

Mediation

by: Rabbi Jeremy Rosen

The reviving clash between religion and the civil state is gaining in heat, but now in reverse. The flash point, of course, is the issue of Sharia law and whether it should have any place in Western democratic legal systems. In parts of the USA, laws have been passed banning Sharia from having any role whatsoever, and in the UK, surprisingly, there is a bill in the House of Lords proposed by Baroness Cox seeking to limit the role of Sharia mediation in the lives of women in the UK.

In principle, there ought to be space for a religious option within and under the supervision of civil systems. In Britain and in the USA for many years it has been possible for Jews to go to state-recognized arbitration within the framework of Jewish law. Civil law is, in many respects, based on different values and fundamentals than Jewish law. In Israel, the civil legal system is a mélange of Ottoman, British Mandate, Roman, and Jewish legal systems.

The room that is given to religious systems to insinuate themselves into the state system are in the optional realms of arbitration, supervision of religious standards, and, more recently, financial transactions where, in Islam as in Judaism, interest is forbidden and there are ways of getting round the prohibition through special contracts.

Government-sanctioned mediation has been used as a legitimate alternative to the expensive and protracted court system in the UK since 1999, and Beth Din arbitrations are recognized by the legal system. But in recent years, the boundaries are being pushed to include family and marital arbitration and this is what is causing, in Britain at any rate, the reaction.

In Charedi circles there is a longstanding suspicion of civil systems. Reporting to the civil authorities is regarded as “messira”—snitching, betrayal. This comes from the experience of anti-Semitic regimes, Communist dictatorships, and even Western welfare agencies whose value systems are often in opposition to Jewish ones. However the increase in publicized cases of abuse where the perpetrators were protected and the victims victimized is a long standing embarrassment to the ethically sensitive . It is possible that prompt action could have prevented the Kletzky tragedy.

At last there is light! A recent decree from Rav Eliashiv, the Godfather of Charedi authority, is that although in principle one may indeed report sexual and other abuse to civil authorities, one should first seek the opinion of a rabbinic expert on these matters. The trouble is that neither I nor any Orthodox rabbis I know in Israel are aware of any such experts or whether there are any who have been trained in such matters.

The Rabbinical Council of America came out with [an unambiguous statement](#) in 2003, which they [reaffirmed last year](#), but even after the terrible Kletzky tragedy [some Charedi rabbis persist in their dubious if not immoral stand](#)

[against calling in civil authorities](#). So thank goodness [others are not so myopic](#).

And yet surprisingly and at the same time there has been an increasing interest in certain non-Jewish mechanisms such as arbitration (yes, I know that Jewish Law has long ago encouraged arbitration, but the theory too often got lost). In general however if voluntary arbitration, Jewish or say Muslim, within the framework of civil law is legitimate and praiseworthy, the problem the other way is that religions often have values that conflict with state law. The equality of the sexes is a case in point. In many Muslim communities, women are morally, emotionally, and physically coerced to accept religious arbitration against their will. How are we to protect them? Even in some Jewish circles we know women face male prejudiced courts that, in divorce settlements and child custody, favor the men (and of course in many secular civil courts the reverse is true). We should be encouraging the weak to seek the protection of the courts rather than encourage them to be at the mercy of internal coercion.

This is why I support bills that limit the areas of mediation outside the civil system, even if it would affect Halachic arbitration. So be it. We can always choose whether to accept the law of a land or move somewhere else. This issue was raised recently and well argued by [Melanie Phillips](#).

Nevertheless, where there are adequate safeguards, I am a fan of mediation. Having had enough negative experiences with the law (matrimonial, civil, and even criminal), I will always advise anyone to void the law at almost any cost. Mediation seems to me to be a far better, cheaper, and less demeaning alternative. What is more, it is a cause of great regret to me that I know of too many Batei Din around the world that are biddable, and mediation is a far more acceptable halachic alternative. And it is a more acceptable alternative for those Jews who feel alienated from religious authority.

This is why I am stepping out of my usual zone to recommend a new Jewish mediation service that has in recent months become available in the UK called [Jmediate](#), founded by an old friend, David Swede.

To quote its blurb, Jmediate “offers a professional approach to resolving disputes. It is fast, confidential, cost-effective and sets out to achieve results acceptable to both parties. Its mediators manage the entire process from first enquiry to eventual outcome. Initial consultation is free, always confidential and without obligation and have extensive experience of resolving conflict in a wide variety of contexts – business, communal and individual. All mediators are selected to meet the particular needs of the Jewish community.”

Good luck, David.