



The Israel Democracy Institute

Constitution by Consensus

Proposed by
The Israel Democracy Institute

Under the Leadership of
Justice Meir Shamgar

Ancillary Laws

The Spousal Registry Bill
The Sabbath (and Jewish Holidays) Bill

DRAFT



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In its plans and endeavors, the Institute strives to support the institutions of Israel's developing democracy and consolidate its values. The Institute's research is followed up by practical recommendations, seeking to improve governance in Israel and foster a long-term vision for a stable democratic regime adapted to the structure, the values, and the norms of Israeli society. The Institute aspires to further public discourse in Israel on the issues placed on the national agenda, to promote structural, political, and economic reforms, to serve as a consulting body to decision-makers and the broad public, to provide information, and present comparative research.

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Introduction

We hereby present legislation which is ancillary to the Israel Democracy Institute's proposal for a Constitution by Consensus. These ancillary laws include bills for the Spousal Registry Law [literally, the Partnership Covenant Law] and for the Sabbath (and Jewish Holidays) Law, drafted by the fellows of the Israel Democracy Institute, under the guidance of the President of the Supreme Court (Emeritus), Justice Meir Shamgar. These two bills constitute an integral part of the set of compromises (the "package deal") included in the Institute's proposal for a Constitution by Consensus for Israel. These bills are to be ordinary legislation, ancillary to the Constitution, and round out the proposed Constitution by Consensus, published under separate cover by the Israel Democracy Institute. The bills for the Spousal Registry Law and for the Sabbath (and Jewish Holidays) Law are an integral part of the series of proposals on matters of religion and state included in the proposed Constitution by Consensus, and they should be understood in that vein. They are proposals for compromise among pivotal groups in Israeli society, compromises regarding their normative perceptions and their needs.

We wish to thank the many individuals who assisted us in preparing these bills. Dr. Shahar Lifshitz directed the work on the bill for the Spousal Registry Law, and helped us crystallize the issues involved. Guy Lurie's efforts were also of great help to us. Yoav Artzieli compiled our work on the drafts of the Sabbath (and Jewish Holidays) Bill.

We believe that consensus, in the spirit of the compromises presented here, will act to alleviate the national, religious, social, political, and cultural tensions in Israel as such compromises are intended to protect the individual, the minority, the group, and the State, and to implement the public will.

Dr. Arye Carmon
President, the Israel Democracy Institute

Section I

The Spousal Registry Bill

General Explanation

Following is a bill for the Spousal Registry Law, drafted by the senior fellows of the Israel Democracy Institute, under the direction of Dr. Shahar Lifshitz. This bill supplements the proposal by the Israel Democracy Institute for the Constitution by Consensus, forming part of the set of proposals regarding issues of religion and state which also includes a bill for the Sabbath (and Jewish Holidays) Law.

The objective of the bill for the Spousal Registry Law is to provide a response to the predicament of anyone who does not wish, or is unable, to marry in a religious ceremony in Israel. The current legal situation in Israel entails a certain violation of the basic human right to establish a family. Existing Israeli legislation permits only religious marriages to be performed. Under religious law, there are couples who cannot wed in Israel (such as those who are halakhically prohibited) who are offered only partial and unsatisfying solutions, such as the concept of “common law unions.” There are also many couples uninterested in participating in a religious ceremony for ideological reasons. The bill for the Spousal Registry Law also aims to answer the plight of these couples.

It is important to emphasize that according to the bill, marriage and divorce in Israel will be conducted solely in accordance with religious law, and therefore the exclusive nature of religious marriage and divorce in Israel will not be challenged. Nevertheless, couples who are not interested in, or who are barred from, marrying in a religious ceremony will be able to cement their relationship through a special registry which will grant them the full rights and obligations conferred upon those who are married. It is proposed that the spousal registry track will run parallel to the religious marriage and divorce track and that the two shall not converge. The Spousal Registry is an agreement between partners to establish a family life. It is proposed to validate the couple’s desire to enter into a Partnership Covenant legally, in a manner which will give partners the

full rights and obligations conferred upon those who are married, while not being married.

Under the bill for the Spousal Registry Law, the State shall administer and be responsible for the Spousal Registry. Partners who seek to conduct a life in common will be able to register in the Spousal Registry, to be administered by an individual qualified to be a Family Court judge. Concurrent with their registration, they will be asked to declare that their entering into a Partnership Covenant does not reflect an intent to marry under religious law. The bill for the Spousal Registry Law also prescribes civil laws for entering into and dissolving a Partnership Covenant: criteria for eligibility and for recognizing couples who married or registered in a spousal registry abroad, and the means for dissolving a Partnership, including arrangements regarding financial relationships.

The bill to establish a Spousal Registry had its inception, principally, in the Spousal Relationship (Registration and Dissolution) bill. It was inspired by spousal registries established in various Western countries. As an outgrowth of discussions with various entities conducted over many years, the Ministry of Justice published its Memorandum on the Spousal Registry Law at the end of 2004. Likewise, a number of private bills in this context have been submitted to the Knesset. The following bill for a Spousal Registry Law is based upon the Memorandum on the Spousal Registry Law published by the Ministry of Justice, although it is substantially different, *inter alia*, regarding the manner in which the relationship between the Partners is dissolved and the eligibility criteria for the Partnership.

