

**The 411 on 911:
Reporting Jewish Abusers to the Civil Authorities**

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JSafe: The Jewish Institute Supporting an Abuse Free Environment

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Safety is the number one priority. In the hierarchy of Jewish legal values, “[Protection from] danger is a more significant factor than [refraining from] ritual prohibitions.”¹ But safety can be elusive for victims of abuse and assault. Their batterers and abusers are stronger than they. Batterers and abusers can be manipulative and controlling, and, at times, devious and calculating. Protecting themselves is often difficult and dangerous. Even family members and friends, despite their best intentions, can be powerless. Some are afraid to get involved. Others are paralyzed and frustrated by helplessness, lack of knowledge of what to do, or lack of legal clout and authority.

But Judaism insists that we have a religious duty and moral obligation to protect all members of our community, especially the most vulnerable, including children and adults who are victims of sexual, physical and emotional violence, abuse and impropriety. Failure to protect another in need is a violation of the biblical verses, “You shall not stand idly by the blood of your neighbor” (Lev. 19:16) and “And you shall love your friend as yourself (Lev. 19:18).” Failure to act can constitute a *hillul Hashem*, a desecration of God's Name.

Although nothing can guarantee absolute safety, there are many means available to victims so that they can be as safe as possible under the circumstances they face. It is important for a victim to develop a safety plan with the help of therapists or domestic violence advocates. These plans may include, among other things, creating a network of supportive family, neighbors and friends; identifying shelters and other social service assistance available to meet immediate and long term needs; identifying a place to live if she chooses to leave her home; depositing keys, important papers, cash, credit cards, medical records, clothing, etc. in a safe and secure place in case they are needed; and understanding the legal options such as calling the police and obtaining an order of protection.

Although not flawless, the civil authorities, through the police and courts, can go a long way in protecting victims. Orders of protection, arrest, imprisonment and removal of children from abusive situations are some of these tools. These concerns obligate us to report child abuse to the civil authorities, and allow victims to seek help in protecting themselves from their abusers. Furthermore, the judicial process can hold perpetrators responsible and accountable for their actions. Despite historic debates and arguments, the consensus of contemporary Jewish religious authorities is that such reporting is religiously mandatory.

¹ *Hullin* 10a.

If all of these are so obviously the right things to do, then what are the problems? Why do some religious authorities prohibit victims to turn to the courts and the police? Are cases of assault and abuse included in the prohibitions of *mesirah* (reporting fellow Jews to non-Jewish authorities) and *arka'ot* (adjudicating matters in non-Jewish courts)? What is the status of non-Jewish legislation in the eyes of the Jewish legal system? These issues raise significant theological, legal and practical concerns.

Jewish and Civil Laws

We are obligated to pray for the welfare of the government in whose country we live. Based on the verse, “And seek ye the welfare of the city to where I have carried you away captive, and pray unto the Lord for it; for in the peace thereof shall you have peace,” (Jeremiah 29:7), R. Hanina, the Assistant High Priest, said, “Pray for the welfare of the government, for were it not for the fear thereof, one man would swallow up alive his fellow-man.”² And we are also duty-bound to obey its laws—*dina de-malkhuta dina* (the law of the government is the law).³ This statement of the Talmudic sage Samuel, offered without biblical support or reasoning, is undisputed in rabbinic literature and most authorities maintain that *dina de-malkhuta* is a biblical obligation.^{4 5}

² *Pirke Avot* 1:2.

³ *Baba Kama* 113a, *Baba Batra* 54b, *Gittin* 10b, *Nedarim* 28a.

⁴ *Avnei Miluim* to *Even haEzer* 28:3; *Teshuvot Hatam Sofer*, *Yoreh De'ah* 314; *Teshuvot Devar Avraham* I:1; *Teshuvot Binyan Ziyon* 2:15. *Bet Shmuel* to *Even haEzer* 28:3 maintains that it is rabbinic.

⁵ Early rabbinic authorities put forth various reasons justifying the obligation of *dina de-malkhuta dina* (the law of the government is the law):

- 1) Social Contract Theory: The residents of a state willingly accepted and obligated themselves to the authority of a certain individual or system of government (Rashbam to *Baba Batra* 54b, s.v. *mi amar*). Even if not every individual accepted this obligation formally and explicitly, such obligation is assumed by virtue of his residence or citizenship. (*Terumat haDeshen*, no. 341.)
- 2) Land Ownership Theory: The land belongs to the monarch and, as “landlord,” he sets the rules. On threat of expulsion, one must follow them. (Rashba to *Nedarim* 28a; Rosh to *Nedarim*, ch. 3, no. 11; Ran to *Nedarim* 28a.)
- 3) Right of Conquest Theory: A ruling authority is considered as one who has captured the territory as a result of war, subjugating all residents of that land to him. (Rashba, Ritva and *Nemukei Yosef*, to *Yevamot* 46a; Ritva quoted in *Shittah Mekubetzet* to *Baba Metzi'ah* 73b. See *Tosafot*, *Yevamot* 46a, s.v. *ki nafki*.)
- 4) Biblical Rights of Kings Theory: The Bible recognizes that rulers have certain powers and authority. These are outlined by the prophet Samuel, I Samuel 8:11-13, in response to the people’s request for a king. (*Kiryat Sefer* of Mabit, *Hil. Gezeilah*, ch. 5.) These powers are afforded both Jewish and non-Jewish authorities. (*Bet Yosef*, *Choshen Mishpat* 26 in name of Rashba.) However, this theory is the subject of a dispute. One

Jewish law, based on the revealed word of God, is unique in character, quality, and sanctity. “The law of the Lord is perfect, restoring the soul; the testimony of the Lord is sure, making wise the simple. The precepts of the Lord are right, rejoicing the heart; the commandment of the Lord is pure, enlightening the eyes.” (Psalms 19:8-9) Now, from a Jewish perspective, what is the nature of non-Jewish laws? Are the two systems similar? Do they share any common values or themes?

