Old-Fashioned Discrimination, New-Style Battle

View PDF



Yifat Bitton is Associate Professor of Law at Sha’arei Mishpatim Law College in Israel. This article appears in issue one of Conversations, the journal of the Institute for Jewish Ideas and Ideals.

Introduction

On the first of September, Yael (not her real name), a 10-yearold student at a Beit Ya’acov elementary school for girls, arrived at what had been her school for the past four years. However, upon arrival this time, she was told to enter her school through a new gate. “From now on,” the teacher told her, “this is going to be your entrance to the school.” Later that day, she discovered that her classmates were all of Sephardic extraction. She was also told she should have no contact whatsoever with any of her former Ashkenazi classmates. At the end of this first sad day of school, making her way home full of shame and hurt, she encountered Sarah (not her real name), her beloved friend for the past four years, and was shocked to learn that they had different uniforms and different timetables for arriving at school. Yael’s life, as she knew it, had changed forever.

Yael is one of 180 Sephardic pupils attending the separate school for Sephardim in the city of Emanuel in Israel. Her story sheds light on the shocking facts regarding segregation in education within Jewish communities in Israel. I write this article to call attention to this segregation and to propose innovative ways to combat it, from my unique perspective as a public-interest attorney representing disenfranchised communities and as a legal scholar criticizing discriminatory mechanisms through the law.

Ethnic discrimination has been a continual struggle for Sephardim in Israeli society since the establishment of the state of Israel. Upon arrival from their countries of origin, Sephardic Jews were categorized as “Mizrahim” (“Easterners”, or Jews from Arab or Muslim countries), a social and cultural category that was invented just for them at that time. However, though established in the past, this category is still meaningful sixty years later. Mizrahim in Israel continue to suffer from structural injustices. Statistics prove they have a high unemployment rate, comprise a disproportionate percentage of Israel’s prison and social welfare populations, and suffer substantial underachievement in education. These deficiencies have held steady or even increased over Israel’s six decades of statehood. (See Oren Yiftachel, Nation-Building or Ethnic Fragmentation? Ashkenazim, Mizrahim and Arabs in the Israeli Frontier, 1 Space and Polity 2, 149-169 (1997); Hubert Lu-Yon and Rachel Kalush, Housing in Israel: Policy and Inequality (1994). Although Mizrahim today comprise a larger share of formally educated society, recent research indicates that the gap itself between Mizrahim and Ashkenazim in education has grown in the last decades. See Momi Dahan, “He is (Not) Entitled—Has the Gap in Education Narrowed?” in Education and Social Justice in Israel—On Equal Opportunities in Education 19 (Samuel Shay et al, 2003).)

A clear example of ethnic discrimination is revealed in the story that began this article. Yael’s experience exposes the reality of ethnic segregation that is currently being practiced at a religious elementary school for girls in the city of Emanuel. The students have been physically separated within this school based solely on ethnicity. The school, which was once one school, has now been virtually divided into two schools, with the Sephardic students separated from the Ashkenazi students and the two groups housed in two isolated buildings. The school administration has taken steps to further separate these buildings, using such shocking tactics as building a concrete wall to prevent any form of interaction between the two groups. Furthermore, the school enclosed the Sephardic students’ playground area behind a plastic cloth fence (Cloth of Utah), to conceal any view of them as they played outside. This shunning treatment recalls the historical treatment of leprosy patients who were sent to live in separate colonies, or the racial segregation of black students from white students in the United States, which was one of the main triggers for the civil rights movement. The school’s administration has rationalized its actions by going so far as to stigmatize Mizrahi culture and individuals as suffering from “lower spiritual levels” than the Ashkenazim.

This repulsive and mentally abusive treatment towards Mizrahi students has already inflicted profound damage. The students have expressed deep feelings of pain, discrimination, shame, confusion, poor self-esteem, and inferiority to their Ashkenazi fellows.