Text of the Proposal

The Spousal Registry Bill

1. Definitions

In this law:

Court: Family Court;

Partners: partners under this law;

Application to Dissolve a Partnership: an application filed with the Court by one or both of the Partners, for the purpose of dissolving the Partnership Covenant, including initiating Court proceedings due to a dispute between the Partners under this law, through an alternate mechanism of mediation, other than litigation, as defined in Article 79C of the Courts Law [Consolidated Version], 5744-1984,¹ or another mechanism for conflict resolution which the Minister of Justice shall prescribe in the regulations;

Partnership Covenant: an agreement drawn up pursuant to this law, to live in common as Partners and to conduct a joint family life and household, but without marrying pursuant to the personal law in Israel;

Declaration of Non-intent to Marry under Religious Law: an affidavit in which the Partners declare that a life in common and entering into the Partnership Covenant do not reflect an intent to marry under religious law;

Support Unit: as defined in Section 5 of the Family Courts Law, 5755-1995;²

Married: including one whom a religious tribunal has determined is married under personal law, and requires divorce or an annulment of marriage pursuant to religious law as a condition for remarriage of the Partners pursuant to personal law;

1 S.H. 5744, at 198; S.H. 5764, at 8.

2 S.H. 5755, at 393; S.H. 5761, at 80.

Relatives: children and their parents, siblings, grandparents, their grandchildren or great-grandchildren, aunts and uncles and their nieces and nephews or their children; for this purpose, the rule for one who has been Married to, or has been the Partner of, any of these – is identical to that for such Relative; moreover, the rule for an adoptee of, or one adopting, any of these – is the same as for a birth Relative;

Spousal Registration or **Spousal Registry:** state registration of the Partners who have entered into the Partnership Covenant;

Resident: an Israeli citizen or one who has been granted an immigrant visa or an immigrant certificate under the Citizenship Law, 5712-1952,³ or one who has been granted a visa or a permit for permanent residence, or a visa or permit for temporary residence under the Entry into Israel Law, 5712-1952,⁴ who resides in Israel.

2. Relationship between Partners

- (a) Partners who have consented to enter into a Partnership Covenant are entitled to register in the Spousal Registry provided the following requirements have been met:
 - (1) Each is over eighteen years of age;
 - (2) At least one is an Israeli Resident;
 - (3) They are not Relatives;
 - (4) Neither is Married, is registered as Married in the Population Registry, or is registered as a Partner to another in the Spousal Registry, in Israel or a foreign state.
- (b) Where one of the Partners is legally incompetent or has had a guardian appointed for him or her, such Partner shall not be registered in the Spousal Registry, unless the Court shall affirm that such Partner may enter into a Partnership Covenant.

³ S.H. 5712, at 146; S.H. 5758, at 295.

⁴ S.H. 5712, at 354; S.H. 5763, at 541.

3. Entering into a Partnership Covenant

The provisions of this law shall not be stipulated against, unless it is explicitly stated with regard thereto that the Partners are entitled to so stipulate.

4. Competent Court

The Family Court shall have sole authority to adjudicate matters under this law.

5. Appointment of a Spousal Registrar

- (a) The Minister of Justice shall appoint an individual qualified to be appointed as a Family Court judge to be a spousal registrar. This registrar shall administer the spousal registry (hereinafter, the Spousal Registrar), and may appoint additional Spousal Registrars as needed; should the Minister of Justice appoint more than one Spousal Registrar, one of them shall be appointed as the National Supervisor of the Spousal Registry.
- (b) For the purpose of carrying out his or her functions, the Spousal Registrar shall have powers of inquiry under Sections 9 through 11 of the Commissions of Inquiry Law, 5729-1968.⁵

6. Registry of Partners

- (a) Partners requesting to register in the Spousal Registry shall file an application with the Spousal Registrar on a form accompanied by documents as shall be determined in the regulations; the application shall also be accompanied by a Declaration of Non-intent to Marry under Religious Law. Moreover, they may file an application with the Spousal Registrar to affirm a financial agreement pursuant to the Financial Relationships Between Spouses Law, 5733-1973⁶ (hereinafter, a Financial Agreement).

5 S.H. 5729, at 28.

6 S.H. 5733, at 267; S.H. 5755, at 398.

- (b) Where the Spousal Registrar shall determine that the application shall have been filed in accordance with the provisions of this law, notice of the application shall be made public, in such manner as shall be prescribed by the regulations.
- (c) Any person may file an objection to the application for registration with the Spousal Registrar, within the time-period as shall be prescribed by the regulations, based on the fact that the conditions set forth in Section 2 have not been met; where an objection is filed with the Spousal Registrar, a copy thereof shall be provided to the Partners, who may submit their response to the objection to the Spousal Registrar.
- (d) Where no objection is filed, or where the Spousal Registrar is convinced that a filed objection is baseless, he or she shall summon the Partners to appear before him or her and enter into a Partnership Covenant.
- (e) Where the Partners shall appear before the Spousal Registrar, he or she shall explain the significance and ramifications of the Partnership Covenant, as well as the significance and ramifications of the Financial Agreement to them; the Partners shall, in the presence of the Spousal Registrar, declare that they have fulfilled all the requirements set forth in Section 2, that they have no intent to marry under religious law, and that they agree to enter into the Partnership Covenant.
- (f) Where the Spousal Registrar shall be convinced that the requirements set forth in Section 2 have been met, and that each [Partner] is ready and freely consents to enter into the Partnership Covenant, and having understood its significance and ramifications, the Partners shall sign the Partnership Covenant agreement in the presence of the Spousal Registrar, and the Declaration of Non-intent to Marry under Religious Law, and the Spousal Registrar shall validate the agreement by countersigning, and shall affirm the Financial Agreement, should the partners have so requested.
- (g) Partners Married in a foreign country, or registered in the spousal registry of a foreign country, and who have met the conditions

set forth in Section 2, may file an application with the Spousal Registrar under Subsection (a); however, the Court may approve the registration of the Partners even where the conditions in Sections 2(a)(1) and 2(a)(2) have not been met; where the Spousal Registrar is convinced of the veracity of the documents, he or she shall summon the Partners to appear before him or her and Subsections (e) and (f) shall apply.

