

UBR v.

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Date: Sun, 24 Jul 2011 17:00:29 +1000
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Subject: child molestation

Dear Kvoid Horuv Shlita

Udshh"t, there has been discussion lately re reporting child molestation to the police. The President of ORA put out a statement that it should be immediately reported and many Rabbis supported this. I questioned it and this brought about some dialogue on this issue. As you weren't on the ORA list that I had I would like your opinion and comment, on this dialogue, and mainly and most importantly on my last email.

This was my first email

Dear All

Toiroh hee vellimoid unee tzorich! I really don't understand why as soon as something of serious loshon horo is heard about someone of even child molestation should we immediately go to the secular authorities. It is ossur to be mekabail loshoin horo and one must investigate first the veracity of the tayno, albeit as a matter of urgency, as Rabbi Groner I'm sure would have done at the time and dealt with it ul pee Toiroh in the way he felt would be the most effective for all concerned. Why can't we as a Jewish community deal with it which could include publicising bifnim, sanctions etc. (in a way that won't go against the law) which could be a lot more effective than the Goyim...According to the goyim there's limits in what can be publicised, in the punishments that can be imposed to the extent that there are pedophiles out there that are repeat offenders...I think that we are once again shirking our responsibilities to be

powerful Jewish leaders like Rabbi Groner was. WHERE IS OUR GEOIN YAAKOIV??? I personally feel that if we as a Jewish leadership can't deal with this and other issues bfnim we are showing ourselves to be impotent and a Chilul Hashem in that sense with all the flow on effects that lessens even more so Kovoid haToiroh veHarabonim in our communities. We should be able to stand strong and say that YES, Toiroh does enables us to deal with all issues without reverting to the goyim unless in the unlikely event that Toiroh law can't be enforced as we're living in a secular state. Let's be aware of our G-d given koichois and be proud and enforce them. Vunehhee veaynaynu kachagovim and therefore vechain hoyinu veaynayhem. If we believe and are strong with our position even the goyim would respect and support us...

I await comment from all!

Yosef Feldman
President RCNSW
Treasurer ORA

A response from Rabbi Kastel

First of all there are legal implications as to your suggestions being that we would be mandatory reporters We all need to make sure that people who are working with children in our organisations are all trained in working with children and all fill in the working with children to be checked
Secondly there is a limit as to how much can be done al pi torah in this country
This is a very serious matter and needs to be addressed accordingly

Rabbi Mendel Kastel
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And then a response from Rabbi MS Kluwgant

I am in fierce agreement with you R Mendel.

Mind you, in Victoria, the clergy does not have mandatory reporting requirements in relation to this issue, unless a disclosure is made to them in a 'teacher's' capacity.

We must however be encouraging victims to go to the police (and to be seen doing so) and not in anyway be seen to be attempting to hush up victims or to cover up, or sweep under the carpet.

This being said, the recent eruption in the media and blogs is not necessarily productive - in fact it can and oftentimes is destructive. While we should not be seen to be lashing out at people who make disclosures about themselves or others, there is a problem with unprovoked disclosures to the press – this is often not helpful to the victim and his/her case. The police encourage against going to the media in these situations as it often hampers their investigations.

Let us accept that there is a problem with this in our community and work together to address it.

KT Meir Shlomo

My response to them

Dear RM and RMS

This is a good response R' Moshe sent to me (and the ORA executive) and my comment in return with some little editing

Dear Reb Yoseph

You raise some valid points - but it is the rabbinic consensus around the world that matters of sexual abuse are bgeder dinei nefoshais that must be handed over to the police ... You would never suggest that murder be handled internally , so too matters of sexual abuse Can not be handled internally ; if you suspected someone of murder you

would not wait to investigate you would call the police , so too sexual abuse -- remember that there are two crimes about which we say the perpetrator is a rodef - murder and sexual crimes ... That is even in a perfect world -unfortunately the world wide experience is that we do not handle it properly internally eg the OU scandal , david kramer and many others Had Kramer been reported to the police then the victim in the USA likely would have been saved ... Furthermore we do not have the same investigative powers as the police , nor the power to protect etc etc etc
Bottom line - matters of sexual abuse must be immediately reported to the police as per the law of the land and that does not diminish gaon Yaakov - aderaba geon Yaakov is enhanced when we are transparent and open with the authorities in order that there should be מקרבך הרע ובערת

All the best
Rabbi Moshe D. Gutnick

My comment in return

It is much easier to slander someone with sexual abuse. I've seen it here that people have been accused for just a certainly non-sexual sincere friendly touch and even a completely innocent person who may be hated by someone or is subjected to someones paranoia can be the victim of serious hoitsous sheim ru and be reported to the police etc. One should first have to immediately report to a Rov mumche who can be appointed for these issues to see whether it's justified to be reported and if that Rov can't immediately investigate than give it over to another one and even if justified we as a Jewish community could be able to be seen to have a stronger approach to deal with it than the Goyim, as mentioned that there are pedophiles that are allowed to live anonymously freely in the community, if we had the proper Gaoin Yaakov...I suggest that this could be a discussion at a future conference which I believe should be held soon...

A further response from Rabbi Moshe Gutnick

I agree the conference should be in August.

I disagree about the reporting. The risk is too great. Generally speaking people do not report to the police inappropriately and the police are careful about who and how they investigate. As stated this is dinei nefoshis and the matter should immediately be reported to police. If one fails to do so one becomes responsible foot any future abuse.

