

Privatizing Israel's Legal System

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Israel's Mandatory Arbitration Bill (MA) is troubling. Justice Minister Yaakov Neeman proposed it. It mandates compulsory arbitration for civil suits filed in Magistrate Courts.

The Court president or deputy may order it. Litigants have no say. Neeman claims it's needed to reduce excessive case loads. His hidden agenda has other things in mind. Judicial fairness will be compromised if he prevails.

On September 4, Knesset members discussed it ahead of second and third readings. Strong opposition exists. More on that below.

Arbitration is an alternate form of dispute resolution. It's common in commercial disagreements. Costly litigation is avoided. So are conventional court proceedings.

When voluntary, both sides agree to let an arbitrator or arbitral panel review evidence and impose binding rulings.

Mandatory arbitration is more controversial. It lets one party impose its will on another. In commercial disputes, companies have bargaining power at the expense of consumers. Litigation rights are denied. So are class actions. Unfair proceedings result. Outcomes may be predetermined.

Israel's MA bill lets courts forward civil suits to private lawyers. They'll become designated arbitrators. Litigants can't sue.

The [Association for Civil Rights in Israel](#) (ACRI) said this measure "has no equivalent anywhere in the world." If enacted, Israeli judicial fairness will be severely compromised.

ACRI, Israeli Supreme Court President Asher Grunis, retired justices, and prominent jurists oppose the bill for good reason.

ACRI attorney Anne Suciu calls it step one toward privatizing Israel's courts. Doing so will severely damage judicial fairness. Unlike judicial vetting, the main qualification for arbitrators is seven years seniority.

Another is the absence of frequent conflicts of interest between his or her proposed arbitral status and outside financial interests.

According to legislative language, individuals with some, but not too many, conflicts are eligible. Moreover, no limitation is placed on ones considered minor. No definition explains.

Growing criticism in some countries led to greater protection for weaker parties in

arbitration disputes. Israel's measure denies it. According to Suciu:

"Years of under-funding led to an unbearable burden on the court system. Instead of solving this problem by amending the system, many decision-makers blindly accept the view that privatization is the desired solution for almost every public service that is not properly functioning."

"The Mandatory Arbitration Bill is an extreme initiative that has no equivalent anywhere in the world, and it could violate the basic right to a due process."

Israel's Basic Law states that "person(s) vested with judicial power shall not, in judicial matters, be subject to any authority but that of the Law."

Legal provisions are intended to ensure judicial independence. Qualifications for judges are strict. They include ethical standards, salaries, length of service, termination of service, and others. According to Israeli Supreme Court Judge Ayala Procaccia:

"We set the standards of behavior that apply to specific judges. They are subject to strict standards of conduct not only judgment, but also in other walks of life....They have to understand that the judgment is not just a job. It is a way of life."

Suciu believes that transferring civil jurisdiction authority to private parties reflects a "simplistic and flawed judicial role of a specific solution to the conflict between" two parties.

Doing so ignores "competent court of law interpretation," longstanding social values, fundamental rights and obligations, and rule of law priorities.

Civil litigation is a right. It plays a key role in democratic societies. Privatizing the judiciary compromises freedom. Israel's MA bill raises fundamental constitutional issues. It's excessive and unreasonable. It damages the public's trust in courts.

According to Supreme Court Judge Mishal Hashin, judicial access is "an essential basic right." It's also "the life blood of the court. (When) the path to the court is obstructed, whether directly or indirectly, or even partially, it undermined the *raison d'être* of the judiciary."

At the same time, legal procedures and laws aren't absolute. Times change, and so do they. Doing so should strengthen democracy, not compromise it. Denying judicial access is dangerously unreasonable.

Privatizing judicial authority compromises basic rights. Mandatory arbitration undermines its intended purpose. Strict regulations, ethics standards, and a supervisory system govern judges.

The arbitrator selection process is lax by comparison. No restrictions are placed on political activity, private practice, income, or other activities potentially compromising their independence. Arbitrators can live double lives.

MA bill provisions include operating according to substantive law and evidentiary rules. However, arbitrators won't be bound by judicial procedures and some Arbitration Law mandates.

Arbitrators will be able to make up his or her own rules and operate virtually ad hoc. Moreover, qualified jurists may be shut out. Only persons who've practiced law are eligible. Judges, law professors, and others with legal expertise won't qualify without this credential.

In addition, the bill greatly empowers Israel's justice minister. He alone may determine who's qualified for appointment. Selection standards should be no different than for judges. No one person should have sole authority.

On September 5, the [Jerusalem Post](#) headlined "Supreme Court President stops Neeman arbitration reform," saying:

Israel's High Court of Justice President Asher Grunis strongly opposes Israel's MA bill. As a result, the Knesset Constitution, Law and Justice Committee asked Neeman to respond.

Grunis isn't alone. Other bill opponents include Knesset members, the Israel Bar Association, senior jurists, ACRI, and other legal experts concerned about privatizing legal procedures.

Neeman's history is checkered. Previous initiatives he supported empowered the executive and legislative branches at the expense of the judiciary. He's no friend of judicial fairness and other democratic values.

MA bill critics call it poorly designed. It's rife with provisions likely to compromise judicial independence, due process, judicial relief, and other constitutional protections.

Litigants also have no say. If ordered to arbitration, they'll be shut out of conventional judicial proceedings. Labor MK Isaac Herzog accused Neeman of trying to pull off a "revolution." He also said he was undercutting Grunis' authority.

Overburdened court dockets don't justify compromising judicial fairness. Instead of arbitrators, Israel's Bar Association urged appointing temporary judges during overload periods.

Israel long ago headed down a slippery slope. Its democracy is seriously flawed. It's more hypocrisy than real. Mandatory arbitration assures further weakening. Political reality can't hide disturbing attempts to transform its deficiencies into strengths.

Arabs never had rights. Jewish ones are eroding en route to eliminating them altogether. Israel isn't just a pariah state. It's a failed one. It's just a matter of time before concealing it becomes impossible.

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