However, the elementary school in Emanuel is only one of many in the Beit Ya'acov chain of schools which discriminate, on a regular basis, against their Sephardic students vis-à-vis their Ashkenazi classmates. Moreover, similar allegations have recently been made, and confirmed, concerning other ultra-Orthodox schools in such places as Beitar-Elit, Elad and Jerusalem, where students were required, in their registration forms, to supply seemingly irrelevant details regarding the ethnic origin of their parents and similar data clearly aimed at collecting as much information as possible to enable the school administration to build an ethnic profile of prospective students. There are even cases where students who had an Ashkenazi father and, consequently, an Ashkenazi surname, but who physically resembled their Sephardic mother, were not admitted to the Ashkenazi class, whilst their friends with similar ethnic profile who bore a more "European"-like appearance were found eligible to attend this same Ashkenazi class.

This "separate but equal" mentality—which was long ago declared unconstitutional by the U.S. Supreme Court—tries to justify giving different groups of people separate facilities or services by claiming that each group still receives an equal quality of service. However, this mentality and practice are far from being equal; on the contrary, it promotes a distorted perception of the 'other' and only perpetuates separation, racism, abusive treatment, culturally-based notions of ethnic hierarchy and, most of all, immense pain.

One of the most troubling facts about this discriminatory apparatus is its institutionalized character. Although Beit Ya'acov schools are considered an informal independent school system, separate and different from Israel's formal state school system and operating with educational autonomy, the Beit Ya'acov schools in fact enjoy official recognition by Israel's Ministry of Education and receive a substantial portion of their annual budget from the state's coffers. In other words, not only does the Ministry of Education refrain from interfering with the discriminatory practices of these schools—on the excuse of reluctance to interfere with these communities' autonomy—the Ministry even finances this discrimination with

Israeli taxpayers' money.

The Legal Battle against Discrimination in Ultra-Orthodox Education. The Traditional Path—Too Little, Too Late

The phenomenon of ethnic-based discrimination in Israel's education system has yet to receive appropriate public or legal attention, as would be expected of a society that clings to the ideal of equality as Israel does. The few legal battles fought thus far on this issue have centered on Israel's administrative courts, where the defendants were the local authorities where the discriminating school was located, and the plaintiffs had asked the court to declare the criteria for admission to these schools as being discriminatory. Based on facts proved before it, the administrative high court has ruled in the past that the quota system which then governed Beit Ya'acov Schools (permitting no more than 30% of students to be of Mizrahi origin) was in fact prohibited by law, and that the local authorities should be held responsible for enforcing the anti-discrimination laws in their community.

In response, the schools eliminated the quota practice as a formal one, and embraced a new practice based on meritocracy alone, which "miraculously" resulted in no more than 30% of Beit Ya'acov students being of Sephardic origin,

It was obvious that a different legal course of action needed to be taken. That is where the Tmura Center, joined by the Achoti organization, stepped in.

The New Legal Agenda

Tmura (means both "change" and "exchange" in Hebrew) is a nonprofit organization that offers pro-bono legal representation to disenfranchised minorities in Israel, including women, Ethiopian Jews, and Mizrahim, on issues ranging from education to housing and land distribution, to rape, sexual offenses and violence against women. Achoti (My Sister) was founded by Mizrahi feminist social activists seeking to bring social justice issues to the center of public discourse and to enhance women's solidarity. Tmura—which was founded by and employs only attorneys who are graduates of ISEF's scholarship and leadership training programs—has an agenda of reform.(ISEF—the International Sephardic Educational Foundation, seeks to narrow Israel's wide social and economic gaps by

providing equal access to higher education for capable young Israelis from disadvantaged communities.)

The organization maintains that Israel's social wealth should be redistributed using private market principles, internalizing the high costs of discrimination and reframing it as financially unprofitable behavior for the discriminating parties. Using the private tort law mechanism, Tmura compels governmental organizations and corporate bodies to face the individual who has suffered discrimination in the courtroom, to acknowledge the unfairness of its policy, and to pay for its harmful consequences—thus ultimately inducing these organizations to seek a better, non-discriminatory solution.

