

'The Levin-Sa'ar Outline': Political Takeover of the Judicial System Pushing Israel Toward the Abyss of Dictatorship

The **Levin-Sa'ar Outline** is a euphemism for a bill at the heart of the regime revolution, aimed at changing the composition of the Judicial Selection Committee. It is designed to ensure political control over the judiciary, amid severe harm to its independence and the balance of power between the branches of government.

Unlike the legislative initiatives promoted in early 2023, which focused on granting the government absolute political majority in the Judicial Selection Committee, this bill centers on politicizing the committee's judge selection process. As explained below, **the results will be just as destructive as they will deal a fatal blow to the fundamental principles of Israel's democratic regime:** the separation of powers, the rule of law and judicial independence, the protection and promotion of human rights, particularly the right to due process and equality, free and fair elections, and the right to vote and be elected.

In addition to serious procedural flaws, the Knesset Constitution, Law, and Justice Committee decided to "skip" critical stages in the legislative process, so that already in the preparation of the bill for its second and third readings, the discussions were based on a fundamentally different version that had previously been frozen. It is worth noting that in accordance with the Supreme Court ruling on the Nation-State Law and the Reasonableness Clause, the Knesset is not omnipotent in its capacity as a constituent authority and is not empowered to revoke or directly contradict the core characteristics of Israel as a democratic state.¹

Following are the fundamental principles of Israel's democratic regime that will be violated should the bill become law:

Separation of Powers

The idea underlying the principle of separation of powers is the distribution of authority among the three branches of government. In a democratic state, the separation of powers also entails mutual oversight among these branches, so that each one of them checks and balances the

* All references are in Hebrew.

¹ [Supreme Court Case HCJ 5658/23 Movement for Quality Government in Israel v. Knesset](#), *Neva*, 1 January 2024; [Supreme Court Case HCJ 5555/18 MK Akram Hasson and 11 Others v. Knesset](#), *Neva*, 8 July 2021.

others. This principle aims to prevent the concentration of power in a single governing body in a manner that could harm individual freedoms.²

The proposed bill severely harms this principle as it would politicize the Judicial Selection Committee's judge selection process, both by slashing the number of jurists in its midst, handing control over the committee to politicians on behalf of the coalition and opposition in the Knesset (instead of representatives of the Israel Bar Association, the committee would include two "public representatives," one chosen by the coalition and the other by the opposition), and introducing a political selection mechanism (a five-member majority comprising at least one coalition and one opposition member would be required for appointments at all levels, thus necessitating a "political deal").

The prospect of politicization is particularly severe where the Supreme Court is concerned, as the bill does away with requiring the approval of the judges representing it on the committee. In addition, it proposes a totally politicized "deadlock breaking" mechanism, whereby if two vacant seats on the Supreme Court remain unfilled after one year, the coalition/opposition representatives will each present three candidates, from which the two new judges would be selected.

The principle of separation of powers is problematic in the Israeli system as it is, given that a significant amount of power is concentrated in the hands of the executive branch. Among other things, the judiciary is administratively and budgetarily dependent on the executive branch (as a unit of the Justice Ministry), which fully controls the legislature and substantially controls the opposition as well (e.g., through budgets and appointments).

Furthermore, Israeli opposition parties do not necessarily represent minorities, as the opposition is defined as the group of parties that are not officially part of the coalition in the Knesset. More than once, parties that are not officially part of the coalition unofficially act as if they are. Thus, no ideological or interest-based conflict would necessarily exist between the coalition and opposition, even though the bill emphasizes the need for consensual agreement.

Rule of Law and Judicial Independence

The principle of the rule of law means the obligation to act in accordance with the law and its purpose, as interpreted by the courts. This obligation applies to one and all, from the ordinary

² Paragraph 141 of former Supreme Court President Esther Hayut in [Supreme Court Case HCJ 5658/23 Movement for Quality Government in Israel v. Knesset](#), *Neva*, 1 January 2024.

citizen all the way to the prime minister.³ Under this principle, effective judicial review of the legality of the actions of every branch of government is mandatory.⁴ Likewise, under the principle of judicial independence, a judge is subordinate to no one except the law. This principle is expressed in Article 2 of Basic Law: The Judiciary, which applies to every judge in Israel, whereby "in judicial matters, no authority is above a judge other than the law."⁵

The proposed bill creates dependence on the political echelon of individual judges and the judiciary as a whole for the purpose of appointments and promotions. Judges up for promotion would know that they must present a "portfolio" of decisions and rulings that appeals to coalition and opposition politicians. Instead of ruling based on the law and the facts before them, this political dependence could consciously or unconsciously have a dangerous impact on their decisions. Even if they did not allow this dependence to influence their judgment, the public's trust in them would be severely harmed, as they would always be suspected of acting under political influence. Moreover, the bill would enable the appointment of judges who would a priori be expected to rule leniently in ongoing or future criminal/civil cases involving politicians from the parties that backed their appointment, or judges who would be known not to oppose the appointment to public positions of corrupt individuals affiliated with those parties.

