART ONE: RELIGIOUS COMMUNITIES AND DOMESTIC VIOLENCE**

Religious control can function as a mechanism for domestic violence. Religious domestic violence occurs in many different faiths (Fortune, Abugideire, & Dratch, 2010; Bent-Goodly & Fowler, 2006; Foss & Warnke, 2003; Ghafournia, 2017; Nason-Clark, 2004). Most references noted in this paper refer to the “big three” monotheistic faiths of Judaism, Christianity, and Islam, and of course this paper focuses on a particular group within Judaism. Irrespective of religious group, women in observant religious communities often face idiosyncratic abuse and barriers to leaving their abusers (Fortune, Abugideire, & Dratch, 2010; Bent-Goodly & Fowler, 2006; Foss & Warnke, 2003; Ghafournia, 2017; Nason-Clark, 2004). However, religiosity and participation in a religious community also serve as a protective factor for many women (Fortune, Abugideire, & Dratch, 2010).

While religiosity, in general, is inversely correlated with domestic violence, religious fundamentalism and patriarchal religious power models are risk factors for domestic violence in religious communities (Warren, 2015). Control based on religion has been incorporated into one version of the power and control wheel that is frequently used to conceptualize the power dynamics that exist within an abusive relationship. Specific mechanisms of domestic violence that have been identified as common to abusers and victims who belong to observant members of all three Abrahamic faiths. These mechanisms include a) using religious teachings to control sexuality and reproduction; b) using members of the religious community as tools for coercing or intimidating the victim; and c) using religious teachings to assert gender-based authority over a victim (Rapoport, 1991; Bent-Goodly & Fowler, 2006).

The expressions of religious domestic violence in the Haredi Jewish communities are idiosyncratic because these communities are small, cohesive, and organized around religion. (Friedman, 1991; Berman, 2000; Freund & Band-Winterstein, 2013). Haredi Jewish practice is vulnerable to manipulation by abusers because the vast majority of the Haredi community feels itself to be bound to Jewish law (“*halacha*”) and to the rabbinic authorities who are the decisors in the Jewish legal system (Pew Research Center, 2015). While religious principles are used in religious domestic violence in a variety of different faiths, their expression in Haredi Judaism has not been extensively explored. *Halacha* governs almost every aspect of a religious Jew’s life (Aiken, 2015). It is often through the use and misuse of *halacha* that abusers in Haredi communities exert religious control over their victims (Cares & Cusick, 2012). In Haredi communities, there is also a strong societal pressure to adhere to the strictures and traditions of the community (Auerbach, n.d.; Schapiro, n.d.). These strictures can be additional loci where abusers take control from their victims because traditions tend to pass down along the male familial line. While many parts of *halacha* and Jewish tradition could be used for abusive behavior, three aspects of halacha are particularly susceptible to being used as mechanisms of control by abusers: the laws of modesty, the laws of sexual conduct, and the strong value placed on marital harmony (*shalom bayit*).<sup>3</sup>

The laws of modesty can be used as a mechanism of domestic violence because they dictate the social interactions of women and men in orthodox Jewish communities. The laws of modesty are primarily thought of as a dress code of sorts for Jewish people. Community standards vary, but in Haredi communities, married women typically are expected to wear clothes that cover their collarbones, their arms past their elbows, and their legs to mid-shin. In addition, they almost always cover their hair with a wig and often a scarf or hat on top of a wig (Nir, 2016). These laws can be used as tools for domestic violence because abusers can control victims’ social relationships and access by threatening to expose the victim to embarrassment in the community as a whole. Consider, for example, a husband who refuses to give his wife money to repair or replace a damaged wig. The woman cannot go out in public in her community without wearing

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<sup>3</sup>Note that interpretations and implementations of halacha and tradition vary widely between communities and between individuals. The discussion of halacha in this paper is not intended to give a representation of how halacha functions in any one community, but rather to identify the manipulations or extreme interpretations of halacha that exist and can be used by abusers. It is particularly not intended as a critique of religious obligations that women freely take upon themselves as part of a Haredi community. The use of the religious law to exert control are, to the author’s knowledge, atypical even within Haredi communities, where religious practice (although strongly reinforced by community norms and expectations) is an *individual* responsibility and is not subject to coercion by either a person’s spouse or their community. See Taubes (2008) (discussing the limited circumstances in which an individual is permitted to rebuke another, and emphasizing that religious practice is incumbent on the person—not their friends or family—and that rebuke is only appropriate when done kindly and when the listener is open to changing their behavior).

a wig, so she is forced to choose between wearing a damaged wig and facing public embarrassment or staying home.

