



Accusations of Abuse

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Question/ Case

A longtime and beloved member of our community is currently facing charges for sexual assault of a high school student who is not a member of our synagogue. Various synagogue members are calling for his exclusion from the shul. Our shul community consists of around two-hundred families and includes many children and teenagers, though the teen he is accused of assaulting belongs to a different synagogue in a neighboring community. The accused claims that the charges are false, and the whole thing is a set-up by those who don't like him. However, an official police complaint has been filed, and that has led to an ongoing investigation by the authorities. He has not yet been charged, so the truth is at this point unknown.

The issue is becoming a major source of division within our community, both among the individual's longtime friends and colleagues and among those who know him less well, if at all. There is a large and vocal group of members who support the accused and have said they will support him unconditionally, and there is an equally large and vocal group who have come forward against the accused and who are calling for him to be ousted from the shul immediately. A much smaller group is calling for a more moderate response at present, given that the matter is still pending in the justice system. The *mahloket* (dispute) is threatening to tear the shul apart, and, of course, each side is claiming that they are taking the side of Judaism and halachah. As a young rabbi, I feel caught in the midst of the battle and am hesitant to take a stand in any direction. In case it is relevant, I will mention that there are synagogue members who have been convicted of crimes of minor financial fraud, and even one member who was convicted of major financial fraud. These members are all still part of the shul community and continue to serve as *shaliah tzibbur* (prayer leader) and receive *aliyot* (are called up to the Torah).

We are looking to understand what the appropriate way forward should be in these circumstances, and will list several conceptual questions that have been raised: Does “innocent until proven guilty” apply here? Is that a secular value or also a Jewish value? And even if it is a Jewish value, should we as a synagogue community be guided by the same values as the court, or are there different values which should guide a community? What is the shul's responsibility to the safety of all members? And what about those families who have expressed concern about bringing their children to shul with them, or about needing heightened supervision for teenagers who are used to being more independent on the shul premises? Isn't excluding the accused individual at this stage also taking a side? Do we have the right to presume his guilt at this point? Or is there an intermediate position that can speak to the concerns of both sides? And can Jewish texts shed light on any of this to help ground a policy decision that is likely to alienate at least some of the community?

Answer

Thank you for your difficult question. The issues raised by having someone accused of sexual violence who is a long-time community member are far from simple, and can indeed tear a community apart, if not handled appropriately. In this *teshuva* (halachic response), we will attempt to explore the relevant halachic issues from several different angles before suggesting policy decisions. We hope that seeing the halachic sources can help both sides understand the various considerations with less emotional weight, and can help those with opinions at both extremes to respect the shul policy even if they don't agree with it.

The *teshuva* will consider the questions raised above, framed in halachic language in terms of the obligation of a community to provide safety to its members – as well as how safety concerns interact with our level of certainty or doubt about a person's legal status. We will also explore the broader issues of messaging and values – or what message is being sent to the community about how much we care about abuse and victims – that can exist around the questions of an accused's inclusion or exclusion. In exploring the boundaries of exclusion, we will also address related concerns, such as that of spreading *lashon ha-ra* (slandorous speech) in making a community aware of a potential abuser, or how to treat someone who has done *teshuva* (repentance), and even the question of what *teshuva* in this realm can look like.

In this *teshuva*, we will begin by exploring the communal responsibility to safety. Though we do not know if the accused committed the actions of which he has been accused, if he did in fact sexually assault a teenager, then his presence could endanger others. Studies show that sexual violations of this nature are often not one-time lapses, and often after one victim comes forward, others follow suit. Should there be additional victims, the dangers are clear: Those who suffer sexual assault suffer trauma; sexual assault can impact a person's physical health and emotional wellbeing. Additionally, studies overwhelmingly point to the truthfulness of children, and of victims in general, when they come forward to report abuse.¹

As the facts of this case are still unverified, and any action taken by the shul will be taken in the face of uncertainty, and uncertain danger. The danger of which we write – even if it were certain that the accused committed the acts of which he is accused – does not technically fall under the purview of *pikuach nefesh* (placing someone in mortal danger) because this category relates to immediate danger., such as seeing a person drowning in a river. However, though *pikuach nefesh* is not directly relevant, we will begin with a brief discussion of some of its sources, as they powerfully present the Jewish value of mutual responsibility for safety.

