



Couldn't Be! Do Alleged Perpetrators of Abuse Deserve the Benefit of the Doubt?

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Victims of abuse often face great doubts and skepticism when they speak out against their perpetrators. One of the most insidious reasons for these doubts is that abusers are most often people who are well known to their victims and to the family, friends or community officials to whom the revelations are made. The accusations are met with incredulosity. Perpetrators can be anyone: husbands, wives, mothers, fathers, and siblings; rabbis and teachers; doctors and therapists; counselors, coaches and neighbors. This familiarity is not only a factor in the reaction of others, but it is a significant obstacle for the victim herself as she contemplates revealing the abuse and asking for the help and support she needs.

At first glance, Jewish law seems to support this approach. The famous Mishnah in *Pirke Avot* brings R. Yehoshua ben Perahyah's teaching, "*Ve-hevei dan et kol ha-adam le-kaf zekhut*—Judge everyone favorably."¹ Likewise, it is forbidden to be *hoshed be-kesherim*, suspicious of those who have unblemished reputations.² In fact, we are

¹ *Avot* 1:6; *Shevu'ot* 30a:

Another interpretation: "In righteousness shall you judge your neighbor" (Lev. 19:15), judge your neighbor favorably.

² See *Encyclopedia Talmudit*, vol. 17, cols. 559-566; *Shabbat* 97a:

Resh Lakish said: He who entertains a suspicion against innocent men is bodily afflicted, for it is written, "[And Moses . . . said,] 'But, behold, they will not believe me;' (Ex. 4:1) but it was known to the Holy One, blessed be he, that Israel would believe. "Said He to him, 'They are believers, [and] the descendants of believers, whereas you will ultimately disbelieve.'" They are believers, as it is written, "and the people believed" (Ex. 4:31); the descendants of believers, "and he [Abraham] believed in the Lord." (Gen. 15:6) You will ultimately disbelieve, as it is said, "[And the Lord said unto Moses and Aaron,] 'Because ye believed not in me.'" (Num. 20:12) What is the source that he was smitten? Because it is written, "And the Lord said furthermore unto him, 'Put now thine hand into thy bosom, etc.'" (Ex. 4:6)

According to Rambam, *Hil. Teshuvah* 4:4, one who is *hoshed be-kesherim* is unlikely to repent.

promised that if we give others the benefit of the doubt, God Himself will act towards us in the same manner.³

The Talmud illustrates the importance of judging others favorably by recounting three innocent situations that might easily have raised concerns of inappropriate behavior. The first is about an employer who did not pay his employee the wages he was owed, claiming that he had no money, no land, no cattle, and no crop. When questioned about this, the employee said that he assumed that his employer had nothing with which to pay him because his employer had invested all his assets, had leased his lands and cattle, and had not yet tithed his produce. The second story is about a prominent rabbi who, after redeeming a young woman who had been taken hostage, had her sleep at his feet on the road home. When questioned, his students related that they did not suspect their teacher of any inappropriate behavior but that they assumed that he did this in order to protect her from those who might take advantage of her. And the third story recounts the activities of Rabbi Yehoshua who entered the home of a Roman matron by himself, closing the door and secreting himself with her. His students assumed that their teacher had important private matters to discuss with her. These generous, innocent and uncritical assumptions proved to be the correct in each of the cases.⁴

Why Judge Favorably?

There are a number of reasons why it is proper to give people the benefit of the doubt. One is that the biblical injunction “*be-tzedek tishpot et ‘amitekha*” which refers to the judicial obligation, “you shall judge your neighbor with righteousness,” also is interpreted to mean “you shall judge your neighbor as righteous.” Society’s interests are served not only by advancing the cause of justice but by furthering the integrity and innocence of each and every one of its members.

Another reason is based on the principle of *hazakah*, a legal theory that enshrines the status quo and enables us to make certain presumptions about people and their behavior—they are presumed to be as they have always been. Because Jewish law presumes that the status quo continues until it is demonstrated to be otherwise (this is the principle of *hazakah*), every person has a *hezkat kashrut* and is to be considered innocent until proven guilty.⁵ One formulation of this *hazakah* posits that since people are born guiltless and honest, they continue to be so.⁶ A second formulation focuses on the established behavior of a good person. His previous behavior patterns have established a presumption that all his actions are good and noble.⁷ A variation of this argument

³ *Shabbat* 127b.

⁴ *Shabbat* 127a.

⁵ *Hil. Kiddush ha-Hodesh* 2:2; *Bet Yosef, Yoreh De’ah* 1 s.v. *katav ha-Mordechai*. There may, however, be a higher, more discriminatory, standard when it comes to qualifications for testimony in a court, see *Hil. Eidut* 11:2 and *Radbaz*.

⁶ *Responsa Maharshdam, Hoshen Mishpat*, no. 310.