Again, the Psalmist writes, “He declares His word to Jacob, His statutes and His ordinances to Israel; He has not done so with any nation; and ordinances he has not made known to them (Psalms 147:19-20).” Jewish law is divinely communicated and is the expression of the will of God; non-Jewish law is not. And so, if, as many commentators suggest, *dina de-malkhuta dina* (the law of the government is the law) is the product of a contractual relationship between the rulers and the ruled, then *dina de-malkhuta* is theologically valueless and is only as enlightened as the parties to the contract make it and Jews are obligated to abide by the law of the land for practical, utilitarian reasons..

However, the authority of *dina de-malkhuta* may arise from the divine quest for justice, based on the Noahide obligation of *dinim* (the establishment of a system of

school maintains that this chapter is the source of legal authority of kings. The other suggests that Samuel was merely trying to dissuade the people from pursuing the establishment of a monarchy. See *Sanhedrin* 20b. See *Nimukei Yosef*, *Nedarim* ch. 3, who writes that because of the latter position, *dina de-malkhuta dina* applies only to non-Jewish governments.

5) Noahide Law Theory: One of the seven Noahide laws (*Tosefta*, *Avodah Zarah* 9:4; *Sanhedrin* 56 a-b) is the obligation of *dinim*, i.e., for non-Jewish societies to set up and enforce a system of justice. (See Rambam, *Hil. Melakhim* 9:1, and Ramban to Genesis 34:13.) Therefore, rulers have biblical warrant to establish laws. (R. Yaakov Antoli, *Mamad Talmidim* 12a, 71b-72a; *Even haEzer* to *Nizkei Mamon* 8:5.)

6) Economic Reallocation Theory: Jewish law recognizes the principle of *hefker Bet Din hefker*, i.e., the Jewish court has the authority to confiscate personal property and render it ownerless. The *Bet Din*, in its role as a governmental authority, holds this power and thus, all governmental authorities may exercise this power. (*Teshuvot Devar Avraham* I:1.)

7) War Casualty Theory: Based on the verse “My vineyard, which is mine, is before me. Thou, O Solomon, shall have the thousand, and those that guard the fruit thereof, two hundred, (Song of Songs 8:12)” the Talmud states, “A government that [by going to war] causes one out of six to be killed is not punished.” (*Shevu’ot* 35b.) This verse recognizes the legal authority of a state to wage war, thus granting it legitimate governmental authority in this and in other areas. (*Teshuvot Hatam Sofer*, *Orah Hayyim*, no. 208 and *Hoshen Mishpat*, no. 44.)

justice),⁶ and thus, has significance and value for Jews as well. This religious value may explain its significance even in Jewish law. The Talmud states that all documents that are issued by a non-Jewish court, even if witnessed and certified by non-Jews, are valid. The exceptions to this general principle are *gittin* (Jewish bills of divorce) and writs of manumission.⁷ Rashi explains the distinction: *Gittin* are invalid because non-Jews have no standing with regard to Jewish marriage and divorce. They are not able to enter into these relationships and thus cannot effect them in any. Other legal documents are valid however, even if they regulate affairs between two Jews. This is because of *dina de-malkhuta dina* and because non-Jews do have standing in these matters,⁸ as Rashi notes, “Noahides were commanded concerning *dinim* (civil law).”⁹

In fact, the very nature of Noahide law—whether divine or human—may be what underlies the Talmudic debate as to its Scriptural derivation. The Talmud, *Sanhedrin* 56b, records a debate between R. Yohanan and R. Yitzchak. Both locate the source of the *dinim* obligation in two different words in the verse: “And the Lord God commanded the man saying, ‘Of every tree of the garden you may freely eat’” (Genesis 2:16). The former derives it from *va-yetzav* (and He commanded), and the latter from *Elohim* (God). The different sources may reflect differences in attitude: R. Yohanan sees the Noahide system of law as a man-made enterprise codified in response to the Divine command and R. Yitzchak views the laws as reflections of God’s divine justice.

If Noahide laws are divine, what did the Psalmist mean when he wrote, “He declares His word to Jacob, His statutes and His ordinances to Israel; He has not done so with any nation; and ordinances he has not made known to them?” (Psalms 147:19-20) One Midrash suggests that while both the Jewish and Noahide systems are divine in origin, the Jewish people were given the details of judicial procedure and non-Jews were not.¹⁰ Ran suggests that the Jewish obligation is “to render just and true judgment, for even if such judgment were in itself not required for the functioning of society and filled no immediate need, by virtue of such just judgment, Divine grace will be visited upon our people.” Conversely, the non-Jewish obligation is functional: “the only value of just adjudication is the proper functioning of society.”¹¹

⁶ Ramban to Genesis 34:13. This is one of the seven Noahide laws that also include prohibitions of murder, theft, forbidden sexual relations, blasphemy, theft and eating the limb from a live animal.

⁷ *Gittin* 9a-b.