- (h) The Spousal Registrar shall register in the Spousal Registry that information regarding the Partners as shall be prescribed in the regulations, and where the Partners shall enter into a Partnership Covenant under Subsection (g), it shall also register the date of their marriage or the date of their registration in the spousal registry in the foreign country, as applicable; a copy of the registration shall be sent to the Partners and to the registration clerk pursuant to the Population Registry Law, 5725-1965⁷ (hereinafter, the Registration Clerk).
- (i) Where the Spousal Registrar shall decide to reject the application, because he or she believes that it does not satisfy the provisions of the law, or because of an objection under Subsection (c), the Partners may appeal such decision to the Court.

7. The Law Applicable to Partners

- (a) Every right or obligation, by virtue of law, which applies to Married Partners shall apply to Partners registered in the Spousal Registry, other than a right or obligation by virtue of religious law.
- (b) Partners who are registered in the Spousal Registry are obligated to provide maintenance to one another pursuant to Sections 2A, 6 through 18, and 20 of the Family Law Amendment (Maintenance) Law, 5719-1959.⁸

7 S.H. 5725, at 270; S.H. 5756, at 180.

8 S.H. 5719, at 72.

8. Striking from the Registry

- (a) The Spousal Registrar shall strike partners from the Spousal Registry in any of the following cases:
- (1) One of the Partners dies;
 - (2) The Court shall render a judgment dissolving the Partnership Covenant under Section 9;
 - (3) A notice shall be received from the Marriage Registrar pursuant to the Marriage and Divorce (Registration) Ordinance, that the Partners have Married each other under personal law in Israel;
 - (4) A competent Court or other authorized authority in a foreign country shall grant a divorce decree or judgment, or a judgment or decree directing the striking of the Partners from the Spousal Registry; all subject to that set forth in the Enforcement of Foreign Judgments Law, 5718-1958.⁹

Where Partners shall be stricken from the Spousal Registry, they shall be free to marry or enter into a Partnership Covenant, beginning at the date of such striking.

- (b) Every right or obligation by virtue of law which shall apply to those divorced or whose marriage has terminated, shall apply to Partners whose registration has been stricken from the Spousal Registry, other than a right or obligation by virtue of religious law.

9. Dissolution of the Relationship

- (a) The Court may dissolve the Partnership Covenant under the following circumstances:
- (1) Where it shall be clearly proven that the Partnership Covenant and the Registration were done solely for the sake of appearance;
 - (2) Where after the Registration it shall become evident that the requirements of Section 2 shall not have been fulfilled;

9 S.H. 5718, at 68.

- (3) Where half a year shall have passed from the date on which the Application to Dissolve a Partnership shall have been filed, and the two Partners consent to the dissolution of the Partnership Covenant;
 - (4) Where a year shall have passed from the date on which one of the Partners shall have filed an Application to Dissolve a Partnership Covenant, and it does not appear very likely that the Partners shall live together again;
 - (5) Notwithstanding that set forth in this Section, the Court may delay or expedite the dissolution of the Partnership Covenant should it deem it necessary to protect the welfare of the Partners, or the children of the Partners, or for other special reasons that shall be noted;
 - (6) Notwithstanding that set forth in Subsections (4) and (5), the Court shall direct the dissolution of the Partnership Covenant in any case where two years shall have passed from the date on which one of the Partners filed an Application to Dissolve a Partnership Covenant, and the Partner who filed the application insists on wanting to dissolve the Partnership, subject to serving such application on the other Partner pursuant to the Rules of Civil Procedure, 5744-1984.¹⁰
- (b) The Court may direct the Partners, where one or both have filed an Application to Dissolve a Partnership, to apply to the Support Unit in order that it may assist them in rehabilitating the relationship or in planning the dissolution procedure.
 - (c) A decree dissolving the Partnership Covenant shall include the following provisions:
 - (1) An arrangement of the financial relationship between the parties; where the Partners shall have reached a consensual arrangement, the provisions of Sections 1 and 2 of the Financial Relationships Between Spouses Law, 5733-1973 shall apply to the agreement;

¹⁰ K.T. 5744, at 2220.

- (2) Children's domicile and their relationship with the two parents, and all other necessary issues regarding the children's guardianship;
- (3) Maintenance of the Partner, including housing, to the extent necessary, at the discretion of the Court, taking into account considerations of justice, the economic circumstances of the Partners, their needs, and the needs of their children; however, in the Financial Agreement, each of the Partners may concede his or her right to housing and maintenance from the Partner, after the dissolution of the Partnership Covenant, provided such concession shall not harm the welfare and the rights of their children;
- (4) The Court may direct the dissolution of the Partnership Covenant and determine the matters set forth in this Section at a later date. In such a situation, in the decree for dissolution, the Court shall order temporary arrangements for such matters.

10. Status of Common Law Unions

- (a) Partners who have not registered in the Spousal Registry after this law comes into effect shall not be recognized as common law couples, unless they were in common law unions prior to the law entering into effect.
- (b) Notwithstanding that set forth in Subsection (a), the Court, or another judicial body with jurisdiction under law, may grant rights of common law unions to Partners who did not register in the Spousal Registry because one of them was Married to another. In employing its discretion under this Section, the circumstances under which the Married person did not get divorced shall be taken into consideration.
- (c) Notwithstanding that set forth in Subsection (a), the Court, or another judicial body with jurisdiction under law, may grant rights of common law unions to Partners who did not register in the Spousal Registry if it deems it necessary in order to deal equitably with one or both of the Partners.

11. Preservation of Laws

Nothing set forth in this law shall infringe upon the exclusive jurisdiction of the religious tribunal to rule on issues of marriage and divorce of Partners who are members of the religious community of such religious tribunal; however, the religious tribunal shall not have jurisdiction over issues ancillary to the divorce of those who were Married and also registered in the Spousal Registry.