⁷ *Encyclopedia Talmudit*, XIII, *Hezkat Kashrut*, cols. 26-27; *Avnei Milu’im* 127:2; *Shev Shemateta, Sha’ar* 1, 15;

focuses on a different, yet related, principle. It looks not at the character of this particular person or on his actions, but on the character of Jews in general. Since the *rov* (the majority) of Jews behave in good and noble ways, the odds are that this person is part of that majority. Thus, we judge him and his actions favorably.⁸ It is also possible that we are swayed by the *rov* of a person's actions. Since he generally behaves appropriately, we must assume that any specific behavior is proper.⁹

Another approach that explains the requirement of judging others favorably suggests that in considering suspicious behavior we are to assume that we do not know the entire story, that we do not properly understand another's motivations, or that the unseemly act may have merely been an innocent mistake.¹⁰ In fact, we are warned not to judge another "until we have been in his place."¹¹ And even when we observe unquestionable misconduct by a Torah scholar, a person whose piety and conduct are presumed to be beyond reproach, we must assume that he has immediately repented for his misdeeds.¹²

Another reason for a person to give others the benefit of the doubt is that this attitude is the key to maintaining good interpersonal relationships. After all, it is not uncommon for those who live in close proximity to each other to say or do things that may be perceived as slights or insults; relationships suffer. Doubt, resentment and suspicion are not uncommon. Unless we are generous in our judgment and forgiving in our dealings, disagreement with our friends and alienation from them are possible. Consequently, giving another the benefit of the doubt ensures the integrity of familial and communal relationships.¹³ R. Avraham Yitzhak Kook explained that disputes arise because we do not know another person's thoughts and motivations. However, he writes, by giving others the benefit of the doubt, peaceful relations will result.¹⁴

Others see this principle as a means of protecting one's own moral integrity. Favorable judgment impacts one's own perspective of the world, training him to see only

⁸ Responsa *Noda be-Yehudah, Kamma, Even ha-Ezer*, no. 69; Responsa *Nahalat David* no. 26.

⁹ Commentary of Rabbeinu Yonah to *Mishlei* 21:12.

¹⁰ *Rema* to *Hoshen Mishpat* 34:4 and *Shulhan Arukh, Hoshen Mishpat* 34:12.

¹¹ *Avot* 2:4.

¹² *Berakhot* 19a:

It was taught in the school of R. Ishmael: If you see a scholar who has committed an offense at night, do not have doubts about him [the next] day; perhaps he has repented. "Perhaps," you say? [That is not the case,] he has certainly repented. According to Me'iri, *Shabbat* 127b, he is to be judged favorably even if it appears that his actions are disreputable.

¹³ *Derekh Hayyim* 1:6. In his commentary on this Mishnah, Maharam Shik is sensitive to the context in which this principle is stated, i.e., "make for yourself a teacher" and makes this same observation in the context of teacher-student relationships.

¹⁴ *Ginzei ha-RAY"H*, 1-7, p. 136.

the good and noble, and denying evil. Such an approach inspires a positive and optimistic world view in which, ultimately, all people are good and all people do good things. This protects him from the pernicious influence of evil activities and immorality.¹⁵ Favorable judgment also helps focus a person's attention not on the failings of others, but on his own weaknesses and flaws, and can serve as a catalyst for introspection, self-growth, and repentance.¹⁶

Judging Favorably: Obligation or Meritorious Act?

There is a difference of opinion as to whether one is obligated to judge others favorably¹⁷ or whether doing so is just an ethical act.¹⁸ Furthermore, there is a dispute as to whether we have to judge everyone in this manner¹⁹ or whether our favorable judgment is due only to the religious elite.²⁰ Rambam is of the opinion that, as a matter of law, righteous people must always be given the benefit of the doubt and that wicked people must always be judged negatively, regardless of the apparent nature of any particular action. He applies R. Yehoshua ben Perahyah's teaching—*hevei dan le-kaf zekhut*—only to actions of people who are *beinonim*, neither wicked nor righteous.²¹ Others apply this principle to strangers, those whose characters are unknown to us and thus we have no context by which to make assumptions about their behavior.²² Maharam Shik and *Avodat Yisrael*, in their commentaries to *Pirke Avot*, limit its application to those individuals mentioned in the Mishnah—friends and teachers.

Always?

Do these principles mean that those who are abused must somehow judge their abuser favorably? Does this mean that those who do not have first hand experience or knowledge of an act of abuse must necessarily, as a matter of Jewish law, refuse to believe untoward accusations by alleged victims, immediately dismissing the charges? Must we “hide our heads in the sand?” How then are innocents to be protected from con artists, manipulators and others out to harm them? How then are criminals to be brought to justice?²³

¹⁵ Commentary of R. Yedayah ha-Penini in *Peirushei ha-Rishonim le-Masekhet Avot*.