⁸ Thus, as a matter of Torah law, non-Jews are valid judges and witnesses in legal matters. See *Hagahot ‘Asheri to Gittin*, ch. 1, no. 10. See also *Teshuvot Radakh*, bayit 20; *Teshuvot Mabit*, I, no. 37; *Teshuvot Be’er Yitzhak*, *Even ha-‘Ezer*, no. 5, anaf 6; *Teshuvot Mishpetei ‘Uzi’el*, III, *Hoshen Mishpat*, no. 17; *Teshuvot Iggerot Moshe*, *Yoreh De’ah*, I, no. 55; and *Teshuvot Tzitz ‘Eli’ezer*, XIII, no. 105.

⁹ Rashi to *Gittin* 9b, s.v. *hutz mi-gittei nashim*.

¹⁰ *Midrash Tanchuma to Parashat Shoftim* 1.

¹¹ *Derashot haRan*, *Derush* 11, 74 (1958). See also *Tehumin*, VII, p. 275 for a discussion of the position of Rav A.Y. Kook.

On the value of non-Jewish law, R. Yosef Albo wrote,

You will find that although Mosaic Law and Noahide Law differ somewhat in their details, their general principles are the same, coming, as they do, from the same source. Moreover, the two exist concurrently; whilst the Jewish people possess the Mosaic Law, the other nations possess the Noahide law... There is no doubt that the other nations could achieve human success through Noahide law, since it [too] is divine, though not the same degree of success as the Jewish people, whose existence is based upon the Mosaic law. Our rabbis have said, “The righteous of the nations have a place in the World to Come.”¹²

In explaining the authority and value of Noahide law, R. Isser Zalman Meltzer wrote,

It is clear that with regard to returning property after *yi'ush* (after the original owner has relinquished ownership by abandoning hope of retrieving his lost property) or stolen property sold by the thief after *yi'ush* [in which case an innocent buyer is not required to return his purchase to the victim of the theft], the *dina de-malkhuta* (the law of the land) applies. The reason is that such a regulation is not contrary to the laws of the Torah, since even according to the Torah, it is desirable to exceed the letter of the law. In such a case, the decree of the sovereign is valid. It is an instance of the *dinim* precept, which means that Noahides are commanded to institute fixed regulations that will be just and not unreasonable. Since this particular regulation is just, although the Torah ruled that property need not be returned after *yi'ush*, the authority of the Torah does not override it. Only in a case where the king's decree does not merely demand going beyond the letter of the Torah's law but actually goes against it, do we rule that the king's authority does not override the Torah, as in an instance where the king's decree is discriminatory. In the case of returning a lost article after *yi'ush*, however, since it is a just regulation, it is valid, for it is within the king's legitimate authority to issue decrees for the common good.¹³

Not only does *dina de-malkhuta dina* enable Jews to function in the mercantile, contractual and legal worlds of non-Jews, it even has consequences in intra-Jewish affairs. The Talmud, *Gittin* 9a, submits, “Documents executed in non-Jewish courts, even if the signatures upon them are those of idolaters, are valid, except for writs of divorce and writs of emancipation.” Rashi explains that since non-Jews are not parties to Jewish marriage and divorce, the writs of divorce that they sign are invalid. Non-Jews have no standing in this matter. However, since they are obligated in *dinim*, they are legal actors with standing in other judicial matters. Most importantly, Rashi adds, their standing is based upon the principle of *dina de-*

¹² *Sefer ha-Ikkarim* 1:25,

¹³ *Even haEzel* to *Hil. Nizkei Mammon* 8:5.

malkhuta dina, and that the signatures are valid even if both parties to a contract are Jews.

The Priority of Jewish Law

“For to Me the Children of Israel are servants, they are My servants whom I have taken out from the land of Egypt, I am the Lord your God” (Lev. 25:55). The exodus from Egypt and the covenant at Mt. Sinai created a claim to our exclusive loyalty to God—we are to be faithful to Him and to no other. Jewish tradition directs us to follow His laws, 613 biblical commandments, which regulate every aspect of our existence, both our God-directed rituals as well as our interactions with others. Religious law mandates that we are bound to follow the laws of the country in which we live (*dina de-malkhuta dina*¹⁴), but only insofar as they do not contradict Jewish religious principles and mandates.

The Torah and its commandments are of primary and paramount importance for the Jewish people. Were we to defer to the law of the land to regulate every activity, we would effectively nullify much of Jewish law and abrogate the Torah itself. Rashba warns:

[Stipulating terms] in monetary matters (contrary to the Torah) is permissible and such conditions are enforceable. However, to adjudicate a certain way because it is the law of the gentiles...is forbidden...and it is prohibited by the Torah, as it states “‘Before them’ and not before [the courts] of gentiles.” [This holds even if] both [parties] agree to it and [even though] it is a monetary matter... If we were to accept this [illegitimate] approach, we would nullify the first-born son’s rights of inheritance and uproot all of Jewish law. What need would we have for holy books written for us by Rabbi {Judah the Prince} and Ravina and Rav Ashi? Jews could simply teach their children the laws of the gentiles and build altars in the gentile houses of study. God forbid that such a thing should ever happen to the Jewish people, God forbid. The Torah itself would wear sackcloth!¹⁵

There is a significant debate as to the extent of the application of *dina de-malkhuta dina*. While all agree that it does not apply to matters of *issur ve-heter* (ritually obligatory or prohibited activities like *Shabbat*, *kashrut*, inheritance and divorce), some do accept it in monetary and commercial matters.¹⁶ Others suggest that *dina de-malkhuta* applies only to *dinei malkhut*, those areas in which the State has legitimate state interests necessary for the proper administration of government and

¹⁴ *Gittin* 10b; *Baba Kamma* 113b; *Baba Batra* 54b.