Haredi interpretations of modesty laws additionally operate as a barrier to women accessing resources in the greater community because women are discouraged or prohibited from speaking to men who are unrelated to them (Zevloff, 2011). Even if victims decide to ask a male community figure for help, it is likely that there will be no way for the woman to approach him or that he will refuse to speak to her because doing so could be considered immodest. Abusers can use these laws to cut women off from figures of power within the community, especially because the legal decisors are all men. Questions to these decisors—and their responses—are expected to be conveyed through women's husbands or fathers, which allows abusers to manipulate or invent rabbis' decrees to control their wives' behavior.

Sexual relationships within Jewish marriages are also governed by *halacha*, providing another avenue for abusers to control women's behavior. While a full discussion of these laws is beyond the scope of this paper, *halacha* addresses the times when spouses may be intimate with each other and the transition between times when spouses can be intimate and times when they cannot be intimate (Zimmerman, 2001; Guterman, 2008). These laws can lead to religious domestic violence in two major ways: a) abusers may pressure their victims to have sex when they are religiously prohibited from doing so and b) abusers can misconstrue *halacha* to try to coerce their victim into believing that they are religiously *required* to have sex with their spouse when, in reality, no such obligation exists (Cares & Cusick, 2012). This is sexual assault, and also forces the woman to abandon her own religious practice and to face the shame and fear of having violated a serious religious law (*Abusive Husband*, 2009).

Finally, much religious domestic violence in Haredi communities is done under the guise of telling the woman she must create *shalom bayit*—peace in the home. *Shalom bayit* is considered of central importance to Jewish marriages (Maimonides, n.d.). *Shalom bayit* is cited as the justification not only for spouses taking special care for each other, but also as a priority of household economic choices and, at its best, the conduit for the Divine presence (see Talmud Bavli, Koren, Shabbat 23b; Talmud Bavli, Koren, Sotah 17:a in Steinsaltz, n.d.). The laws of *shalom bayit* apply to both men and women (Maimonides, n.d.). However, they are very susceptible to manipulation by abusers to control their victims and force them to acquiesce to the abuser's demands. Abusers can tell their victims that they may not contradict them or must contribute more labor to the household (even as the abuser refuses to do so) in order to maintain *shalom bayit*. Furthermore, rabbinic authorities—either due to bias or ignorance—may tell victims of domestic violence to exert more effort to maintain *shalom bayit* in their home instead of helping them to leave abusive relationships (Schneerson & Chabad.org, 2001b).

By framing domestic violence in the terms of *shalom bayit*, abusers

can place the blame for abuse on a victim's shoulders. Arguably, *shalom bayit* can be utilized as a religious framework for telling the victim that she would not be abused "if only she created *shalom bayit*"—i.e., fulfilled any and all demands of the abuser. Couples going to a rabbinic authority or other community resources with marriage troubles often are counseled to stay together for the sake of *shalom bayit*, and to simply "try harder" to achieve this illusory peaceful home (Schneerson & Chabad.org, 2001b).

Jewish law can be misused not only in the perpetration of domestic violence but also as a barrier to women's leaving abusive relationships. The prohibition against "mesirah"—turning a Jewish person over to non-Jewish authorities (Teshuvot HaRosh 17:1), especially given concerns about widespread antisemitism and anti-Haredi sentiment—is a significant obstacle to victims of domestic violence accessing help from outside of their community. In insular Haredi communities, this prohibition is interpreted very broadly, which results in almost all legal matters being handled within the community (Aviv, 2014). For victims of domestic violence, this prohibition means that a victim can face community censure for going to the secular police or courts for help. Haredi women may not pursue an order of protection in a secular court, because doing so will be considered a betrayal of the community. Husbands also have the ability to refuse a religious divorce (*a get*) to their wives. The refusal to grant a *get* is domestic violence because it functions as a way for abusers to prevent their wives from leaving them or the community. By *halacha*, women are unable to remarry in a Jewish ceremony unless they obtain a Jewish divorce.

