

Persons with Mental Confusion and Persons with Limited Intellectual Ability

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Mental Confusion

1.1 The Definition of *Shoteh*

In halacha, the term *shoteh* refers to one whose mind is confused and whose processes of thought or conduct are adversely affected. This confusion is likely to arise from various causes: mental illness, a “bad spirit,” brain damage, diseases of old age, or other causes.

The cause makes no difference in halacha, which takes no account of the cause of the mental confusion, merely of the effects. For example, someone suffering from depression is not called a *shoteh* unless the illness causes confusion of thought or conduct.

Obviously, not all confusion of thought or conduct acquires the title of *shoteh*. A person is only so described if his confusion reaches a certain level. When mental confusion occurs over a wide range of thought and conduct, the halachic authorities define him as a *shoteh gamur* or simply as a *shoteh*. When mental confusion applies only to thought and conduct within a specific limited sphere and in other matters he behaves normally, he is called a *shoteh li'davar echad*. In addition, one who is mentally confused but has periods of calm and normality is not considered as a *shoteh* during those periods of calm, even though his confusion still persists and at times affects him severely.

Halacha distinguishes clearly between a person with mental confusion (*shoteh*) and a person with limited intellectual ability (*peti*). The former is, as stated, one whose mind becomes confused. The latter is one who is intellectually disabled, of very low intelligence, who is unable to function as an intelligent person. (See *Sefer Meirat Einayim*, Choshen Mishpat 35:21)

In extreme cases both the person with mental confusion and the person with limited intellectual ability are considered, legally, as people without intelligence. When the mental confusion of a *shoteh* reaches such a degree that he does not relate to his environment and his mind is utterly confused, he is clearly in no way responsible for his actions. In such a situation, halacha makes no distinction as to the cause of the illness.

This axiom requires no proof. We may take an example from the responsa of *Ateret Chachamim* (§18), in a case where the questioner wanted to distinguish between confusion arising from differing causes, claiming that if it arose from depression the patient should not be considered a *shoteh*. The rabbi who responded rejected this view, and wrote:

“Regarding his claim, that if the illness arises as a result of what we call melancholy the patient is not a *shoteh*, this does not appear to be the case. The term “melancholy” is applied in the halakhic literature also to people who are completely not in their right mind, as is known to anyone who is

even slightly acquainted with books on the subject. If a person who suffers from melancholy has reached a stage where he habitually behaves irrationally in a way that indicates mental aberration, he is certainly a *shoteh*; whereas if he does not behave in this way, but simply isolates himself from the company of human beings and prefers to sit alone in the dark, then he is not considered a *shoteh*. Everything points in the same direction: if someone is seen to be incoherent and mentally confused, then he is considered a *shoteh* regardless of the cause."

It is interesting to note that this leading halachic authority, relied on medical literature available in his time. However, instead of taking the medical definition of the illness, he concerned himself only with the degree of severity of the illness as expressed in the patient's behavior. Thus, he set out the principle that the criterion for defining a *shoteh* in halacha is the degree of the illness and not the category in which it falls.

The same applies to a person with limited intellectual ability: when someone is severely intellectually disabled there is no room for discussion regarding his status in halacha, he is clearly without responsibility.

1.2 Cases that are Less Clear-cut

The problem in defining the *shoteh* in halacha is where the cases are not clear-cut.

Halachic literature includes hundreds of responsa that deal with cases of various types of mental confusion of different degrees of severity, such as states of depression and mania, terror in differing degrees, megalomania, and various other disorders. For the purpose of the current discussion we will confine ourselves to three states of mental confusion which are not all that extreme or clear-cut.

- a) Various psychiatric disorders which are expressed only in one specific matter, in a clearly defined sphere of behavior, where the person concerned appears to behave perfectly normally and rationally in all other matters.
- b) A person who is partially intellectually disabled and possesses a limited degree of understanding and discrimination.
- c) A temporary disorder arising from an external cause, such as the influence of drink and drugs.

Initially, a correct diagnosis is required, and the type of effect, its scope and its degree of severity must be determined. This is where it is obligatory for the rabbi and the doctor to meet.

