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Halachic Guidelines for Reporting CSA

“For like a man who rises up against his fellow and murders him, so is this thing.” (*Devarim* 22:26)

Introduction

The devastating effects of CSA are now well-known and indisputable. It harms victims in every area of their development; physically, emotionally, mentally and spiritually. As such, our responsibility to prevent CSA stems from our obligation of לא תעמוד על דם רעך – “You shall not stand aside while your brother’s blood is shed.”

Is there a prohibition of מסירה to report instances of CSA to authorities?

Although מסירה in general is indeed forbidden, there are times when reporting a crime to secular authorities is not only permitted, but is required according to Halacha. The details of this are discussed in *Shulchan Aruch (Choshen Mishpat 388)*, but the general conditions that necessitate this, are as follows:

1. The person involved is acting in a manner that endangers members of the public
2. Reporting is necessary in order to save (potential) victims from (further) harm
3. In order to stop the offender from transgressing further איסורים
4. טסקא דמלכא – Where reporting is a legal responsibility (known as ‘mandatory reporting’).

CSA by its nature, satisfies the conditions for reporting enumerated above. In addition, Rav Elyashiv זת"ל ruled that besides for the reasons outlined previously, the halacha is that Beis Din have a duty to preserve the morality of their generation by extrajudicial means if necessary, if the low status of

the generation warrants it. Rav Elyashiv זת"ל held that this is unfortunately the case nowadays regarding CSA, and as such, reporting to the authorities would be an appropriate vehicle for achieving such safeguards.

According to the mandatory reporting law in Victoria, an adult is required to inform the police if they have a “reasonable belief” that CSA has occurred. An example of a “reasonable belief,” according to Victorian law, is when a child discloses CSA. According to halacha, can one report CSA to authorities when the knowledge of it is not derived from kosher witnesses?

In general, a crime may only be reported if it is witnessed by kosher witnesses. CSA by its nature, precludes such evidence, forcing us to rely upon the testimony of women and children in deciding upon a course of action. However, it is important to understand that in hearing victims’ account, we are not seeking to establish whether or not the alleged perpetrator is actually guilty, but rather to verify whether or not there is a safeguarding responsibility on our part, as the purpose of our reporting is to protect the victims, not to punish the perpetrator.

Rav Elyashiv ruled that when there exists a reasonable basis (רגלים לדבר) for our suspicions of CSA, we are required to act in the interests of those affected, even if this involves reporting to non-Jewish authorities. This would include when a child makes a disclosure of CSA, as it has been determined by experts in this field, as well as numerous studies, that

false allegations by children are extremely rare in these instances. Furthermore, since mandatory reporting laws in Victoria obligate everyone to report a child's disclosure of CSA, there also exists the additional reason of **טסקא דמלכא** which necessitates the reporting of a child's disclosure to the authorities.

Besides for the distinction outlined above, it is important to note that a woman's testimony is only considered invalid in Halacha, insofar as it is deemed to be insufficient evidence for a Beis Din (or anyone else) to convict or punish on that basis. The woman herself, however, is absolutely entitled to act upon the basis of her own certain knowledge of what has happened to her.

Moreover, if we have heard an admission of guilt from the suspect themselves, there is certainly no justification for not acting upon this. Although there is a general rule that we do not accept self-incriminating testimony, this only applies regarding our consideration of the offender's own future status (**אין אדם משיים עצמו רשע**). This has no relevance, however, with regard to the safeguarding of others, as outlined above.

If one is in doubt whether there exists "reasonable grounds" whether CSA has occurred, what should be done?

This is not a halachic question, but rather an issue of **בירור המציאות** – establishing the facts on the ground. One should immediately go to a health professional with expertise in this field to make this determination.

Should we not judge the perpetrator favourably, in that perhaps he has done teshuva (particularly if he is otherwise known as a **חכם תלמיד)?**

The concept of repentance, and of being **זכות לכף**, has no bearing upon this issue whatsoever. Firstly, we are not considering the question of the perpetrator's guilt, but rather whether we need to be concerned for his victims, as outlined above.

Secondly, someone who has involved others in a Torah prohibition is not relied upon in regard to having done teshuva until this has been independently verified (see **ש"ע יו"ד ס' קיח**). Thirdly, paedophilia is a sickness, and as such, any rehabilitation thereof would be under the category of healing, to which the concept of teshuva does not apply.

What about **רחמנות? Should we not take pity upon the offender?**

One of the traits of the Jewish people is indeed that we are merciful. However, it is clearly wrong to be merciful at the expense of innocent people, as Chazal have said, **כל המרחם על האכזרים לבסוף מתאכזר על** - 'He who has compassion for the cruel, will eventually be cruel to the merciful.' Indeed, our experience shows that in cases such as these, the 'cruelty to the merciful' is immediate and instantaneous, with devastating effects **ר'ל**.

Should we not pursue alternative options before reporting, as per the halacha of **אפשר להצילו באחד מאבריו?**

There are certain aveiros, such as murder or rape, that are so severe that one can even kill a would-be perpetrator if need be, in order to stop him (**ניתן** (להצילו **בנפשו**). However, the halacha is clear that one must try to minimise our intervention as much as possible, for instance by disabling him rather than killing him (**אפשר להצילו באחד מאבריו**). As such, if there were another way of saving potential victims that would definitely be effective, one would certainly be required to take that route as a first option. However, this is only when we can be absolutely certain that such alternative methods will be equally effective in preventing further offense by the perpetrator, otherwise this rule cannot be applied. There is no room for error in these cases – our primary responsibility is to the victims who cannot defend themselves, and there is no place here for dubious 'solutions' that essentially amount to little more than wishful thinking on the part of those implementing them.

How should we relate to a person who discloses CSA to the authorities?

When a person makes a disclosure of CSA to authorities, it is our responsibility as a community to show support to the victim and their family. It goes without saying, that it would be absolutely forbidden to disparage or shame those individuals or their families in any way.

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