## **PART TWO: RELIGIOUS DISAGREEMENTS AND DOMESTIC VIOLENCE IN CUSTODY DISPUTES**

Custody orders aimed at maintaining religious stability for children create additional difficulties for victims attempting to leave an abusive relationship in which religion is a major factor. Custody disputes may lead to further or more severe religious domestic violence because an abuser can exert control over a co-parent's religious practice either individually or by channeling the resources of the community, and isolate a co-parent who is not following religious law scrupulously, all under the guise of enforcing a court order about the best interests of the child.

Custody disputes for Haredi couples can be complicated by the social and religious implications of childrearing within their communities. This is partially due to demographic realities—Haredi couples do not live together or have children before marriage (*Negiah and Relations for Unmarried Couples*, 2017). These couples tend to get married earlier (Pew Research Center, 2015), and typically begin to have children soon after marriage. Child custody disputes are also more common—and more intense—because of the social connotations of leaving the Haredi community or changing religious practice (Cohen, 2017). Thus, custody disputes are not only about the individual parents' own relationships with the children

but also implicate the greater community's hopes for the children and their religious and social education (Fenton & Rickman, 2016; Santo, 2013).

Courts strive to maintain a “religious status quo” for the child and “will consider religion in a custody dispute when a child has developed actual religious ties to a specific religion and those needs can be served better by one parent than the other.” (Gribeluk v. Gribeluk, 2014; Ervin R. v. Phina R., 2000). This approach is grounded in the broader perspective that a child's best interests are served by maintaining stability in the child's life (Gribeluk v. Gribeluk, 2014). Courts' concern for the religious status quo of the child can be determinative in child-custody cases of Haredi couples, because the custodial parent has the right to determine the child's religious upbringing (De Beer v. De Beer, 1990; Stevenot v. Stevenot, 1987). If one parent is now practicing the religion in a different way—or not at all—courts may decide that the child should stay with the parent whose religious practice has not changed in order to maintain the status quo. In a recent case, ETTY AUSCH, a formerly Haredi mother of seven, was severely limited in her visitation of her older children and prohibited from seeing her younger children because she is no longer religious (Ewing & Grady, 2017). Despite Ms. AUSCH's allegations of her ex-husband's significant sexual abuse against her, the court denied her custody of her children and severely limited her visitation (Ewing & Grady, 2017).

Courts routinely place religious requirements on Haredi co-parents in order to maintain religious stability for Haredi children. They commonly require parents to keep kosher and observe the Sabbath when their children are with them (Weisberger v. Weisberger, 2018; M.C. v. R.C., 2008). These requirements are extremely ambiguous given the diversity of opinions within Jewish law regarding what is or is not “kosher” and what constitutes a violation of the Sabbath. Because of First Amendment concerns, the enforcement of such orders tends to rely on discerning the credibility of the parents' assertions about their religious practice and the parents' complaints about the religious practices of their co-parent rather than an investigation into normative religious practice in the community.<sup>4</sup> Nonetheless, courts continue to use these markers because they are very obvious elements of religious Jewish practice and because they directly address the lifestyle of the child. Most recently, courts have begun to require parents to adhere to children's “school rules”—the (often-unwritten) comprehensive requirements for parents who send their children to Haredi Jewish private schools<sup>5</sup> (Weisberger v. Weisberger). Arguably, this requirement is especially

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<sup>4</sup>Constitutional concerns about the separation of church and state prevent a court from issuing a legal decision about which parent is “right” regarding a question of religious law. Because of the constitutional concerns, courts are often opaque about their application of religious rules to custody and visitation cases. While there may be a constitutional issue with requiring non-custodial parents to acquiesce to the custodial parent's religious standards, a constitutional analysis is beyond the scope of this paper. For a discussion of the constitutional angle, see generally Barshay (1997); Volokh (2006).

<sup>5</sup>These rules are difficult to obtain because Haredi schools rarely have a religious presence,

vulnerable to manipulation by abusers because courts cannot easily verify what the school's rules are.