Protection and Promotion of Human Rights, Especially Right to Due Process and Equality

Democracy is not merely a system of basic rules for fair elections, but also a set of fundamental rights and freedoms.⁶ The protection and promotion of human rights, particularly minority rights, is a prerequisite of a democratic regime.⁷ The purpose of judicial review in a democracy is to restrain the government's power in order to protect those rights. However, given that Israel does not have a constitution enshrining recognition of the full range of human rights, a major part of these rights has been recognized through interpretation in Supreme Court rulings, such as the rights to equality and freedom of expression.

If passed, the bill could reduce the recognition of human rights and harm their protection and promotion. It would weaken the ability of citizens to subject government actions to independent judicial scrutiny and to obtain effective legal remedy from the courts against any

³ Yitzhak Zamir, [The Rule of Law in the State of Israel](#), *Hapraklit*, special issue celebrating Israel Bar Association's 25th anniversary, 1987.

⁴ [Supreme Court Case H CJ 325/85 MK Mi'ari v. Knesset Speaker](#), *Nevo*, 1 August 1985.

⁵ [Basic Law: The Judiciary](#), *Nevo*, last updated 1 April 2025.

⁶ [Supreme Court Case H CJ 5016/96 Lior Horev v. Minister of Transportation et al](#), *Nevo*, 13 April 1997; [Supreme Court Case AB 9255/12 19th Knesset's Central Elections Committee v. MK Hanin Zoabi](#), *Nevo*, 20 August 2013.

⁷ [Supreme Court Case H CJ 5555/18 MK Akram Hasson and 11 Others v. Knesset](#), *Nevo*, 8 July 2021.

abuse of power. Citizens appealing to the courts would know a priori that the judge attained his position thanks to his political affiliation and would forever be fearful of not getting a fair trial.

Moreover, the bill would undermine the judicial independence of the courts at all levels, which is essential for protecting the right to equality: district court judges who rule on contract bidding and professional licensing, magistrate judges who handle most civil claims against state authorities, and Supreme Court judges who rule on the legality of ordinary laws and Basic Laws, policy decisions, and budgeting. One example of the latter is the Supreme Court ruling that invalidated a discriminatory government decision to designate national priority areas for the purpose of education benefits that excluded Arab localities.⁸

Free and Fair Elections, Right to Vote and Be Elected

Free and fair elections is a prerequisite of a democratic regime.⁹ The democratic system includes mechanisms designed to ensure the freedom to vote and to uphold a representative regime. According to the principle of electoral equality, each person has one vote. The right to be elected is the right of individuals to run for a place in the nation's leadership in a way that allows them to advance their ideology.¹⁰

The Supreme Court plays a key role in protecting the certainty of free and fair elections and the right to vote and be elected. Among other things, the Supreme Court oversees the disqualification of party lists and candidates running in Knesset elections and the impeachment of incumbent MKs,¹¹ and ensures equal electoral opportunities by enforcing "the rules of the game" so that benefits or restrictions are not set in a way that gives unfair advantage to the parties in power, such as funding and election propaganda arrangements that favor certain lists or factions.¹² In addition, Supreme Court rulings restrict the actions of caretaker governments during election campaigns, especially on budget matters, to avert possible conflicts of interest or improper political considerations on the eve of elections.¹³

⁸ [Supreme Court Case HCJ 11163/03 High Follow-Up Committee for Arab Citizens of Israel v. Israel's Prime Minister](#), *Nevo*, 27 February 2006.

⁹ [Supreme Court Case HCJ 3752/10 Amnon Rubinstein v. Knesset](#), *Nevo*, 17 September 2014; [Supreme Court Case HCJ 6427/02 Movement for Quality Government in Israel v. Knesset](#), *Nevo*, 11 May 2006; [Supreme Court Case HCJ 5658/23 Movement for Quality Government in Israel v. Knesset](#), *Nevo*, 1 January 2024.

¹⁰ [Supreme Court Case HCJ 5744-16 Adv. Shahar Ben Meir v. Knesset](#), *Nevo*, 27 May 2018; [Supreme Court Case HCJ 3166/14 Yehuda Gutman v. Attorney General](#), *Nevo*, 12 March 2015.

¹¹ [Basic Law: The Knesset](#), *Nevo*, last update 24 January 2023.

¹² Paragraph 21 of former Supreme Court President Asher Grunis in [Supreme Court Case HCJ 3166/14 Yehuda Gutman v. Attorney General](#), *Nevo*, 12 March 2015.

¹³ [Supreme Court Case HCJ 8815/05 Adv. Avraham Landstein v. Adv. Meir Spiegler](#), *Nevo*, 26 December 2005; [Supreme Court Case HCJ 2453/06 Israel Medical Association v. Attorney General](#), *Nevo*, 21 March 2006.

These rulings are crucial to prevent the government's abuse of power and public funds to skew the results of the elections.

Therefore, the proposed bill undermines the judicial independence of the Supreme Court, which is vital for its continued effective oversight of free and fair elections and its protection of the right to vote and be elected.

Conclusion

The purpose of the Levin-Sa'ar scheme, marketed to the public as "a consensual plan," is one and only: To ensure political control over the judiciary by changing the composition of the Judicial Selection Committee, at the expense of judicial independence and the balance of power between the branches of government. It is a continuation of the politicization efforts targeting all governing institutions in Israel, which will result in serious harm to the rule of law, human rights, and the ability of citizens to seek legal remedy against the government.

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