12. Regulations

The Minister of Justice is responsible for implementing this law, and may issue regulations for its implementation, including regulations on the following issues:

- (1) The wording of an application for dissolution of a Partnership or an application for conflict resolution under this law, the wording of the Declaration of Non-intent to Marry under Religious Law, a mechanism for consensual conflict resolution, [and] procedures before the Court or the Spousal Registrar, with the approval of the Knesset's Constitution, Law and Justice Committee;
- (2) The determination of Court or Spousal Registry fees, with the approval of the Knesset's Constitution, Law and Justice Committee.

13. Amendment of Population Registry Law

In the Population Registry Law, 5725-1965:

- (a) In Section 2(a) in paragraph (7), "single, married, divorced, or widowed," shall be replaced by "single or a Partner."
- (b) In Section 15, after paragraph (2), shall be inserted:
"(2A) Registration as a Partner under the Spousal Registry Law."

14. Amendment of Single Parent Families Law

In the Single Parent Families Law, 5752-1992,¹¹ in Section 1, paragraph (1), after "not married" shall be inserted "registered as a Partner under the Spousal Registry Law."

11 S.H. 5752, at 147; S.H. 5761, at 218.

15. Amendment of Marriage and Divorce (Registration) Ordinance

In the Marriage and Divorce (Registration) Ordinance, after Section 4, shall be inserted:

“Giving Notice to the Spousal Registry

4A. At the beginning of every month, the registering authority shall give notice of those marriages registered during the previous month, to the Registry, operating pursuant to the Spousal Registry Law.”

16. Amendment of Penal Law

In the Penal Law, 5737-1977,¹² after Section 176, shall be inserted:

“Spousal Registry

176A. The provisions of this paragraph shall apply, *mutatis mutandis*, to an individual who registered in the Spousal Registry set forth in the Spousal Registry Law, while still Married to another or while registered in the Spousal Registry, or to an individual who Married while still registered in the Spousal Registry as a Partner of another.”

17. Application and Preservation of Rights

- (a) This law shall enter into effect six months from the date of its publication.
- (b) This law does not alter the rights of Partners who shall have entered into a Partnership Covenant where such rights shall have been acquired before the law shall have entered into effect, unless otherwise agreed in a Financial Agreement.

12 S.H. 5737, at 226.

Explanation of Proposed Sections

1. Definitions

Partnership Covenant: the legal nature of the Partnership Covenant is established in this definition. The Partnership Covenant is an agreement expressing the will of the Partners to establish a family life;

Application to Dissolve a Partnership: this definition also includes processes of conflict resolution as alternatives to legal processes, such as mediation, due to their great importance in conflicts between Partners;

Declaration of Non-intent to Marry under Religious Law: this declaration is intended to clarify that the Spousal Registry which this bill proposes be established does not infringe upon the status of religious marriage in Israel and that Partners registered under this law are not “married.” This declaration is expected to assist the religious tribunals in not viewing a Partnership Covenant as a marriage, and therefore there will be no need to apply the laws of religious divorce upon dissolving a Partnership;

Married: this definition is primarily designed to relieve concerns regarding *mamzerut* (illegitimacy of children under Jewish law) of the children of one who has entered into a Partnership Covenant and held a religious ceremony, and after dissolving the first Partnership Covenant has entered into a Partnership Covenant with another. This is necessary because the track for dissolving a Partnership is administered independently from that of the divorce track.

2. Relationship between Partners

This Section prescribes the eligibility criteria for Partners to enter into a relationship. These conditions are “civil” requirements and not specifically religious (age, residency, and prohibition against familial relations or bigamy). The criteria regarding age and the provision regarding legal incompetence and an individual for whom a guardian has been appointed were prescribed in order to ensure that the

relationship between the partners rests upon their autonomous will. The track for entering into a Partnership Covenant is open to all, subject to these “civil” conditions, including those who are halakhically prohibited, and those who are uninterested, from an ideological standpoint, in marrying under religious law. At the same time, the requirements for eligibility also ensure, in Section 2(a)(4), that there will be no concerns regarding the *mamzerut* of children of Partners who entered into a Partnership Covenant.

3. Entering into a Partnership Covenant

The majority of the arrangements in this Proposal are mandatory and may not be stipulated against by the Partners, as they are integral to the legal rules dealing with personal status.

4. Competent Court

It is proposed that the Family Court have jurisdiction, given the importance of having judges with particular expertise on the matters included in this bill sit in judgment.

5. Appointment of a Spousal Registrar

The Minister of Justice is authorized to appoint a number of Spousal Registrars, who are qualified to be appointed as judges in the Family Court, if the number of Partners who apply to be registered in the Registry increases.

6. Registry of Partners

This Section sets forth how a Partnership Covenant shall be set up. Subsection (a) proposes that the request to be registered in the Spousal Registry shall be prescribed in the regulations. It also notes an option of filing an application to affirm a Financial Agreement, so as to make the Partners aware of such possibility.

Subsections (b) through (d) detail the procedure for publicizing the Partners’ application, and allowing others the opportunity to

object thereto. This procedure is also customary in the framework of conducting a marriage. Subsection (i) allows for filing an appeal with the Family Court regarding the decision of the Spousal Registrar to deny an application by the Partners to register in the Spousal Registrar.

Subsections (e) and (f) propose that the Partnership Covenant shall be effected by an agreement which will be signed in the presence of the Spousal Registrar. Subsection (e) details the procedure which precedes the execution of a Partnership Covenant. Subsection (f) defines the extent of the Registrar's discretion regarding the signature of the Partners on a Partnership Covenant agreement. Such agreement will be valid from the moment the Registrar signs it, at which point the Partners shall be bound by the Partnership Covenant. It is also suggested that, at such time, the Partners shall execute the Declaration of Non-intent to Marry under Religious Law, for the reasons stated in the explanation of Section 1 of the bill.