There are three ways in which custody determinations that adhere to the religious status quo inquiry in a best-interests analysis create additional risks of religious domestic violence or may increase the severity of such violence. First, focusing on maintaining the child's religious status quo by mandating certain religious practices or comportment by the victim gives the abuser a tool to continue domestic violence by policing the victim's adherence to court orders. Because a victim's visitation with her children or her custody of her children may be contingent on her maintaining the religious status quo, abusers can come to court and allege that the victim's religious practices have changed and ask for custody or visitation to be modified. While the use of the legal system to perpetuate domestic violence is possible in every custody dispute, it is especially problematic in the Haredi context because court orders regarding Jewish religious practice generally involve practices that are beyond the court's own understanding.<sup>6</sup> Evidence regarding religious practice is hard to provide to a court and even hard to apply because of constitutional concerns that limit the ways in which courts can rule on the validity of a litigant's religious practice. Therefore, if the abuser claims that the victim has violated the court order, the court is unable to easily identify whether there has or has not been a violation and may end up supporting an abuser's frivolous or manipulative claim. Even if the victim is ultimately able to defend against the abuser's claim, the abuser has still been given a legally-sanctioned way to monitor the victim's religious practice and subject her to traumatic and intrusive legal proceedings.

These concerns are even greater when a court has ordered both parents to maintain the "school rules" of their children. Most children who grow up in a Haredi community attend a private Jewish school that adheres to the tenets of their sect of Judaism (Pew Research Center, 2015). Haredi schools rarely have an online presence, and the school rules are often unwritten or

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the rules are unwritten, and the school operates in Yiddish. However, rules of the school Bnos Menachem were circulated in the Jewish community in 2017 after the school issued a letter instructing mothers of students at their school that new school rules for mothers of students included "1) Nail polish should be conservative/soft colors; 2) No denim; 3) [Wig] length should not exceed the shoulder blades; 4) No tight fitting or provocative clothing; 5) No leggings; 6) Elbows, feet, neckline completely covered; 7) Skirts mid-calf" and asking the mothers to sign a statement that they would "do [their] utmost to fulfill them" (Gurary, 2017).

<sup>6</sup> Consider, for example, the following scenario: An abuser comes in and claims that the victim is feeding the children "non-kosher" food. The victim explains that the food has kosher certification and that it is, indeed, kosher. The abuser responds that he does not think the certification is valid and that when they were living together, the family never would have considered such food kosher. Both parties have witnesses who can testify to the fact that the food is/is not kosher. In such a scenario—or the thousands of possible analogs that could come up in religious practice—it will be incredibly difficult for the court to know whose claim is correct. The court cannot know which kosher certifications are acceptable to the family or the community, and how much the victim's conduct does or does not deviate from the agreed-upon religious practice of "keeping kosher."

even unspoken. By linking child custody or visitation to school rules, the court creates an opportunity for the abuser to use the children's schools as a tool of domestic violence. For instance, an abuser can begin to highlight examples of school-rules violations that might not get policed by the school itself.

Furthermore, because the school rules generally apply to parents, whether their children are with them or not, the school-rules requirement invites the abuser to monitor the victim's conduct even when the children are not in her custody. Chava Weisberger was denied custody of her children due to her failure to adhere to a religious conduct custody agreement until the lower court's ruling was overturned on appeal in January 2018 (Weisberger v. Weisberger, 2018). Even to the extent that Ms. Weisberger donned religious apparel and abided by the abuser's religious dictates while she was with their children, her irreligiosity was used by the abuser to justify intensive monitoring of her behavior and limiting her contact with her children, for instance asking that the victim's visitation be supervised by a Haredi relative. Accordingly, abusers can engage in manipulative applications of the laws of modesty, the Sabbath, or kashrut in order to continue to control the victim even when the victim is not with her children.

A second problem with using community norms or school rules as a conduct-requirement for victims is that courts provide opportunities for abusers to channel the resources of the community into controlling the decisions of the victim about religious observance. In many Haredi communities, there is a very deep fear of people leaving the sect, and the community will mobilize in order to convince wavering members to remain in the sect (Brodesser-Akner, 2017; Halime, 2015). Therefore, the abuser can exert control over the victim by co-opting these communal efforts and using the community as a tool for controlling the decisions of the victim.