¹⁵ *Teshuvot* Rashba, VI, no. 254.

¹⁶ R. Yeshayah miTrani in *Tosafot Rid* to *Gittin* 10b; *Teshuvot Hakhmei Provence*, *Hoshen Mishpat* 49; *Tashbatz* I:158; *Teshuvot Sha’ar Efrayim*, no. 79; *Nahalat Shiva*, *helek haTeshuvot*, no. 31; *Teshuvot Bet Shlomo*, *Hoshen Mishpat*, no. 130; *Teshuvot Binyan Ziyon*, II:15. See Y.E.Henkin, “*BeInyan Dina deMalkhuta Dina*”, *HaPardes*, vol. 31, no. 54, pp. 3-5 and *Mishpetei Uziel*, *mahadura tinyana*, III, *Yoreh De’ah*, no. 92.

for the smooth functioning of society in matters like roads and taxes. Other legislation that encroaches on the social, interpersonal, judicial, cultural, religious and personal areas of life is not included and is regulated by Torah law.¹⁷ Ramban limits the force of *dina de-malkhuta* to those laws or taxes that have been practiced in the past, are common to all jurisdictions, and are part of the founding by-laws of the state. Arguing that it is *dina de-malkhuta* (the law of the kingdom) that is binding and not *dina de-malka* (the law of the king), he excludes new legislation passed for benefit the ruler himself or to further his agenda.¹⁸ Others disagree and maintain that new taxation and other legislation are binding if they are applied universally and are non-discriminatory.¹⁹

Non-Jewish Courts

Despite the legitimacy granted to non-Jewish legal systems, there are significant problems for Jews regarding *arka'ot*, turning to civil courts for adjudication. “These are the laws which you shall place before them” (Exodus 21:1) says the Torah in its introduction to its chapters on civil law. This verse requires that all legal matters between Jews be submitted “before them,” i.e., rabbinic tribunals, for judgment, and not to non-Jewish judiciaries, religious or secular.²⁰ This prohibition applies even if non-Jewish laws are similar to Jewish law and even if the non-Jewish courts are honest and just.²¹ If one violates this injunction “he denies God and His Torah,”²² “profanes the Divine Name and ascribes honor to idols,”²³ “is wicked and is as though he has reviled, blasphemed and rebelled against the laws of Moses,”²⁴ and “acts as if the Torah of Moses was not truthful.”²⁵ Thus, we are enjoined not only to privilege the Jewish legal system over those of others, but to submit only to its courts

¹⁷ *Bet Yosef, Hoshen Mishpat* 26 in the name of Rashba; *Magid Mishneh, Hil. Malveh veLoveh* 27:1; Ramban to *Baba Batra* 55a; *Teshuvot Rivash*, no. 203; Maharik, *shoresh* 187.

¹⁸ *Hiddushei haRamban* to *Baba Batra* 55a; *Magid Mishneh* to *Hil. Gezeilah va'Aveidah* 5:13; *Ba'al haTerumot, sha'ar* 46, VIII:5; Maharik, *shoresh* 66; *Tashbatz* I:155.

¹⁹ *Magid Mishneh* to *Hil. Gezeilah va'Aveidah* 5:13, 14, 18; *Magid Mishneh* to 5:13; *Choshen Mishpat* 369:9; *Tur, Hoshen Mishpat* quoting Rosh; *Yam shel Shlomo, Baba Kamma* 10:18.

²⁰ *Gittin* 88b.

²¹ See Rabbi Norman Lamm, “*Din ha-poneh la-arka'ot ha-memshalah*,” *Bet Yitzhak* 36, 5764, pp. 3-7. Rabbi Lamm points to the opinion of *Mordekhai* to *Gittin* 10b who cites the position that it is only unscrupulous, dishonest and unjust non-Jewish courts that are subject to the prohibition of *arka'ot*; Jews may avail themselves of those non-Jewish courts that have the reputation of being just and honest. Rabbi Lamm points out that this minority opinion is not normative.

²² *Tanhuma, Mishpatim* 3.

²³ Rashi to Exodus 21:1.

²⁴ *Hil. Sanhedrin* 26:7; *Hoshen Mishpat* 26:1.

²⁵ *Netivot haMishpat* 26:4.

and judges. All matters between Jews must be redressed only in a Jewish court and only according to Jewish law.^{26 27}

Now, every government has the right to enforce its own laws within its own borders and to punish those who violate them.²⁸ However, according to Jewish law, *mesirah*, “turning over” a fellow Jew to non-Jewish authorities, is one of the most severe offenses that a Jew can commit. So grievous is this transgression that a blessing was added to the thrice-recited daily *Shemoneh Esreh*, “May there be no hope for the informers.”²⁹

This prohibition of *mesirah* applies whether the fellow Jew is innocent or guilty, whether the informant is “turning over” the other’s person or property, and even if his fellow Jew is harassing him or harming him in any way. “Any one who turns over a Jew, whether his person or his property has no share in the World-to-Come.”³⁰ The prohibition of *mesirah* was motivated not only by a concern for the priority of Jewish law, but by anxiety over Jewish self preservation. The exposure and vulnerability of the Jewish community, a relatively defenseless minority subject to the whims and prejudices of a discriminatory, severe majority, were real and dangerous.