The first case that we will consider is that of the *shoteh li'davar echad*, "person with mental confusion in one respect only," where the psychosis is expressed only in a defined sector of conduct while in all other matters the person appears to behave perfectly normally.

1.3 A Person with Mental Confusion in One Respect Only - Debate

The responsum of Rabbi Mordechai Kimchi, written seven hundred years ago contains one of many such descriptions to be found in halachic literature:

"For the past two years he has been perpetually troubled by imaginary disorders. He imagines that there are men inside his stomach, and they frighten him. As a result, he abstains from three things: from eating meat, from drinking wine, and from sleeping on a bed. He believes that meat and wine will increase his illness, and that if he sleeps on a bed the men inside his stomach will terrify him, so he sleeps on the ground or on benches. In all other matters his mind is not confused, only in these. He asks questions intelligently and gives intelligent answers on all other issues (*Responsa of the Sages of Provence* §57).

Opinions differ regarding the halachic attitude to a *shoteh li'davar echad*. We will consider two basic approaches.

The first is stricter and considers one who has a disorder and confusion with respect to one issue as being a *shoteh* in all respects. Even if on careful examination he is found to understand and behave normally with respect to all other matters, he is still considered a *shoteh*. The outstanding proponent of this attitude is Rambam, who wrote:

"Not merely one who walks about naked, smashes utensils or throws stones is considered a *shoteh*. Rather, anyone whose mind is disordered, and is regularly confused over a particular matter, even if he talks and asks questions intelligently in other matters, is disqualified [from giving evidence in court] and is placed in the category of *shotim* (*Laws of Evidence* 9:9)."

The other attitude considers that such a person needs examination and may possibly be considered normal. The fact that he is affected or confused in one matter is sufficient reason to demand that he be checked thoroughly to see to what extent his disorder applies overall; but if examination shows that he is only affected in a limited sphere and in other matters he is intelligent and behaves normally, he is treated as an intelligent and responsible person. The outstanding exponents of this attitude are the Tosafists, who wrote:

"Since he is a *shoteh li'davar echad*, a person with mental confusion in one respect, we must certainly *presume* him to be a *shoteh* in all matters" (*Tosefot Chagiga* 3b, s.v. *derech*).

Tevuot Shor (Yoreh Deah 1:11) explains the statement "we must presume him to be a *shoteh* in all matters" to mean that when he acts irrationally in one matter and we are unable to examine him thoroughly, then we must assume that he is irrational in all matters until proved otherwise; but if we examine him and show that in other matters he is of normal intelligence, asks questions and answers intelligently and speaks intelligently, then he is not considered a *shoteh*.

1.4 A Person with Mental Confusion in One Respect Only - Reasons

A possible explanation of the approach, which considers a person with mental confusion in one respect only to be a *shoteh*, is that when a person's mind has become confused over one matter, even if he appears to speak and behave normally in other matters, we cannot rely on his sanity. This is because we cannot know what irrational thoughts are turning round in his head at that time, and what in fact motivates him, these being matters that cannot be discovered by examination. This approach regards the process of thought and of the soul as one entity, and believes that it is impossible to prove that the damage is limited to one detail. The proponents of this approach are the above-mentioned rabbis of Provence who decided that the patient in question was a *shoteh* and therefore unable to divorce his wife, since:

"In defining the *shoteh* referred to by the Rabbis of the Talmud, we do not go by the way his mind works in other matters, but once one of the varieties of melancholy has continuously seized him, even if he speaks sense and behaves normally, he is presumed to be a *shoteh*.... Even though we see him apparently sane in other matters, we do not rely on the clearness of his intelligence, and from his behavior we may prove concerning his thoughts that whatever he thinks and says is from a confused mind.... Therefore we do not examine *shotim*...."

(There is still a need to clarify why, according to this approach, he is considered a definite *shoteh* and not just a possible *shoteh*.)

An alternative explanation of this approach is that examination and diagnosis of the person's mental state in other matters is irrelevant. Simply put, his status is defined as that of a *shoteh* because that is the definition of a *shoteh*. This brings in a new concept in halacha, with many halachic implications about which a great deal of material has been written.