¹⁶ *Avodat Yisrael* to *Pirke Avot* 1:6.

¹⁷ Rambam, *Sefer ha-Mitzvot*, 'asei no. 177; *Sha'arei Teshuvah*, *sha'ar* 3, no. 218; *Semag 'asin* 106; *Sefer ha-Hinukh* 235.

¹⁸ *Me'iri* to *Shevu'ot* 30a.

¹⁹ *Torat Kohanim*, *Kedoshim* 4:4; Rashi, *Shevu'ot* 30a, s.v., *hevei dan et haverkha*.

²⁰ *Hil. De'ot* 5:7.

²¹ *Peirush ha-Mishnayot* to *Avot* 1:6.

²² Commentary of Rabbeinu Yonah to *Avot*. See also *Sha'arei Teshuvah*, *sha'ar* 3, no. 218, in which Rabbeinu Yonah writes that judging a pious person favorably is “*al derekh 'emet*” (a rational requirement needing no biblical mandate) and in which he maintains that the biblical obligation to judge favorably refers to a *beinoni* (an average person) whose deeds are morally ambiguous. The principle to be *dan le-kaf zekhut* applies to a *beinoni* whose deeds appear to be most likely sinful.

²³ Once they are before the court, the opinion of R. Yehudah b. Tabbi, *Avot* 1:8, applies:

Despite the call to judge favorably, there is room for suspicion and for precaution. Another Talmudic dictate instructs, “A person should always consider others as thieves, while honoring them like Rabban Gamliel.”²⁴ An example of this approach is found in a story about R. Yehoshua and how he treated a house guest with great suspicion. After an evening of eating and drinking, R. Yehoshua showed his guest to the roof where he would spend the night. After the guest climbed the ladder, R. Yehoshua, without his guest’s knowledge, removed the only safe exit. In the middle of the night, the guest gathered much of his host’s property and sought to escape “like a thief in the night.” The ladder having been removed, the thief fell off the roof and was injured. When the thief complained about the missing ladder, R. Yehoshua castigated him saying that he should have realized that he would have been under suspicion.²⁵

How do we resolve the tension between the requirement to judge favorably on the one hand, and the need for caution and suspicion on the other? One answer is to make a distinction between those we know who generally behave appropriately and strangers whose motives and dispositions are unknown to us. The former require our sympathetic assessment, the latter do not.²⁶ Others suggest that one should be wary and suspicious of others, but he must treat them respectfully as if they were innocent.²⁷

Consider the Mishnah, *Yoma* 18b, which relates how the priestly elders charged the High Priest prior to his officiating in the Temple’s Holy of Holies on Yom Kippur. To ensure that he would follow the rituals according to the rabbinic, Pharasaic requirements, and not in accord with the interpretations of the Sadducees,

They adjured him, took their leave, as they said to him: “Sir High Priest, we are messengers of the court and you are our messenger and the messenger of the court. We adjure you by He Who made His name to dwell in this house that you do not change anything of what we said to you.” [The High Priest] turned aside and wept and they turned aside and wept.

The Talmud explains that “he turned aside and wept” because they suspected him of being a Sadducee, and they turned aside and wept for having suspected him and not

Yehudah b. Tabai said: [A judge] should not play the part of an advocate (i.e., should not suggest to either party a line of argument); while [the parties in a lawsuit] are standing before you, regard them as if they were [both] guilty (and thus you will assess their words critically and appropriately). And when they leave your presence, [after] having submitted to the judgment, regard them as if they were [both] guiltless (i.e., each thought that justice was on his side and comported himself appropriately during the legal procedures).

²⁴ *Masekhet Derekh Eretz, Pirkei Ben Azzai* 3:3.

²⁵ *Masekhet Derekh Eretz, Pirkei Ben Azzai* 3:3.

²⁶ *Kallah Rabbati* 9; *Teshuvot ha-Rab”i Ab”d* no. 44.

²⁷ Commentary of R’I b. Shlomo to *Avot*.

judging him favorably.²⁸ Rambam, in his commentary on the Mishnah dealing with the exhortation of the elders of the High Priest before Yom Kippur states that positive presumptions are suspended with regard to strangers when there is a *hekhreh gadol*, a critical need to do so. Another resolution is offered by R. Moshe Soloveitchik who suggested that in the case of the High Priest and the elders on Yom Kippur, the elders were justified in their actions. He submits that while one may look at a person's past behavior in a charitable light, such openness is not required, and may be inappropriate, with regard to future actions.