Yet, despite this prohibition, many Jews throughout history did appeal to non-Jewish courts. In response to this breach, rabbinic authorities excommunicated some violators, and even ordered others lashed³¹ or killed.³² These individuals were considered evil and, hence, disqualified to testify in a Jewish court. Furthermore, the funds that they recovered by their illegal litigation were deemed stolen property.³³

The result of all of this is that one may not initiate an action against a fellow Jew in a civil court.³⁴ If, however, he is summoned to testify by such a court or if he

²⁶ See Simcha Krauss, “Litigation in Secular Courts,” *Journal of Halachah and Contemporary Society*, vol. 2, no. 1. For a modern application of this prohibition, see *Teshuvot Iggerot Moshe, Hoshen Mishpat*, no. 8.

²⁷ Rashba to *Gittin* 10b. See *Shakh to Hoshen Mishpat* 73, no. 39, who allows for secular law to be applied in situations of monetary matters which are subject to conditions and stipulations set by the parties to an agreement, or in situations in which there is no explicit *halakhic* statement. See, however, *Hazon Ish, Hoshen Mishpat, likkutam*, no. 16, 1 who argues that there are no areas in which there are not *halakhic* guidelines and principles.

²⁸ Ran to *Sanhedrin* 46a; *Teshuvot Avnei Nezer Yoreh De’ah*, no. 312, secs. 46-52. See also Ritva to *Baba Metzia* 83b-84a.

²⁹ *Berakhot* 28b.

³⁰ *Hil. Hovel uMazik* 8:9; *Hoshen Mishpat* 488:9.

³¹ *Teshuvot Geonei Mizrah uma’arav*, no. 42; *Teshuvot Rif*, no. 221.

³² *Hil. Hovel u-Mazik* 8:10; *Hoshen Mishpat* 388:10.

³³ *Tashbatz*, IV, *Tur* 3, no. 6 and II:290.

³⁴ Rabbi Moshe Feinstein (*Teshuvot Iggerot Moshe, Hoshen Mishpat*, no. 8.) ruled that one may not report to civil authorities a proprietor who fraudulently sold non-

must attend in order to defend himself or protect his rights, appearing is permissible.³⁵ As a matter of fact, Rosh asserts that failure to testify when required to do so by civil law constitutes a *hillul Hashem* (desecration of God's Name).³⁶ However, Rema maintains that if a Jew is subpoenaed to testify in a case which two Jewish litigants inappropriately brought to *arka'ot*, he may not testify. By testifying he is abetting them in their violation³⁷ and ascribing legitimacy and importance to the non-Jewish courts.³⁸

Jews must appeal to a *bet din* (rabbinic court) to resolve their disputes and it behooves Jewish communities in Israel and in the Diaspora to establish and support such institutions.³⁹ This is their Torah obligation: "Judges and officers shall you place for yourself in all your gates (Deuteronomy 16:17)."⁴⁰ Rabbi Yosef Eliyahu Henkin lamented the lack of Jewish courts:

The positive commandment [concerning] appointment of judges is binding also in the Diaspora, (at least in every district), even in our own time. Even in a locale in which there are scholars, the community is not relieved [of its obligation] to appoint designated persons for this purpose. Let us protest the many cities and large metropolises in America that have many Torah-observant individuals but, nevertheless, do not appoint judges and decisors...⁴¹

Take Him to Court?

Are there any circumstances in which one may report a fellow Jew to the civil authorities? Is the prohibition of *arka'ot* absolute?

The prohibitions of calling a law enforcement agency and turning to the civil courts for relief appear absolute. The Talmud, *Gittin* 7a, records the case of Mar 'Ukba who complained that certain men were disturbing him. He asked R. Elazar whether he had the right to report them to the non-Jewish authorities.

[R. Elazar] wrote [to him in response], "'I said, I will take heed to my ways, that I sin not with my tongue; I will keep a curb upon my mouth

kosher food as kosher if he would submit to the authority of a *Bet Din* or if he would subsequently refrain from his fraudulent behavior.

³⁵ *Hoshen Mishpat* 26:1.

³⁶ Rosh to *Baba Kamma*, ch. 10, no. 14. Although, according to *Shulhan Arukh*, *Hoshen Mishpat* 28:3, the *hillul Hashem* occurs only in those cases in which Jewish witnesses have been specifically designated to testify by non-Jews, *Bah* maintains that Rosh's position applies in our own day, even when such witnesses have not been officially summoned. This is due to the potential consequences to the Jewish community because of withholding information.

³⁷ *Teshuvot Rema*, no. 52 maintains that it is prohibited because of *lifnei iver*, the stumbling block prohibition, Lev. 19:14.

³⁸ *Tashbatz*, IV, *Tur* 1, no. 6; *Yam shel Shlomo*, *Baba Kama* 10:23.

³⁹ See J. David Bleich, "The Bet Din: An Institution Whose Time Has returned," *Tradition* 27:1, 1992, pp. 58-67.

⁴⁰ *Hil. Sanhedrin* 1-2.

