Conference of the Jewish Law Association, Moscow 2018

**Shaming Under the Auspices of the Court: Community Law vs. State Law**

**Lecture abstract**

According to Jewish law, when one person shames another he has committed an offense according to Jewish law – *halbanat panim* – public embarrassment. What is the status of embarrassment that is decreed by the court as a sanction against someone who defies its rulings? We are not familiar with the use of such sanctions in ancient times, but they do appear in medieval Ashkenaz in the bans established by the 12th Century Tosafist, Rabbenu Tam. The issue has recently come up for discussion, as various rabbinical courts have chosen to impose shaming sanctions on individuals who refuse to grant their spouses a *get*. The pronouncement publicized by the Rabbinical Courts has included, among other things, prohibitions against engaging in commerce with them, not to host them, not to include them in a prayer quorum, and not to allow them to read the Torah or lead prayer services. The source for these sanctions is found in the bans of Rabbenu Tam which pertained to a wide range of legal, social, and religious activities. In the State of Israel, only some of these have been given legal sanction in the Rabbinical Courts Law (Support of Divorce Decisions), 1995. Among the powers granted to the Rabbinical Courts are the ability to constrain the individual from leaving the country, to hold his passport, to declare him a limited client regarding opening of bank accounts, etc. In our case, however, the Rabbinical Court preferred to apply social and religious sanctions that are not mentioned in the law against divorce refusers. Two such individuals – Gez and Ben-Hayyim – appealed to the Supreme Court, claiming that the Rabbinical Courts did not have the authority to apply these sanctions. While the Supreme Court rejected their petition, it also expressed reservations about the Rabbinical Court ruling and its use of shaming.

The use of shaming as a legal sanction in 21st Century Israel raises two main problems: First, the types of shaming that were available to Rabbeinu Tam are insignificant compared to the possibilities that exist in modern society. Second, Rabbeinu Tam used social sanctions that worked within the framework of his community. Are such sanctions appropriate in the framework of a sovereign state?

Regarding the first problem, some argue that for the first time, social networks allow ordinary people who are not professional journalists, to expose injustices and correct social flaws. Many others are more concerned that social networks have the unprecedented potential to destroy the good names and lives of ordinary people who have difficulty defending themselves from a public onslaught. At the same time, some argue that the practice of shaming by the Rabbinical Court is not a problem at all. It constitutes an appropriate solution to prevent unnecessary and disproportionate shaming, since the sanction is issued by a competent and responsible court, which ensures its use in appropriate cases.

Regarding the second problem, some argue – and the justices of the Supreme Court Justices raised this, as well – that a sovereign state should apply the legal sanctions available to it by law and should not turn to the public for assistance. Calling on the public offers no honor to the state, and, moreover, poses a concern given the lack of governmental control. Critics believe that the use public pressure may have been appropriate for a Diaspora community with no sovereignty and no means of enforcement, but is wholly inappropriate in a modern state. In response, some argue that this is a necessary solution to the problem of individuals who refuse to grant divorces where severe state-sponsored sanctions cannot be applied, and only the use of massive, nonviolent pressure can advance the goal.

This lecture will examine the differences between Jewish law and civil law regarding the use of shaming applied by a judicial body, by reviewing the arguments raised in the court and other legal sources, as well as by analyzing the rulings of contemporary authorities of Jewish law. The question will also be asked why the Rabbinical Courts, which are in charge of Jewish law, saw the use of shaming as an optimal solution in this case, while the Supreme Court, which is responsible for secular law, disapproved of the use of shaming by the Rabbinical Court, even as it rejected the appeal of the individuals who petitioned against the shaming. Through this discussion, we will analyze the various elements and values that serve as foundations in each of the legal systems regarding this complex issue.