Subsection (g) regulates the Spousal Registration of Partners who were married or registered in a spousal registry abroad. For such Partners, eligibility requirements which differ slightly from those for Partners who are registering in the Israeli Spousal Registry for the first time, are justified. Until now Partners who were married abroad could only register their marriage in the Population Registry.

Subsection (h) regulates the manner of the Partners' registration in the Spousal Registry, and it prescribes that the Spousal Registrar has an obligation to notify the Population Registry of the registration of a Partnership Covenant, similar to the obligation of the Marriage Registrar.

7. The Law Applicable to Partners

Section 7 proposes that all civil laws which apply to married couples shall also apply to Partners who have entered into a Partnership Covenant. In contrast to the Memorandum on the Law of the

Ministry of Justice, there will be no rights to which the Partners will be entitled only after a period of time, in order to avoid contempt for the institution of the Spousal Registry. The objective is to grant equal legal status both to couples who marry and Partners who enter into a Partnership Covenant, so that it may not be assumed that the possibility of a fictional bond between Partners who register in the Spousal Registry is more reasonable than the possibility of a fictional bond between couples who marry.

8. Striking from the Registry

Section 8 presents the circumstances under which the Spousal Registrar shall be authorized to strike the Partners' registration from the Spousal Registry. All such instances are based on decisions and documentation by the authorities. The Spousal Registrar shall rely on these documents and, in this context, shall not have the authority to conduct a factual inquiry. In order to dissolve the Partnership bond based on an application by the Partners, the Partners will have to apply to the Courts.

Subsection (c) emphasizes that the legal status of Partners whose registration is stricken from the Spousal Registry is equal to the legal status of partners who divorced or whose marriage has terminated, other than with regard to religious law. The objective is to ensure, to the extent possible, that the legal consequences of the Partnership Covenant and the institution of marriage be equivalent.

9. Dissolution of the Relationship

Section 9 proposes that the Family Courts shall have sole jurisdiction to dissolve the Partnership of Partners registered in the Spousal Registry. It is proposed that the track for dissolving the Partnership Covenant shall be administered independently from the divorce track. Partners registered in the Partnership Covenant are not expected to need a religious divorce. Nevertheless, should the Partners require a religious

divorce, this procedure will be administered by the religious tribunals, pursuant to the provisions of Section 11 of the bill.

Section 9 proposes a balance between an aspiration to respect the wishes of one of the Partners to dissolve the Partnership bond and the public interest to strengthen such Partnership bonds, to protect economically weak Partners and to protect the children's interests. Therefore, the process proposed for dissolving the Partnership should not be a hasty one, but rather should include a true examination of whether the relationship between the partners has been irreparably undermined. In this regard, Section 9 of this bill differs significantly from the Memorandum of the Law published by the Ministry of Justice. On the one hand, it is proposed that neither a Partner nor the Courts should be able to delay the dissolution of the Partnership for more than two years from the date that one of the Partners applied to dissolve the Partnership Covenant (Subsection (a)(6)). On the other hand, it is recommended that dissolution of the Partnership should not be allowed to occur too easily, and therefore the Court's jurisdiction to dissolve the Partnership Covenant is limited, whether the Partners agree to dissolving the Partnership Covenant (Subsection (a)(3)), or whether there does not appear to be a real prospect of the Partners living together again (Subsection (a)(4)). This bill does not permit the immediate dissolution of the Partnership Covenant at the Partners' request. Nevertheless, the Court's discretion is maintained regarding expediting or delaying dissolution of the Partnership Covenant on exceptional grounds (Subsection (a)(5)).

Subsections (a)(1) and (a)(2) govern cases where there was an *a priori* defect in the Partnership Covenant (a fictitious arrangement or non-fulfillment of the eligibility criteria).

Subsection (b) grants the Court discretion to direct the Partners to the Support Unit established under the Family Courts Law, 5755-1995, in

order to facilitate the process of dissolving the Partnership Covenant, or to allow for the rehabilitation of the Partnership bond.

Subsection (c) proposes a number of provisions that have no counterpart in Israeli law. Here it is suggested that in the Family Court's decision to dissolve the Partnership Covenant, it shall be obligated to determine, at least in a temporary ruling, the financial relationship between the Partners, their children, and maintenance for the Partners. The objective is not to permit any dissolution of a Partnership Covenant unless these issues are resolved, even if only provisionally.

Subsection (c)(3) introduces a significant innovation into Israeli law. This Subsection grants the Family Court discretion to obligate a Partner to provide maintenance and housing to the other Partner even after dissolution of the Partnership. Moreover, Subsection (c)(3) proposes that the Courts be allowed to require the payment of rehabilitative maintenance, taking into consideration, *inter alia*, the earning capability that one of the Partners acquired during the Partnership, at times at the expense of the other Partner's earning capability. It is proposed that Partners be allowed to stipulate against these rights under this Section, provided that such a stipulation not harm a third party – their children.

10. Status of Common Law Unions

Section 10 proposes to amend the laws regarding common law unions without abolishing them. Because Partners will now have the ability to register in the Spousal Registry *a priori*, it may be assumed that the use of *ex post facto* recognition of common law unions will decrease. Therefore, Subsection (a) proposes that, as a general rule, couples will no longer be recognized as common law couples, but this arrangement will only apply to those who were not in common law unions prior to the Spousal Registry Law entering into effect. Subsections (b) and (c) propose to retain the discretion of the courts or other judicial bodies to grant rights of common law

couples to Partners who did not register in the Spousal Registry, on the assumption that there will still be a need to do so. Other western countries which also permit civil marriages maintain a parallel institution of common law unions.