In today's day and age " a sincere friendly touch " if such a thing even exists is unacceptable and rightly so. The amount of sexual abuse which occurs means that a number of gzeiros have been put in place to protect our youth. With a kal v'chomer , we live in such a promiscuous society yet society has seen fit to put in safeguards to protect our youth, how much more so we must abide by those safeguards.

It is possible that we are even mechuyav to do so - not just because of Dina dmalchusa but because of sheva mitzvahs d'nei noach and the klal we can not be more lenient than their laws...

Bottom line - nowhere in the Jewish world have these matters been successfully handled other than via the police. The perpetrator is basically frightened of only one thing - getting caught and going to jail - and I believe it is naive in the extreme to think anything else.

If there is room for discussion at a conference, it is not about us subsuming the role of police, but about how we get our community to open up to the police even more so that more perpetrators can be caught and punished .
All the best

Rabbi Moshe D Gutnick
Rabbinic Administrator - The Kashrut Authority
Dayan - Sydney Beth Din

Then from Rabbi MS Kluwgant

I have some great brochures and guidelines on what constitutes appropriate and inappropriate behaviour when it comes to 'the friendly touch' etc.

Let me know if you would like me to email them to you.

Warm Regards
Rabbi

Then from Rabbi Avrohom Gutnick

I too unfortunately have had many dealings in relation to Paedophilia, during my time with the NSW Police service. I whole heartedly agree with R' Moshe Gutnick's comments. I would like to add that it is my opinion that Rabbis should be available as a point of notification only where someone is hesitant to go to the police in the first instance and the party involved or the Police wants the Rabbis' participation. I do not wish to go into details here, however, should someone wish to know why I feel this way they can contact me and I would be more than happy to discuss,
 Kol Tuv
 R' Avrohom Gutnick

And then finally from myself

I know it's not being politically correct (even though one should just think how he'd react if one's father, son or brother was an alleged molester and kol Yisroel Achim) but after further info including the fact of the very recent reporting in [crownheights.info](http://www.crownheights.info) <http://www.crownheights.info/index.php?itemid=36386> that the VP of Agudas Yisroel of America holds to first report to a Rabbi before (being allowed to) report to the police, Rabbo Osdoba who didn't sign the CH Psak Din (even separately) and also how Rabbi Groner dealt with it, I also believe, besides the issues and concerns I wrote earlier, that one would be even considered a Moiser and a Roidef if one initially reports to the police as I'll explain.

R' Moshe Gutnick and the Psak Din of CH considers the culprit as a Roidef. I think that everyone is forgetting a very important point. Lehalocho not all sexual immorality is considered a roidef (see the Gemoro in Sanhedrin 73). Only someone attacking kemikchoil bishfoiferes (proper sexual intercourse) licheoiro is considered as such. Roiv cases of molestation isn't to that extent. The din of roidef would licheoiro only apply if someone was in the actual process of likely to be attacking in such a manner.

Also even the Alter Rebbe in Shulchan Oruch that the psak Din quotes (hilchos nizkay guf venefesh s14) says clearly UMASRIN BOY (also in nizkei momoin s7 re mesiro) and even someone who's being roidef to kill he must be warned (Shulchan Oruch Ch"m 425s1 Sh"O A"R hng"v s7), (unless the roidef was TORUCH UMOSSUR NUFSHOI (Sh"O A"R hng"v s12)), before being killed or by a moiser etc. before given over to the authorities which is messiro even if maitsur loy oy metsaaroy as brought in Shulchan Oruch ch"m 388s9. In our case the warning could include being publicised and in today's day and age by internet to even thousands etc. which in itself could be a deterrent. There could also be arranged a beating by a B"D or 7 tuvay hoir etc. (Ch"m ramo 425 s1, Sh"O A"R hng"v s15 at legth) and he must accept it i.e. not to report it or if not then to be reported etc. (as he may then be considered like musre veyesh leayin bozeh vk"m)

Only someone that's in the actual process of Redifo or Mesiro and is warned and he says loy kee emserenu and continues is a roidef (ibid.s7) -and not after he has killed, which in our case would be he already had even intercourse- or has been moiser already 3 times after hasroo, has a din of a roidef. Even though just to be moiser him one could be allowed if there's even a chshush (ibid.s6) but here the mesiroh is a redifo kidelekamon and for that reason even if one would want to be medame this case to rogil lehukois (ibid.6) where mesiro could be muttor, here is a geder of redifo kidelekamon.

If anything one who reports is being a Moiser and even a Roidef as the reported could likely go to jail and even today (where some may hold that our secular system or jails may not be mesiro) a pedophile would most likely be raped by other inmates with full intercourse as is well known and someone facilitating that would certainly be considered a Roidef.

With regard to Chilul Hashem involved as mentioned in the Psak Din we could make our system a lot stronger even in the eyes of the Goyim that we could be seen as a Kiddush Hashem if we would have the proper GEOIN YAAKOIV as Rabbonim and Munhigim and also hopefully in a way that in our system we wouldn't see repeat offenders etc.

In conclusion even without a system benoigaya lepoyel licheoiro one would be ossur to go the authorities and initially one must go to a Rov who should firstly investigate the veracity of the complaint and if thought to be serious warn the culprit etc. and act in a way that could scare him by threatening him with publicity by internet to the whole community etc but Chas veshloim for us to be moiser in such an instance as most likely then ain loy chaylek leoilom habo Ch"m 388s9.

Please comment on this very important issue.

Veyayhafaich Yomim Aylu Taykuf Umiyud Mumoshi!

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