⁴¹ Rabbi Yosef Eliyahu Henkin, "*Madur ha-Halakhah*," *Edut beYisrael*, p. 167.

while the wicked is before me' (Psalms 39:2). [That is], although the wicked is before me, I will keep a curb on my mouth." Mar 'Ukba again sent [word to] him saying, "They are distressing me very much, and I cannot stand them." [R. Elazar] replied, "'Resign yourself to the Lord, and wait patiently [*hit'holel*] for him.' (37:7) [That is to say, wait for the Lord, and He will cast them down prostrate [*halalim*] before you; go to the *Bet Hamidrash* (the Study Hall) early in the morning and in the evening and there will soon be an end of them." R. Elazar had barely finished speaking when Geniba (one of the antagonists) was [arrested and] placed in chains [for execution].

Rambam adopts R. Elazar's opinion as the definitive law and writes, "It is forbidden to turn over a fellow Jew to non-Jews, whether his person or his property, even if [that Jew] is a *rasha* (evil person) or a sinner, and even if he causes his distress and pain⁴²... It is permissible to report whoever causes distress and pain to the community in order for him to be lashed, imprisoned or fined, but it is forbidden to report him because of the distress he causes [only] to one individual."⁴³

Yet, as early as the Gaonic period,⁴⁴ many rabbinic courts lacked the authority to enforce their rulings, creating the potential for lawlessness in the Jewish community. What could a person do to protect himself from an aggressor? How could he retrieve stolen property when the rabbinic courts were powerless in the face of these thieves?

Despite the objection of *Keli Hemda* that this biblical prohibition should never be waived under any circumstances "because a person is obligated to forfeit all of his wealth and not violate a prohibition,"⁴⁵ rabbinic courts often granted permission to Jewish litigants to turn to the general courts for adjudication and for enforcement of their legal rights.⁴⁶ And if a person refused to attend a Jewish court or to submit himself to its authority, rabbinic tribunals granted permission to the plaintiff to submit his complaint to the general courts.⁴⁷ In each of these cases, there is no violation of the *arka'ot* prohibition as the litigants first submitted themselves to the Jewish courts

⁴² *Hil. Hovel u-Mazik* 8:9. See *Hoshen Mishpat* 388:9.

⁴³ *Hil. Hovel u-Mazik* 8:11. Concerning the distinction Rambam made between individual and communal distress, *Hatam Sofer* suggests that it is based on R. Elazar's response to Mar 'Ukba. R. Elazar told him to go to the *Bet Midrash*. This, says *Hatam Sofer*, is possible only for an individual to do, not for an entire community. *Ketav Sofer* points to the verse, "I will keep a curb upon my mouth while the wicked is before me" (Psalms 39:2)—before me, an individual, but not before a collective.

⁴⁴ Rav Paltoi Gaon cited in *Piskei ha-Rosh* to *Baba Kamma* 8:17; *Otzar ha-Gaonim* to *Baba Kamma*, ch. 8 and *Teshuvot*, no. 227.

⁴⁵ *Keli Hemda*, *Parashat Mishpatim*.

⁴⁶ *Rosh* to *Baba Kama* 92b, chap. 8, no. 17; *Hil. Sanhedrin* 26:7; *Hoshen Mishpat* 26:2.

⁴⁷ *Baba Kama* 92b; *Rosh* to *Baba Kama* 92b, quoting R. Paltoi Gaon; *Teshuvot* Ramban, no. 63; *Hoshen Mishpat* 26:2.

for direction. The prohibition obtains only when one could otherwise successfully adjudicate his concerns in a Jewish court.

There are other circumstances in which it is permissible to seek help from *arka'ot*.

Rambam notes that the prohibition of *mesirah* restricts a *private individual* who is being harassed from making a report to the civil authorities. However, when there is a *meitzar ha-tzibbur* (public menace), informing is permissible.⁴⁸ While this would seem to restrict an abused wife from calling the authorities on her husband, or a concerned party from reporting an abusive parent, this is not the case. First, the rate of recidivism in child abuse cases is high and therefore a child molester can be considered a “public menace.”⁴⁹ Second, *Shakh* records that where a person is a repeat abuser (“*ragil le-hakot*—strikes on a continuing basis”), one is permitted to report him to the non-Jewish authorities in order to prevent him from abusing again.⁵⁰ And third, *Geresh Yerahim* limits Rambam’s reading of the Talmudic statement above (*Gittin* 7a) to situations in which the abused faces no real personal harm. He points to Rashi’s explanation of Mar ‘Ukba’s complaint that “Certain men are annoying me,” explaining that they were merely insulting him.⁵¹ But, if Mar ‘Ukba would have been subjected to greater injury, i.e., physical or financial harm, it would have been permissible for him to complain to the non-Jewish authorities, even though he is just an individual. Similarly, *Me’irat Einayim* adds that the distress of the private individual that is forbidden to report is *tza’ar be-alma* (general distress). However, if one is the subject of assault or attacks, reporting is permitted.

In addition, there are situations in which a rabbinic court is ineffective, incapable of adjudicating and powerless to protect victims. This can be for any number of reasons: perhaps one of the parties will not appear before it, perhaps a party will not feel bound by its decision, or perhaps the *bet din* will be unable to protect one of the litigants from physical or financial harm. Rabbeinu Gershom *Ma’or ha-Golah* understood that even if someone agrees to come to the rabbinic court, he may be doing so only because he thinks he can delay or obfuscate the proceedings, or because he feels that he will be able to avoid certain punishment or fines if he avoids the civil courts. Rabbeinu Gershom enacted that in such cases the *bet din* should give the other party permission to go to the general court.⁵² Radbaz

⁴⁸ *Hoshen Mishpat* 388:12, according to the text quoted by *Shakh*, no. 59, and *Gra*, no. 71.