11. Preservation of Laws

It is proposed that the track for religious marriage and divorce shall be parallel to the track for the Spousal Registry. The exclusive nature of religious marriage and divorce shall not be harmed, and nothing in this bill shall cause any amendment to the laws of marriage and divorce. Therefore, it is suggested that the religious tribunals shall have the authority to rule upon issues of Partners' marriage and divorce, even if they have registered in the Spousal Registry, while differentiating between the creation and dissolution of the Partnership Covenant, which shall be adjudicated in the Family Courts. Therefore, Partners who register in the Spousal Registry, as well as marry in a religious ceremony, will need to divorce according to the religious divorce laws currently in effect. Nevertheless, issues which are ancillary to a divorce of Partners who are registered in the Spousal Registry, such as the matters set forth in Section 9(c) of the bill, shall be adjudicated within the framework of the dissolution of the Partnership Covenant, and will not come under the jurisdiction of the religious tribunals.

12. Regulations

It is suggested that the Minister of Justice have the authority to promulgate regulations for the implementation of this law, to be confirmed by the Knesset's Constitution, Law and Justice Committee.

13. Amendment of Population Registry Law

It is suggested that registration in the Population Registry be altered and should note only whether an individual is "single" or a "Partner," without distinguishing between one who is married and one who is registered in the Spousal Registry.

14. Amendment of Single Parent Families Law

It is proposed that the Single Parent Families Law be amended in light of adding the institution of the Spousal Registry parallel to the institution of marriage.

15. Amendment of Marriage and Divorce (Registration) Ordinance

It is proposed that the Marriage and Divorce (Registration) Ordinance be amended in light of adding the institution of the Spousal Registry parallel to the institution of marriage.

16. Amendment of Penal Law

It is proposed that the Subchapter on bigamy in the Penal Law be amended in light of adding the institution of the Spousal Registry parallel to the institution of marriage. The rationale for the offense of bigamy shall also apply to the institution of the Spousal Registry.

17. Application and Preservation of Rights

It is proposed that the provisions of this law shall not apply retroactively. Subsection 17(b) is necessary in light of the provisions of Section 9(c) of the bill.

Section II

**The Sabbath
(and Jewish Holidays) Bill**

General Explanation

The bill for the Sabbath (and Jewish Holidays) Law (hereinafter, the Sabbath Bill) distinguishes between permitted activities (recreation, culture, and entertainment, and public transportation in a special and limited format) and prohibited activities (official government activities, and Commercial and Industrial Activities, other than essential activities).

The Sabbath Bill was written in the spirit of the comprehensive and detailed arrangement recently consolidated in the Gavison-Medan Accord, an arrangement similar in many points to a number of other proposals raised over the last decade regarding the Sabbath, such as proposals by the Tzameret Committee, Gavison-Ben-Nun, Meimad-Beilin-Lubotzky, Knesset Minister Langental, the Religious Kibbutz Movement, Takam, and the National Kibbutz Movement. The uniqueness of this proposal lies in the establishment of a national committee for matters relating to the Sabbath and in the appointment of a supervisor for enforcing the law.

The objective of the Sabbath Bill is to give prominent and significant expression to the uniqueness of the Sabbath in the Israeli public sphere. The Sabbath's uniqueness in Israel originates from its religious background, but the Sabbath Bill rests on three additional foundations: cultural, social-economic, and historic-national.

On the cultural level, Israeli and global experience teaches that, in many cases, consumer culture overpowers more than one alternative for utilizing our free time. The intent of this proposal is to allow the existence of a day in the week to be dedicated to culture, recreation, and entertainment. Therefore, it seeks to prevent the expansion of the consumer-commercial activities from weekdays to the Sabbath day. The commercial activities currently taking place on the Sabbath began relatively recently and so ending them does not alter a deeply rooted Israeli custom.

On the social-economic level, the commercial activities currently taking place on the Sabbath harm the weakest sectors of society: small business owners cannot compete with the large commercial entities conducting activities on the Sabbath; workers (religious and secular) are forced to work on the Sabbath or else they will lose their position. Considerations of this type have also been taken into account in other Western countries.

On the historic-national level, the Sabbath occupies a unique place in the Jewish public sphere, for religious and secular alike, for many years now. In the well-known words of Ahad Ha'am, a distinguished secular Zionist philosopher: "More than Israel has kept the Sabbath, the Sabbath has kept Israel." This Bill is intended to preserve a fundamental component of the Jewish historical and national memory in the Jewish state.

Text of the Proposal

The Sabbath (and Jewish Holidays) Bill

1. The Sabbath – A Day of Rest

The Sabbath is the official day of rest in the State of Israel.

2. Right to Rest on the Sabbath

- a. The right of a Jewish worker to rest on the Sabbath, and the right of a non-Jewish worker to rest on his or her religious day of rest or on the Sabbath, shall not be violated, other than in accordance with that set forth in this law.
- b. A person who chooses not to work on the Sabbath or on his or her religious day of rest shall not be discriminated against in any matter, including those matters enumerated in Section 2 of the Equal Opportunities in Work Law, 5748-1988.
- c. Whenever employment shall occur on the Sabbath, it shall be done on the basis of a Sabbath Rotation. In work places which also employ in the framework of over-time hours, the Sabbath-observers shall be given priority for the possibility to work such over-time hours during the course of the week.

3. Activities Prohibited on the Sabbath

- a. On the Sabbath, Commercial and Industrial activities shall not be permitted.
- b. On the Sabbath, activities of Government Institutions shall not be permitted.
- c. Subsections (a) and (b) shall not apply in cases where a permit for employment during the weekly rest hours, by virtue of Section 12 of the Hours of Work and Rest Law, 5711-1951, is granted. Cases to be adjudicated under such Section, after this law shall have entered into effect, shall be adjudicated in accordance with the principles of this law.