This approach also regards the person as a complete entity, but from a halachic point of view and not from a medical one. It considers that there is no such thing as a partial person with mental confusion, one who is a person with mental confusion in one respect only is a total person with mental confusion for all matters, even where he acts normally. Examination is impossible, since even where he understands he is treated in halacha as a *shoteh*. This is expressed in the responsa of *Oneg Yom Tov* (§153):

"The reason is not because if we see him confused in one matter we suspect that he acted without knowing ... but that one whose mind is occasionally confused in one matter is not called sane in laws of Torah."

Many other leading authorities have concurred with this view, among them Rabbi Y. Assad and Rabbi Aaron Kotler.

1.5 The Severity of Mental Confusion in One Respect Only

It is important to stress that in halachic discussions the authorities also deal with the type of disorder and with its severity. *Noda Bihudah* (Be'ur Hayashar 34) claims that a person with mental confusion in one respect only is not considered person with mental confusion unless the disorder is sufficiently serious that it causes him to act irrationally. In other words, that it causes a functional disorder. However, if the disorder is expressed merely in speech, and in other matters he can talk normally and rationally, he is not considered a *shoteh* at all. The comment of *Beit Yitzchak* is interesting:

"Anybody is liable to have strange ideas, but one who has enough sense does not express these in his speech, and until he puts his thoughts into practice he is not considered as a *shoteh* (*Even Ha'ezer* 2:4)."

To determine the criteria for defining one who is mentally confused in one respect only as a *shoteh*, the authorities utilize the symptoms stated in a *Baraita* quoted in the Talmud (*Chagigah* 3b):

"Who is a *shoteh*? One who goes out alone at night, or who spends the night in the graveyard, or who tears his cloak."

Another *Baraita* adds the symptom "or who destroys that which is given to him." The authorities interpret the *Baraita* to mean that for a person to be classified as a *shoteh*, he must perform irrational acts at least as bad as those mentioned. They therefore decided, in the famous case of the divorce at Cleves, that one who suffers from groundless fear is not considered a *shoteh* unless his fear leads him to act abnormally, and if his fear led him to emigrate to another country this is not sufficient to classify him as a *shoteh*.

1.6 Summary

There are two basic views. One accepts the possibility that a person may be affected only in a specific sphere and be normal in respect of all other matters. Such a person must undergo a thorough examination, but if as a result it is shown that his disorder is limited then in all other matters he is treated as a normal person.

The other view does not accept the idea of a person being partially affected. If a person is severely affected such that normal functioning is affected and he acts in a way that indicates severe mental confusion, then no notice is taken of an examination even if it tends to show that in all other matters he is intelligent and understands exactly what he is doing. The reasoning behind this view is either the assumption that an examination cannot prove that the patient is only affected in one detail, or the fact that the halacha relates only to a person as a whole and one who is a person with mental confusion in one respect only is nonetheless considered as a total person with mental confusion even if his behavior in other respects is normal.

The conclusions of our discussion appear together in a responsum of *Beit Yitzchak* (*Even Ha'ezer* 2:4):

"We examined the man a number of times, and talked to him, and he answered all our questions intelligently.... But he had a fear of demons and kept saying every now and then: 'Blessed is His royal honored name for ever and ever!' When we asked him why he kept saying this, he replied that the demons kept inciting him to say wicked things, confused him with wicked thoughts, incited him to say seven abominations, and once incited him to say 'dust and ashes,' but as he had no wish to obey them, he said on each occasion 'Blessed is his royal honored name for ever and ever!'"

The author gave his decision to allow the man to divorce his wife for the following reasons:

- The mental confusion was not as great as the examples given in the Talmud;
- The man did not perform any irrational actions; he only spoke irrationally.
- Many consider that a person with mental confusion in one respect only is not treated (in halacha) as a person with mental confusion (*shoteh*) who is not fit for performing an act of divorce.

Here we have an example of a halachic decision that is arrived at by combining various legal concepts, including the state of the patient, the manner in which the disorder is expressed (thought, speech or deed), and the halachic definition.