⁴⁹ Rabbi Eliezer Waldenberg, quoted in *Nishmat Avraham*, IV, p. 209, maintains that for this reason, child molesters must be reported to civil authorities. See R. Asher Zelig Weiss, “*Mesirah la-shiltonot be-hashud be-hit’olelut be-yeladim*” in *Yeshurun*, 5765, p. 659; R. Yehudah Silman, “*Teshuvah le-shei’lah be-inyan divu-ah al pegiyot be-yeladim*” in *Yeshurun*, 5765, p. 661.

⁵⁰ *Shakh*, *Hoshen Mishpat* 388, no. 45 and 60.

⁵¹ Rashi, s.v. *ha’omdim ‘alai*.

⁵² Manuscript Frankfurt 123, see Rabbi H. Shlomo Sha’an an, *Hafna’at tove’a le-bet Mishpat*, *Tehumin* XII, p. 252. See *Piskei Ri MiKorbeil* in Sha’an an, *Ner LiShmaya*, *pesak* 69.

confirms that “this is the practice of all rabbinic courts in every generation in order not to give the upper hand to aggressors and intimidators who do not respect the judgment [of the *bet din*].”⁵³

In a ruling of great significance for victims of abuse, Rema writes, “A person who attacks others should be punished. If the Jewish authorities do not have the power to punish him, he must be punished by the civil authorities.”⁵⁴ According to Rema, the victim has the right to go to the civil authorities not just to prevent an attack, but to seek punishment and justice for an attack that has already taken place.⁵⁵

Support for this position can be found in the Talmudic account, *Baba Mezi’a* 83b-84a, of the activities of R. Elazar b. R. Shimon. There we are told of R. Elazar’s work for the Roman government—he identified and arrested Jewish thieves and turned them over to the Roman authorities. The Talmud continues:

Thereupon R. Yehoshua, son of Karhah, sent word to him, “Vinegar, son of wine (i.e., reprobate son of a righteous father)! How long will you deliver up the people of our God for slaughter!” [R. Elazar] replied, “I weed out thorns from the vineyard.” Whereupon R. Yehoshua retorted, “Let the owner of the vineyard himself [God] come and weed out the thorns.”... [One day] Elijah met him and remonstrated with him, “How long will you deliver the people of our God to execution!” [R. Yehoshua] replied, “What can I do, it is the royal decree.” [Elijah answered,] “Your father fled to Asia, you flee to Laodicea!”

Although at first glance it appears that R. Elazar is taken to task for cooperating with the Roman authorities, a more careful reading of the passage shows otherwise. R. Yehoshua’s objection was not to R. Elazar’s cooperation with the non-Jewish authorities; that was permissible. He claimed that R. Elazar should not have done what he was doing because of the severity of the punishment to which these thieves were subjected—“How long will you deliver up the people of our God for slaughter!” The punishment imposed by the Romans was the death penalty; the punishment was excessive and did not fit the crime. R. Elazar, he claimed, was endangering Jewish lives. However, if the punishment had been proper and congruent with what Jewish law would impose, even R. Yehoshua would have approved of R. Elazar’s actions.

Furthermore, Elijah the Prophet’s objection was not a legal one, but was a moral one. He felt that someone of R. Elazar’s stature and piety should not engage in such activities. Elijah had no legal objection to R. Elazar’s activities and would have

⁵³ Radbaz to Rambam, *Hovel u-Mazik* 8.

⁵⁴ *Hoshen Mishpat* 388:7 and *Shakh*, no. 45; See also gloss of Rema to *Hoshen Mishpat* 388:9; *Ba’i Hayei* and *Maharam miRiszburg* cited in *Pahad Yitzhak*, *Ma’arekhet Hovel be-Haveiro*.

⁵⁵ See *Darkei Moshe*, *Hoshen Mishpat* 388 and *Teshuvot Maharam MiRizbork* cited by *Shakh*.

sanctioned it for others.⁵⁶ R. Elazar disagreed, maintaining that the royal decree (i.e., the law of the land) overrode any claim of piety.⁵⁷ He believed that when it came to the pursuit of justice and the need of society to protect itself and its members from harm, there is little room for pious niceties. All must be done to protect life, body and property.

This passage also teaches that as long as a Jew is operating at the behest of the government, the authority responsible for the welfare of society, collaboration is appropriate.⁵⁸ Lack of cooperation would cause a breakdown of the society in general and lead to anarchy, lawlessness and danger.⁵⁹

Rabbi Shalom Yosef Elyahiv ruled that one may report a child abuser to the civil authorities in America, but only if he is certain about the abuse; a false report that can destroy a person's reputation and life.⁶⁰ And Rabbi Shmuel HaLevi Vosner, author of *Teshuvot Shevet ha-Levi*, applies this reading of the Talmud to the case of a tax agent who must report tax fraud to the government for prosecution. Rabbi Vosner obligates this Jew to do so, arguing that 1) this is the law of the country and 2) the report will not cause the imposition of a dangerous sentence on a Jew.⁶¹

Furthermore, a child abuser is worse than a *meitzar* and is in the category of *rodef* concerning whom one is permitted to do anything to stop the attack.⁶²

Others maintain the prohibitions of *mesirah* and *arka'ot* do not apply to these situations altogether. R. Yitzchak Weiss avers that the state has an interest in the safety and welfare of its citizens and one may report those who are endangering that safety.⁶³ Rabbi Herschel Schachter stated that the prohibition of *mesirah* applies only when testimony assists civil authorities in illegally obtaining the money of, or excessively punishing, another Jew. It does not obtain when it aids a non-Jewish government in fulfilling such rightful duties as collecting appropriate taxes or punishing criminals. When the information concerns the criminal activities of a fellow Jew—as long as the Jewish criminal has also violated a Torah law and even if

⁵⁶ See Rashba quoted in *Bet Yosef, Hoshen Mishpat* 388.