The Rest of the Story

This predisposition to give others the benefit of the doubt is limited in its application. If we accept that argument that it is based either on *hazakah* (legal presumption of the status quo) or on *rov* (the majority of his actions), it is important to note that these principles are operative only in cases of doubt and only when it is impossible to otherwise investigate and establish the facts of this case. While one may initially want to reserve final judgment about the allegations, one is obligated to follow through and establish, to the best of his ability, the facts of the case.²⁹ In addition, the *hazakah* of innocence is a weak one. Although people are born innocent or have established a track record of the same, King Solomon himself reminded us that “There is not a righteous person on earth that does good and that does not sin.” (Eccl. 7:20). We need to be concerned about those failures, especially when they may be harmful to others.

Furthermore, the obligation to judge others favorably, according to the Mishnah, applies to all people, including the accuser. If we are to give others the benefit of the doubt, we must do so for the accuser as well. We are not to assume automatically that the allegations are false, nor are we to assume automatically that the accusations are true. We must treat all parties with deference, as if all were innocent of wrong doing, but we must investigate carefully and thoroughly, and in a timely manner. Of course, as we shall see, we must also act with great prudence, assuring that those who make the accusations as well as other innocents do not come to harm either by further abuse or by retaliation of the accused.

In addition, we cannot let our favorable judgment cause us to ignore possible violations of Jewish law. The Torah obligates us to rebuke those who have sinned³⁰ as well as to protect the safety and welfare of the community.³¹ Automatically deciding another's innocence prevents these obligations from being fulfilled.³² And this obligation

²⁸ *Yoma* 19b.

²⁹ For a discussion of how and when *hazakah* or *rov* applies in a case that can be determined through investigation see *Encyclopedia Talmudit*, XIII, *Hazakah B (De-meikkara)*, par. 6, s.v. *ke-she-efshar le-varer*, cols. 545-549.

³⁰ Lev. 19:17; *Arakhin* 16b; *Hil. De'ot* 6:7-9.

³¹ “Do not stand by the blood of your neighbor” (Lev. 19:16)

³² *Hafetz Hayyim, kelal 4, Be'er Mayim Hayyim* no. 18; *Responsa Minhat Yitzhak* VI, no. 139:11.

of rebuke applies even when the one accused of doing wrong is one's parent or teacher.³³ In fact, R. Yehudah was greatly rewarded for calling his teacher, Shmuel, to task.³⁴ A distinction can be made between giving someone the benefit of the doubt and finding him guiltless.³⁵ The former does not require the latter and justice is served when victims are believed, their accusations validated, and they find safety and security.

Justice and Mercy

It is often difficult to believe allegations of abuse. And it is often difficult, even if the allegations are believed, to want to hold the perpetrator responsible. Feelings of compassion and pity for the perpetrator, his reputation, and his family push even well meaning people to minimize the abuse or to minimize the perpetrator's responsibility and the consequences he must face. But such compassion is misplaced. Denying justice to the victims of abuse denies compassion for the abused. Denying accountability for the perpetrator denies compassion for victims—past, present, and future.

Giving people the benefit of the doubt is important for all the reasons discussed in this article; giving victims the justice they deserve, the security they need, and the faith of others they crave is more important. Judging people favorably is important; judging victims favorably whose innocence and self esteem have been violated and whose past and future have been devastated is even more important.

The Midrash taught that “*be-tzedek tishpot et 'amitekha*” means not only that “you shall judge your neighbor with righteousness,” but “you shall judge your neighbor as righteous.” Choosing the right neighbor to call righteous makes all the difference in the world and is an act not only of justice, but ultimately of kindness and mercy to those who need it most.

³³ *Baba Mezi'a* 31b:

One of the Rabbis said to Rava: “‘*Hokhei'ah tokhi'ah* [rebuke, you shall rebuke] your neighbor’ (Lev. 19:17): Perhaps *hokhei'ah* means once, *tokhi'ah* twice?” He replied, “*Hokhei'ah* implies even a hundred times. As for *tokhi'ah*: I know only that the teacher [must rebuke] the student: how do we know that the student [must rebuke] his teacher? From the phrase. ‘*Hokhei'ah tokhi'ah*,’ implying under all circumstances.”

³⁴ *Tosafot, Baba Batra* 10b, s.v. *elyonim le-mata ve-tahtonim le-ma'alah* explains that the reward for rebuking one's teacher was seen by Yosef b. R. Yehoshua in his vision of a world upside down, with the upper below and the lower above. According to *Tosafot*, R. Yehudah, the student of Shmuel merited having his teacher sit before him in rewarded for the following event recorded in *Shabbat* 55a:

Rav Yehudah was sitting before Shmuel [when] a woman came and cried before him; but Shmuel ignored her. Said {R. Yehudah} to [his teacher], “Does not the Master agree [that] ‘whoso stops his ears at the cry of the poor, he also shall cry, but shall not be heard’ (Prov. 21:13)?”

³⁵ *Responsa Minhat Yitzhak*, VI, no. 139 quoting *Hafetz Hayyim, Issurei Lashon Ha-ra, kelal 4, Be'er Mayyim Hayyim* no. 18.