The Person with Limited Intellectual Ability

2.1 The Degree of Disability

As we said, our discussion is concerned with partial intellectual disability in which there is a limited degree of intelligent discrimination. We wish to define the degree of intelligence that the halacha demands of one who is intellectually disabled for him to be considered in control of his actions. We also wish to find the similarities and differences between the person with mental confusion (*shoteh*) and the person with limited intellectual ability (*peti*). Of special importance in this matter is the estimation of the judge or the adjudicating rabbi important, as Rambam stressed:

"This has to be according to the way the judge sees it, since we cannot direct him in writing."
(*Laws of Evidence* 9:10, and see *Responsa Or Sameach* §12)

One approach to determine the criteria by which a person with limited intellectual ability is to be classed together with the person with mental confusion is by comparing the level of intelligence of the person with limited intellectual ability with various levels of intelligence found among children between six and ten (Talmud, *Gittin* 59 a).

The Early Authorities (*Rishonim*) disagree as to the interpretation of this. Rabbenu Asher (*Rosh*) and his supporters claim that the requirement that the child be especially bright applies only till he reaches the age of ten. From that age on, he is considered to have reached the level of intelligence even if he is not especially bright. (This seems to imply that the intelligence required is that of an average child of eight,

but the matter still needs clarification.) Rambam (*Laws of Sale* 29:6) however maintains that a child is only considered to have reached the level of intelligence if he is especially bright, even up to the age of adulthood (twelve or thirteen).

Those authorities who decided to compare the intelligence level of the person with limited intellectual ability to that of *pe'utot* use the general definition of intelligence and the intelligence limits of a child, from which they have deduced the intelligence limits of the person with limited intellectual ability. This is a vast subject beyond the scope of our discussion.

An alternative method is to use Rambam's definition of a person with limited intellectual ability (*peti*), whom he distinguishes from the person with mental confusion (*shoteh*) as follows: the latter is one who is not in his right mind, the former includes various types who are intellectually disabled (which he considers in section 10):

"The worst type of person with limited intellectual ability does not recognize things that contradict one another and does not understand matters the way other simple people do" (*Laws of Evidence*, 9:9-10).

Rambam takes as his criterion the level of thought. He defines the degree of intellectual disability of the "most severe type of person with limited intellectual ability" as "not recognizing things that contradict one another," but this definition still requires explanation as to its level of thought. Is Rambam referring to those who do not know the difference between "yes" and "no," between one thing and its reverse? If so, the definition is very narrow, so that the intellectually disabled include only those with extremely low intelligence. Or does he mean those who cannot distinguish between things that require a higher level of discrimination and intelligence? If so, the definition is very broad, since the intellectually disabled include those with a certain degree of intelligence.

The authorities have shown that Rambam followed the broader definition, and an evaluation of simple daily actions is insufficient to exclude someone from the definition of a person with limited intellectual ability:

"It is obvious that such people (who can't even discern simple things) are worse than the *chereish* and the person with mental confusion, and Rambam did not have to state this. He meant that they do not understand things that contradict one another in matters where intelligence is necessary to understand and distinguish between positive and negative, and these people cannot understand in the way other people can (*Get Mekushar Bula* 15)."

Oneg Yom Tov (153:5) also proves that according to Rambam a person is excluded from the category of persons with limited intellectual ability if he has understanding "in matters that require an intellect to understand," or as we would express it today, if he has a level of intelligence that enables discrimination at a much higher level. This, too, is a point at which the rabbi or judge needs to meet the physician or psychologist who is making a diagnosis.

2.2 The Legal Status of a Person with Limited Intellectual Ability

The authorities in general agree on this definition of a person limited intellectual ability but disagree regarding his status in halacha. Some consider him to be like a *shoteh*, a person with mental confusion in all matters, i.e., his actions have no legal standing, and he is exempt from all duties (*mitzvot*). (See *Get Mekushar*, *ibid.*) Rambam appears to have written just that:

"The most severe type of persons with limited intellectual ability, who do not recognize things that contradict one another, and do not understand matters in the way that other simple people do..... are included among persons with mental confusion (*shotim*)."