Finally, requiring victims to maintain the religious status quo or to follow school rules in custody or visitation orders may unintentionally isolate victims from resources outside of the religious community. Many Haredi communities and schools have a requirement that families refrain from having smartphones and refrain from using computers or the Internet if they are not required to do so for their jobs (Grynbaum, 2012; Fenton, 2016). Therefore, by requiring a victim to maintain the religious status quo or to follow the school rules of her children's schools, a court may unintentionally lend state-enforcement to community policies that cut the victim off from the nonreligious world at a time when such contact might be especially necessary

### **PART THREE: HOW COURTS CAN AVOID PERPETUATING RELIGIOUS DOMESTIC VIOLENCE IN CUSTODY DISPUTES**

Given the impact of the current best-interest analysis that courts employ when considering a child's religion, a change is required to protect against religious domestic violence. The best-interests analysis in custody

disputes is a child-focused analysis (Peskind, 2004). Whereas earlier courts focused on a parent's right to raise their child or on traditional assumptions of which gender parent is better for children at different stages of the child's life, courts have moved to a case-by-case and child-by-child approach to determining custody (Peskind, 2004). In cases involving domestic violence, multiple legislatures have articulated that courts must consider domestic violence when determining child custody, and that it is a weighty factor in the best-interests analysis.<sup>7</sup>

In the context of religious domestic violence, courts should consider the ways in which custody orders that address religion in order to maintain the child's religious status quo can intensify or perpetuate domestic violence between religious co-parents. Courts should replace the "status quo" model with a "friendly religious co-parent" model, in which courts consider which parent is more likely to support the child's own religious choices and to foster a relationship with the other parent's religion.

That is, one way to prevent abusers from using custody disputes as a locus of domestic violence is to change the model that courts use to determine the best interests of the child in custody disputes between religious co-parents. Due to the dangers inherent to the present model for considering religion, it is vital that courts create a model that does not give abusers tools to continue religious domestic violence. One potential solution is for courts to consider religion in the way that they currently consider each parent's ability to foster the child's relationship with the other parent. This paper proposes this model and calls it the "friendly co-parent" model. Under a friendly co-parent model, the court would look into whether each parent is willing to allow the other co-parent to have access to the children, whether the parent speaks badly of the other parent, or if either parent is trying to turn the child away from the co-parent. All of these metrics tend to bias a court against a domestic violence survivor who is acting out of a rational fear of her abuser. However, while the friendly co-parent model can burden domestic violence victims by forcing them to protect their children's relationship with a person who has abused them, using the friendly co-parent model to guide decisions about the child and parents' religious observance does not face

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<sup>7</sup>See, e.g. Ariz. Rev. Stat. Ann. §25-404.03 (2015) ("The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person."); N.D. Cent. Code §14-09-06.2 ("In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child."); N.Y. Dom. Rel. §240 ("Where... allegations [of domestic violence] are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child").

the pitfalls of the religious status quo model, which are discussed above in Part Two.

To apply a friendly religious co-parent model, a court should consider whether a parent is speaking disparagingly about the other parent's religious practice, whether the parent is supporting the child's own religious development and beliefs, and which parent is open to fostering the child's relationship with the other parent's religious beliefs. While this still is burdensome for a parent who is faced with supporting their child's relationship with a religion that is not (or is no longer) their own practice, it does not force victims to support their abuser directly, but rather to support the child's own religious beliefs and the child's relationship with the co-parent's religion. This mitigates the problem of religious policing by the abusive co-parent because the inquiry is framed in terms of the parent supporting the child's needs, rather than the co-parent's desires regarding the victim's own religious conduct. For example, a mother who feeds her child kosher food and supports the child's observance of the Sabbath, cannot be penalized for choosing not to adhere to a Haredi dress code, simply because her new mode of dress changes the child's religious status quo.

Adopting a model that is focused more on the parent's ability to support the child's religious development and exposure to each parent's religion minimizes the risk of court-enforced religious domestic violence in several ways. First, it limits the abuser's ability to use the court to monitor the victim's religious behavior and to threaten the victim if she does not comply with his religious standards. This model does not dictate parents' own religious conduct. As a result, the abuser cannot use a court order to dictate the victim's religious observance or to control her lack of observance.