- d. Notwithstanding that set forth in Subsections (a) and (b), a Committee, which shall operate in accordance with that set forth in Section 6, may issue a Special Permit for Commercial Activities which will take place on a Sabbath Rotation, and make the permit contingent upon a fee.

4. Activities Permitted on the Sabbath

- a. The right to conduct Recreational, Cultural, and Entertainment Activities on the Sabbath shall not be violated, provided they are conducted strictly in accordance with location and noise restrictions.
- b. Such activities shall not be permitted in neighborhoods where a significant majority of the residents object thereto.
- c. An entity which operates on the Sabbath shall close on an alternative day of the week, of its choice.

5. Freedom of Movement on the Sabbath

- a. Freedom of movement on the Sabbath shall not be violated.
- b. Public transportation shall operate on the Sabbath in a special and limited format, while preserving the character of the Sabbath to the utmost and limiting the necessity to work thereon.
- c. Notwithstanding that set forth, it is possible that local transportation routes shall be closed for the duration of the Sabbath or on certain hours on the Sabbath in neighborhoods where an especially significant majority of the residents are interested therein. This shall not derogate from the freedom of movement of the residents of such neighborhoods.

6. Committee for Sabbath Affairs

- a. A Committee for Sabbath Affairs is hereby established.
- b. The Committee shall interpret the details of the arrangements to be found in Sections 3(d), 4, and 5, and shall rule on conflicts arising therefrom.

- c. Five members shall serve on the Committee, unanimously elected by an Appointing Committee: the President of the State, the Speaker of the Knesset, and a retired Supreme Court Justice (who shall be elected by the President and the Speaker of the Knesset). Two of the members of the Committee for Sabbath Affairs shall be proponents of positions which reflect the preferences of the public who observe the Sabbath according to Halakhah (Jewish religious law), and two shall be proponents of positions which reflect the preferences of the rest of the public. The fifth member shall serve as the Chair of the Committee.
- d. The term for a Member of the Committee shall be four years from the date appointed; however, of the initial appointees, two shall serve for two years and two shall serve for four years. The two members who shall be replaced shall be proponents of positions which reflect preferences which differ from one another.
- e. The term of office of the Chair of the Committee shall be five years. When such term of office ends, it shall be possible to elect the Chair for another term of office. The re-election of the Chair of the Committee, or the election of another Chair, shall be unanimous, by the four remaining members of the Committee. Where the four members do not reach a consensus, the Appointing Committee shall elect the Chair.

7. Implementation and Enforcement of the Law

- a. The authority to promulgate regulations for implementing this law, on matters which do not come under the authority of the Committee for Sabbath Affairs, and for enforcing this law, is granted to the Prime Minister.
- b. The Prime Minister shall appoint a Supervisor for enforcement of the Sabbath Law.
- c. The Supervisor shall be responsible for enforcing this law and shall publish an annual report on his or her activities. The report shall set forth, *inter alia*, the identity of offenders, the extent of their offenses, the penalties imposed upon such offenders, and the amount of time

- actually served. The report shall be available for public perusal, and shall be submitted for review by the State Comptroller.
- d. Violators of the provisions of this law shall be fined. The fine shall be doubled for repeat violations.
 - e. For Commercial and Industrial Activities performed in contravention to that set forth in Section 3, monetary sanctions will be imposed, in an amount of those estimated profits derived from the activity prohibited on the Sabbath. Where such prohibited activities are repeated, the monetary sanction shall be doubled.
 - f. (1) A legal action for violation of the provisions of Section 2 of this law may be filed by an individual whose right to rest on the Sabbath has been violated;
(2) In an individual's legal action for violation of the provisions of Section 2, the employer shall have the burden of proof that its actions were not in contravention to the provisions of Section 2;
(3) An employer shall not cause detriment to an employee because of a complaint or suit regarding this law or because he or she assisted another employee regarding a complaint or suit pursuant to this law.
 - g. Where an organization commits an offense under this law, every organ and officeholder shall be deemed liable therefor, and may be brought to justice as if it itself committed the offense, should it not prove that the offense was committed without its knowledge, or that it took all the proper measures to prevent it.
 - h. This law is not intended to derogate from, but rather to expand upon, all other punitive measures which currently exist.

8. Jewish Holidays

All that set forth in this law shall also apply to Jewish holidays, as such are defined in Section 18A of the Law and Administration Ordinance, 5708-1948. Additional arrangements in order to observe the Jewish holidays shall be determined by law.

9. Definitions

In this law:

Sabbath: from the beginning of the Sabbath, at sunset on Friday, until it concludes, when the stars may be seen on Saturday evening, according to the timetable to be published by the Chief Rabbinate of Israel;

Recreational, Cultural, and Entertainment Activities: activities of eateries, places of entertainment, theaters, movie theaters, museums, and the like;

Governmental Institutions: government offices, the Israel Defense Force and security forces, offices of local authorities, educational institutions, representatives of Israel abroad, and the like;

Commercial and Industrial Activities: manufacturing, commerce, and service activities, including activities of industrial factories, banks, stores, chains of distributors, malls, and the like (irrespective of their legal organization and geographical location);

Special Permit for Commercial Activities: a permit which shall be granted to a limited and restricted number of gas stations, pharmacies, and small grocery stores;

Sabbath Rotation: the division of labor on Sabbaths (or on the religious day of rest for non-Jews), among employees or among entities which operate on the Sabbath. The division of labor must be equal.