Others however consider that the person with limited intellectual ability is not considered as a *shoteh* but must be evaluated in respect to whatever matter we are considering. If examination shows that he understands the simple meaning of his actions, then his actions do have legal standing. These authorities understand Rambam's words that such people "are included among *shotim*" to refer only to their qualification to act as witnesses in court, but not to other matters. This is the opinion of *Maharik* (*Even Ha'ezer* 16).

Maharik (*New Responsa* 20) considers that an intellectually disabled person is not considered a *shoteh*, and even a minimum of intelligence is sufficient to establish his actions as legally valid. He gives an interesting reason for this:

"But if one is sane and speaks rationally, but does not understand various things as well as other people, it appears to me that his actions are acceptable because we must have some criterion by which to determine in what matters he is considered sufficiently intelligent and in what matters not; after all, there are those who are more intelligent than others, and those who are less so. Some grasp things very quickly at the age of six or seven, others take a lot longer, and not all people have the same intelligence. All we have to go on is the definition of a *shoteh*, a person with mental confusion, given by the rabbis in Talmud *Hagigah*"

In the opinion of *Maharik*, the impossibility of determining a clear criterion for the required level of intelligence is sufficient to decide that the person with limited intellectual ability is not a *shoteh*, and even a minimum degree of intelligence is sufficient to render his actions valid. The question then arises as to what level of intelligence is required to give his actions legal validity. Here too, the discussion concerns the level of thought required with respect to the particular action.

Oneg Yom Tov (*ibid.*) considers that it is sufficient to have a level of intelligence such that he understands and appreciates the meaning of his actions. Good judgment is not required. The case he was considering was of "one whose speech is hard to understand, such that even people who are used to him do not always understand what he is saying; his intelligence is very weak so that he does not understand all the things that people normally understand, but only things that he is most used to; he does not understand things fully, has a very limited understanding of buying and selling, and does not know how to count." This description clearly refers to one who is unable to exercise judgment or to understand matters that "require an intellect to understand," and *Oneg Yom Tov* gives his legal decision:

"This man's marriage is valid, since we see that he can buy something that he is used to buying in the market, and a person with limited intellectual ability is considered normal in matters which he can understand when they are explained to him. However, we do have to clarify what a person wishing to get married or divorced needs to understand, without which understanding the marriage is invalid, and to check that we are able to explain these matters to this particular person with limited intellectual ability."

Maharik, whom we have quoted above, also considers that a minimum of intelligence is sufficient to validate the actions of a person with limited intellectual ability.

We will not enter into the fundamental question: "If that is the case, what is the difference between a person with limited intellectual ability and a person with mental limited confusion?" This question deserves a discussion in itself.

2.3 The Person with Limited Intellectual Ability's Obligations Regarding Mitzvot

A *shoteh*, a person with mental confusion, is exempt from duties and obligations (*mitzvot*). Hence the question of whether or not a person with limited intellectual ability is exempt depends on whether he is considered halakhically to be like a *shoteh*. According to those who place the intellectually disabled person in the same category as a person with mental confusion, the person with limited intellectual ability is exempt from duties and obligations, but according to those who disagree with this, he is under an obligation to observe *mitzvot*.

Just as a person with limited intellectual ability's actions are legally valid only when his level of intelligence allows him to understand those actions, so, obviously, it is necessary to determine the level of intelligence required for him to be obliged to observe *mitzvot*. We also need to discover whether a particular person with limited intellectual ability is or is not obliged to observe all *mitzvot* or if, just as we judge each action individually to determine its validity according to whether or not he understands what he is doing, so we consider each individual *mitzvah* in relation to his intelligence. In the latter case he would be liable to observe only those which he understands and would be exempt from those he is unable to understand.

This problem appears to depend on whether the Torah applies a partial obligation with respect to its duties. The Later Authorities (*Acharonim*) have considered this question in relation to a person who is a person with mental confusion in one respect only, and disagree as to whether the Torah can put an obligation on him with respect to *mitzvot* in a sphere in which he is not a person with mental confusion. However, we will see that there is a difference between a partial obligation to observe *mitzvot* in the case of a person with limited intellectual ability and a partial obligation in the case of a person with mental confusion in one respect only. This depends on the basis of the obligation (if there is one) for a person with limited intellectual ability to observe *mitzvot*, as we shall see.