In the Beit Ya'acov school case, the purpose of our intervention is to stop the discrimination immediately, so that all students may learn fairly and equally together in the same classroom. Additionally, we seek compensation for the school's Mizrahi students for the shame and disgrace they have endured.

We are therefore working on several simultaneous legal planes. First, we have sought an immediate injunction against the school, to compel it to eliminate all sorts of discrimination to which the girls are subjugated. Second, we have asked for immediate government intervention to reassign government funds allocated to the school; those funds would henceforth be administered by a nondiscriminatory professional committee appointed by the Ministry of Education. Additionally, a formal complaint was filed with the police, demanding the immediate enforcement of laws strictly and clearly banning any discriminatory practices at the school.

In my opinion, it is the duty of Israeli courts to set a precedent in such cases and bring about systemic change with the goal of abolishing discrimination of this kind. Such rulings would encourage others from this community to come forward and fight this discrimination, which has gone on far too long. The religious community should no longer feel its practices are beyond the reach of Israel's legal system.

The Main Difficulties in Using the Legal System

The main problem in combating anti-Mizrahi discrimination in the education system is that this discrimination is largely hidden, and there is little or no public awareness of this issue. While the situation at the Beit

Ya’acov school in Emanuel has supplied concrete evidence of the larger problems within the education system, using this case as a “model case” imposes some other difficulties which are unique to this specific case.

The ultra-Orthodox community is usually an extremely closed society, with many issues kept inside the community and not addressed in Israel’s state secular courts—especially issues of discrimination against minorities (women and Sephardim). In the past, Tmura representatives have proposed to the leading rabbis of this community to take these issues to court; however, these suggestions were repeatedly rejected, as this community regards Israel’s courts as illegitimate agents of a secular system whose very existence this community opposes. However, in the Emanuel case, Tmura and Achoti have, for the first time, been given permission by Sephardic rabbinical authorities to take this very disturbing issue to a secular court due to its severe circumstances. It is indeed rare for the rabbis of the community to grant permission to take this issue before a secular court. Therefore, it is obvious that this opportunity for an action is rare and precious.

One last objection to legal recourse as a solution to discrimination is its inherently limited social impact. No single court case can change such deeply embedded practices. Therefore, in addition to taking legal action, public awareness about this situation has also been raised through a strategic campaign, which climaxed with a demonstration against both the Ministry of Education and the leadership of the Beit Ya’acov Schools, held in the very heart of Jerusalem’s ultra-Orthodox neighborhood.

Epilogue

Yael’s story is not hers alone; it is not even the story of her 180 classmates; it is rather the story of many Sephardic pupils in Israel today. Discriminatory practices against them within the educational system are not limited to the ultra-Orthodox community. The mainstream Orthodox educational system is also regularly accused of discriminatory practices, mainly vis-à-vis Ethiopians but also Sephardim. With Ethiopians, the segregation is more blatant, as was recently demonstrated in the case of Yeshurun School in Petach Tikva, where four Ethiopian girls were totally separated from the rest of the students. Yet with regard to Mizrahim, more subtle practices are also common. For example, the Zeitlin Middle and High School for Girls in Ramat-Gan maintains de facto separate classes for the “different” girls. At the prestigious Netiv Meir Yeshiva in

Jerusalem for boys, the number of Mizrahi students never exceeds a certain low percentage. Similar practices have even been found at some of the top schools in the state secular school system, where such discriminatory practices are truly impossible to trace and combat effectively, since from a legal perspective, it is of course easier to fight against the more blatant and traceable ones.

Within Israel's education system, the Mizrahi community has been deprived over the decades of full and equal opportunity for education, resulting in low achievements and an absence of leadership within the community. This reality calls for concerted action to ensure that future generations of young Mizrahi Jews in Israel do not grow up with the negative impact of discrimination on their future; rather, we need to educate and cultivate strong leaders within their communities and ensure that they enjoy the true equal protection of the law. This struggle can serve as another breach in the wall, leading to an equal and fair society for all Israel's citizens and strengthening Israel's long-term sustainability as a whole.