10. Restriction on Application

The provisions of Sections 3 and 5(b) in this law shall not apply on Sabbaths in a community in which the significant majority of its residents are not Jews, but shall apply, *mutatis mutandis*, on the religious day of rest of the majority of the residents.

11. Preservation of Rights

This law is not intended to derogate from, but rather to expand upon, the right granted to an employee under any law, collective agreement, employment agreement, or custom.

Explanation of Proposed Sections

1. The Sabbath – A Day of Rest

This Section is a declaration of principles intended to emphasize the uniqueness of the Sabbath as an official day of rest.

2. Right to Rest on the Sabbath

This Section determines the right of a worker to rest on his or her day of rest, without being discriminated against as a result.

3-4. Prohibited and Permitted Activities on the Sabbath

These Sections are the heart of the Sabbath Bill. They prescribe the distinction between activities permitted on the Sabbath (entertainment, cultural, and recreational) and activities prohibited on the Sabbath (governmental activities and commercial activities, other than a few exceptions which will operate in a limited format).

The distinction is not drawn for religious reasons, but rather for cultural, social-economic, and historical-national reasons.

The Sabbath Bill allows for the operation of essential institutions on a limited basis.

Beyond that stated explicitly in the law, it is suggested that steps be taken in order to make it easier for people to enjoy entertainment activities on the Sabbath without desecrating it, such as pre-purchasing tickets.

As is also currently customary, it is suggested that, to the extent possible, sporting (or other) events that take place on the Sabbath be shifted to Saturday night, or to other days of the week.

Institutions shall be able to conduct commercial activities on Saturday night, should they so desire.

5. Freedom of Movement on the Sabbath

This Section is concerned with freedom of movement on the Sabbath and retains the accepted distinction between transportation routes – see the report of the Tzameret Commission (The public commission which made recommendations regarding a comprehensive policy on Sabbath transportation issues on Bar-Ilan Street, throughout Jerusalem, and beyond the city limits, 5757), as well as H.C. 5016/96 **Lior Horev, et. al. v. Minister of Transportation, et. al.**, 51 P.D. (4)1.

The Section proposes an important change, in contrast to the existing situation, and allows public transportation in a special and limited format, thus enabling the weaker segments of society to have freedom of movement on the Sabbath.

6. Committee for Sabbath Affairs

This Section expresses the desire to implement the law through broad consensus. To this end, a Committee for Sabbath Affairs is to be established, whose composition shall reflect differences of opinion in the population with regard to the relevant aspects.

7. Implementation and Enforcement of the Law

This Section is concerned with the law's enforcement. Past experience has shown that commercial and other pressures exist which cause violations of the arrangements regarding the day of rest. Enforcement of the existing arrangements has been insufficient. Therefore, the Sabbath Bill prescribes extensive enforcement mechanisms, with the objective of ensuring its implementation. The Prime Minister is entrusted with the authority to promulgate regulations in order to ensure governmental oversight in this sensitive area.

8. Jewish Holidays

This Section expands the application of the law to those Jewish holidays which are enumerated in the Law and Administration Ordinance, with the intent of preserving the current status quo. These holidays are: the two days of Rosh Hashana, Yom Kippur, the first and last days of Sukkot, the first and last days of Passover, and the Festival of Shavuot. It is clear that there is no intent to violate the special character of Yom Kippur, which has a different nature than that of the rest of the holidays enumerated in this Section.

9. Definitions

This Section is self-explanatory.

The definition of the Sabbath is intended to bar any claim that the Sabbath begins and ends at midnight (a “secular day”). Current legislation does not define the Sabbath, and this lacuna allows such a claim to be raised. The courts have rejected this claim (Cr.A. 1004/00 **Aloni Ltd. et. al. v. The State of Israel**, 2003(1) Tek-Ar 103).

The definitions relate to entities organized in any form, in order to ensure the broad application of the law, and thus rejecting the court ruling regarding a cooperative society, in the matter of Jerusalem Municipal Building Plan P.1048/98 *The State of Israel v. Kibbutz Tzarah, Cooperative Society* (unpublished). For an extended discussion, see M. Goldberg, **Labor Laws** (Ch. 15 at 17, Oct. 2003 edition).

10. Restriction on Application

This Section determines the non-applicability of this law in communities where a significant majority of the residents are not Jewish.

11. Preservation of Rights

This Section is self-explanatory. It follows Section 35 of the Hours of Work and Rest Law, 5711-1951.

In passing, it should be noted that the Sabbath Bill does not set forth other supplementary arrangements which are not part of the “core bill” but which may be adopted as well. Thus, for example, should the entire economy shift to a five day work-week, it may also be feasible to hold social and cultural activities on an alternative day of rest which is not the Sabbath, thus making it easier to preserve the special character of the Sabbath.

This booklet presents legislation which is ancillary to the Israel Democracy Institute's (IDI) proposal for a Constitution by Consensus: the Spousal Registry Law and the Sabbath (and Jewish Holidays) Law. These laws constitute part of a series of proposals regarding matters of religion and state included in the proposed Constitution by Consensus, which was published by the IDI. These bills, similar to the draft Constitution by Consensus, are woven from a tapestry of compromises. We believe that a consensus, in the spirit of the proposed compromises, will act to alleviate the national, religious, social, political, and cultural tensions in Israel as such compromises are intended to protect the individual, the minority, the group, and the state, and to implement the public will.

Similar to the proposed Constitution by Consensus, so too are these proposals the fruit of the labor by experts at the IDI, under the leadership of the President of the Supreme Court (Emeritus), Justice Meir Shamgar. The bills are accompanied by explanatory notes, which contribute to an understanding of their importance and ramifications.

We hope that these bills, together with the proposed Constitution by Consensus, will stir broad public discourse. Should they provide any assistance to the elected representatives in Israel, we will be amply rewarded.