The person with mental confusion is exempt from observing *mitzvot*, not because he lacks the intelligence to understand them and thus to observe them, but because he is not commanded to observe them; one who is not perfectly sane does not have choice, and therefore cannot be commanded to do anything. Rambam expresses it as follows:

"Since they are not responsible, they are exempted from all the *mitzvot* of the Torah."

The person with mental confusion is exempt because he lacks responsibility. On this basis, the person with limited intellectual ability's obligation to observe *mitzvot* does not depend on his ability to understand, but on whether he is regarded as responsible for his actions. In other words, is his level of intelligence sufficient to classify him as a responsible person? (The responsum of *Diverey Chayyim*, §74, implies clearly that the duty to observe *mitzvot* depends on the ability to weigh up a situation, i.e., to make a choice, and not on understanding.)

It follows that a person with limited intellectual ability cannot be obliged to observe only certain *mitzvot*. If he is a responsible person, then he is obliged to observe them all, and if he is not, he is exempt from them all. In contrast, a person with mental confusion in one respect only may well act irresponsibly in one particular matter, while being held responsible for his actions in all other matters.

The problem here is that those who do not regard a person with limited intellectual ability to be the same status as a *shoteh*, and who give his actions some legal validity, expect even the person with the most severely limited intellectual ability to observe *mitzvot*. Yet his judgment is clearly impaired, in which case an obligation cannot be imposed on him.

Furthermore, an obligation to observe *mitzvot* implies not merely the ability to observe them but also the imposition of punishment for transgression. An obligation to obey a commandment does not make any sense unless it is accompanied by punishment for failure to obey. Such punishment can only be imposed on a person who is able to make a judgment regarding his actions, who is able to form some appreciation of the *implications* of his actions; it is not sufficient that he merely understands *what* he is doing. Even where a person with limited intellectual ability understands what he is doing, his judgment is clearly impaired and he cannot be punished, so for this reason alone he should be exempt.

Rabbi S. Z. Auerbach was once asked to define the degree of understanding above which a person with limited intellectual ability is obliged to observe *mitzvot*. His reply was that if he knows that G-d gave the Torah and understands that the *mitzvah* is among his commandments, he is considered sufficiently intelligent. Likewise, he wrote (*Minchat Shlomo* §34):

"It appears that as long as he has the intelligence level of a child and knows that G-d gave us the Torah and we obey his instructions (*mitzvot*), he is considered an intelligent person with respect to observance, and on reaching the age of thirteen he is considered to be an adult."

His words are not easy to understand. According to those who treat a person with limited intellectual ability like a person with mental confusion, either he has the level of intelligence "to understand matters that contradict one another" in matters that require intelligence and understanding, in which case he is

like a fully intelligent person in all respects; or he does not have that level of intelligence and is considered as a person with mental confusion with respect to all the laws of the Torah. According to those who do not treat a person with limited intellectual ability as a person with mental confusion, understanding is not sufficient; he needs in addition the ability to form a judgment and make a choice, as we have shown from the words of Rambam. I in fact asked Rabbi Auerbach about this, and he agreed that the words of Rambam do indicate this.

Rabbi Auerbach went further. He wrote that the intelligence required to be obliged to observe is not necessarily the same as that required to deserve punishment. A person with limited intellectual ability may possibly be considered as intelligent for performing *mitzvot* but unintelligent with respect to punishment. His words are:

"...whereas regarding punishment, just as there is mercy on a minor, so a person with limited intellectual ability is considered as a minor in this respect, even though he is in fact an adult."

This is also difficult to understand. The level of intelligence required to impose an obligation to observe *mitzvot* must be the same as the level of intelligence required with regard to punishment since the obligation to observe also arises from the ability to choose between right and wrong, and we have already explained that there can be no obligation to observe unless accompanied by reward or punishment. Rabbi Auerbach's assumption that a person with limited intellectual ability can be considered as intelligent when it comes to observance but not when it comes to punishment is hard to understand.

The issue of the requirement of a person with limited intellectual ability to observe *mitzvot* still needs clarification, which is outside the scope of our discussion.