⁵⁷ See R. Moshe Halberstam, *Mesirah le-shiltonot be-mi she-mitolel be-yeladav* in *Yeshurun* 5765, pp. 643-651.

⁵⁸ Ritva to *Baba Mezi'a* 83b.

⁵⁹ *Teshuvot Rashba*, III:393; *Bet Yosef, Hoshen Mishpat* 388.

⁶⁰ “*She-eilah be-inyan hoda'ah la-memshalah al hit'olelut be-yeled 'o be-yaldah*” in *Yeshurun*, p. 641.

⁶¹ *Teshuvot Shevet ha-Levi* II:58. See also *Teshuvot Iggerot Moshe, Hoshen Mishpat* I:92, which, in a similar situation allows the tax agent to report because even if he did not reports, others would, thus relieving the Jew of sole responsibility..

⁶² R. Moshe Halberstam, *Mesirah le-shiltonot be-mi she-mit'olel be-yeladav* in *Yeshurun* 5765, p. 646.

⁶³ *Teshuvot Minhat Yitzhak* VIII:148

the punishment will be more severe than the Torah prescribes⁶⁴—the ban of *mesirah* does not apply.⁶⁵

Arokh ha-Shulhan maintains that *mesirah* was prohibited because of the nature of the autocratic governments under which Jews lived throughout much of history. Such informing often led to dangerous persecution of the entire Jewish community. He maintains that this injunction does not apply to those societies in which the government is generally fair and nondiscriminatory.⁶⁶

We are not concerned that the procedures of a civil court differ from those of a *bet din* or that the testimony that the former accepts may be invalid in the latter or even that the punishment may be more severe than that imposed by Jewish law. The Talmud, *Sanhedrin* 46a, records:

It has been taught: R. Eli’ezer b. Ya’akov said: I have heard that the *Bet Din* may, [when necessary,] impose lashes and pronounce [capital] sentences even where not [prescribed] by the Torah; yet not with the intention of disregarding the Torah but [on the contrary] in order to safeguard it. It once happened that a man rode a horse on the Sabbath in the Greek period and he was brought before the Court and stoned, not because he was deserving [of this punishment], but because it was required by the times. Again it happened that a man once had intercourse with his wife [in public] under a fig tree. He was brought before the *Bet Din* and flogged, not because he deserved it, but because the times required it.

Jewish law grants the ability to impose unauthorized punishment, to accept otherwise unacceptable witnesses, all at the discretion of the judges, according to what they deem proper and fitting.⁶⁷

The Bottom Line

Child abusers must be reported to the authorities. In all states there are mandated reporter—generally those who work with children in some sort of professional capacity—who are obligated by civil law and by Jewish law to report abusers. But even those who are not mandated by state law to report, are obligated by Jewish law to do so. “You shall not stand by the blood of your neighbor” (Lev. 19:16) is not limited to professionals; it applies to everyone.

⁶⁴ Ran to *Sanhedrin* 46a. See, however, *Teshuvot Rema*, no 88, who maintains that according to *Tosafot*, *Baba Kama* 114a, s.v. *ve-lo*, if the punishment exceeds that prescribed by the Torah, the *mesirah* prohibition maintains.

⁶⁵ Rabbi Herschel Schachter, “*Dina De-Malchuta Dina*,” *Journal of Halachah and Contemporary Society*, I:1, 1981, p. 118.

⁶⁶ *Arukh haShulhan*, *Hoshen Mishpat* 388:7. This source is authoritatively cited by R. Gedalia Dov Schwartz in “The Abused Child: Halakhic Insights,” *Ten Da’at*, *Sivan* 5748, p. 12.

⁶⁷ *Hoshen Mishpat* 2:1; *Teshuvot ha-Rashba* III:393; *Teshuvot Panim Me’irot* II:155.

It is permissible for a victim of sexual or physical abuse to seek the protection and help of civil authorities. Rabbis and rabbinic courts are powerless to do much in these cases and cannot protect women, children and men from repeat attacks. It is permissible to seek orders of protection and to seek prosecution of the abuser as the law allows.

Many authorities maintain that victims should go directly to the police or the courts for protection. Any delay may prove dangerous. But a word of caution: a small group of authorities interpret these laws more narrowly than outlined above and, in their communities, turning to civil authorities without first obtaining rabbinic permission may have unfavorable and harmful results. Those who do proceed without rabbinic authorization may well be worried about becoming the object of communal censure and pressure, and possibly the withholding of a *get*. In cases of abuse one must be concerned about harmful results of exposure. Some rabbis rarely, if ever, grant such permission. Others who do consent to the involvement of the police and courts may do so only after great delay. However, victims of abuse must beware that inaction in these cases carries the possibility, indeed probability, of the danger of further abuse by the same person, and the risk to many future victims if the abuser is not exposed and restrained. In almost all cases, abuse victims should certainly rely upon the strong *halakhic* basis detailed above to seek the necessary protection from the police and courts.