Second, it allows parents to consider their children's own religious choices and desires. Therefore, while a custody order may require that victims accommodate their children's own desire to keep kosher or to observe the Sabbath, the driving force of religious requirements in the parents' life are the child's own religious needs and opportunities, not the abuser's mandates for the children. This model is most relevant for children who are old enough to verbalize their religious desires and does not fully address the problem of religious upbringing for infants or toddlers. However, this model is more consistent with the children's rights-focus of modern family law (Fortin, 2003) and also further distances the victim from her abuser's attempts to control her religious life.

The religious conduct required of the victim is only the conduct that is necessary to support the child's opportunity to participate in the co-parent's religious practices—the victim would no longer be bound to follow the abuser's religion in full, even where the religious observances do not impact the child's own practice of the religion.<sup>8</sup> While communal pressures

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<sup>8</sup> Consider, for example, a mother who no longer wishes to adhere to the modesty laws of their ultraorthodox sect. The mother's dress has no bearing on the child's own religious practice. However, under the current model, courts could require mothers to maintain their

can still be brought to bear on a mother who chooses to leave the religious sect, victims will be protected from having formal court orders that require the mother's own religious conduct. This added level of separation is a small change but creates a crucial difference. For a mother who has a court order requiring her own religious conduct, her clothing and other choices can be a direct violation of the custody order, and per se puts her custody or visitation rights at risk. For a mother whose conduct is the subject of social pressure but is not violative of a court order, the court can act as a protective factor for the mother and protect her custody rights in the face of religious pressure regarding the mother's conduct that goes against community norms but does not have a significant impact on her child's ability to practice religion.

Third, a model that requires the parents to support the child's exposure to the other parent's religious practice will protect against abusers that try to cut off a victim's access to her children because of her lack of religiosity. Abusers who denigrate their victims for a lack of religiosity or for changing their religious practices will no longer be rewarded (as he is under the status quo arrangement) and instead will rightfully be seen as alienating the children from the victim's religious practice.

Finally, adopting this approach to religious differences in custody disputes is consistent with the child's best interest. It would be impossible for a secular court to determine what religious practice is best for the child. Therefore, the court should look at which parent best provides for the religious development of the child, which includes the child being able to make their own religious choices (Dwyer, 1994; Kilkelly, 2009). While stability is important, the need for stability in religion is outweighed by the need for the child to have stable relationships with his or her parent—no matter whether the parent and child's religious paths diverge. Therefore, by factoring in which parent is best able to encourage the child's religious growth and accept the child's involvement with the co-parent's religious practice, courts will be closer to finding the best interest of a child whose parents have different religious practices.

## CONCLUSION

Haredi victims of domestic violence are vulnerable to continued domestic violence during custody disputes with an abusive spouse. Despite the grave risks facing such victims, courts consider co-parents' religious practices in a way that is vulnerable to exacerbating the dynamics of religious domestic violence. Courts routinely tie child custody or visitation to specific types of religious practice and to community norms or children's school rules. In doing so, the court creates a tool for abusers to use to

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ultraorthodox dress code in order to maintain stability for the child or because the court has ordered parents to follow school rules. Under a friendly religious co-parent model, the court would need to consider whether the mother's dress is relevant to the child's own religious practice and to consider that the abuser's attempts to coerce the victim into dressing a certain way is anathema to the abuser supporting the children's relationship with the mother's own religious practice.

continue religious domestic violence—with court enforcement. To mitigate the religious domestic violence faced by Haredi domestic violence survivors in custody disputes, courts should consider religion not as a question of specific practices, but as a question of choice and development. Courts should find that it is in the best interest of a child to be placed with a parent who is open to accommodating the child’s own religious choices and to the child developing a relationship with the co-parent’s religion or lack thereof. By changing their consideration of religion in this way, courts can protect against custody orders being used to perpetuate religious domestic violence and cease to reward abusive religious behavior against Haredi or formerly Haredi victims of domestic violence.

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### ABOUT THE AUTHOR

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