¹ Berkovits, Shira M. "Institutional Abuse in the Jewish Community." *Tradition: A Journal of Orthodox Jewish Thought*, vol. 50, no. 2, 2017, pp. 11–49. This entire issue of *Tradition* is devoted to the topic of sexual abuse in the Orthodox community from several different vantage points. See especially p. 17 (note 9) for the long-term impact of any type of sexual abuse (whether or not it includes penetration), and p. 18–21 on the overwhelming truthfulness of children's accusations.

The obligation to protect people's safety, including protection from danger to psychic and emotional well-being, would require us to exclude from our shul a person who had committed such acts as this person is accused of. Although it has not yet been established that this person has indeed committed these acts, and we should assume innocence until proven guilty on the legal level, the laws of being *chosheish* for *lashon hara* obligate us to act on the possibility that these accusations are truthful to protect ourselves and those in our community. Finally, we will look at claims that the principle of *teshuvah* should lead to a different conclusion as well as discuss specific policy recommendations.

I. Communal Responsibility to Safety

As the rabbi of your community, you, along with the members of the shul committee, are responsible for the safety of your congregants. In a situation in which a member of the community is suspected of sexual violence, there is the added complication of the tendency to cognitive dissonance, which means that increased circumspection is needed. In her important article “Institutional Abuse in the Jewish Community,” Shira M. Berkovits describes this phenomenon: “faced with allegations of abuse against someone they know or respect, institutional leaders all too often reject the evidence, privileging their prior beliefs about the individual instead.”² The desire to reject unpleasant information, which casts doubt on one’s instinctive ability to read character and threatens communal stability, is so strong that one may not even realize the extent of its effect on one’s better judgment.

In addition, people may also enlist the language of *teshuvah* (repentance) as grounds for including the potential molester in the community, or even the convicted sexual offender. We will return to this later and explain why it is almost always inapplicable, both halachically and as a practical matter. Research has shown that sexual abuse is most often a serial crime and not a one-time lapse, and there are limitations of making a hopeful but often unfounded claim about the person having repented and changed his/her ways.³ Research has borne out that sexual abuse is often a result of deep character-pathologies and that it is rare for people – if not impossible – to actually change. A successful process of therapy may have the outcome of the abuser owning the pain he/she has caused in the past and wishing to protect others in the future by having his/her own potential danger disclosed and having a community impose protective measures that will help to prevent reoffending. Sexual abuse is a real and ongoing danger, and we must recognize it on a communal level in order to best be able to manage it.

² See *ibid*, p. 12.

³ See *ibid*, p. 13, where she discusses someone initially accused of one act of abuse who was later found to have abused 96 children, and the way the communal cognitive dissonance in assimilating his abuse with the many selfless and kind acts he did for others, enabled his continued abuse. And see p. 22-5 where she discusses the specialized knowledge needed in assessing an individual’s risk of reoffending and the multiple ways in which the risk assessment can be mishandled or misinterpreted.

a) The Responsibility to Safety in Halacha

halachah is no stranger to danger and codifies the need for safety – both communal and individual – which we will now explore, beginning with the requirement for personal safety. The Torah teaches that we are required to guard our lives and our health; there is a mitzvah of self-preservation and a mitzvah to preserve one's health and to treat any medical problems.⁴

But there is a further requirement of removing any potential danger from the private domain. This requirement is generally derived from the verse that first mandates the obligation to build a fence around one's roof and then follows it with the exhortation of “*Ve-lo tasim damim be-veitekha*,” “and you should not place blood in your house” (Deuteronomy 22:8).

The gemara understands this commandment broadly (BT Bava Kamma 15b):

דתניא, רבי נתן אומר: מניין שלא יגדל אדם כלב רע בתוך ביתו, ואל יעמיד סולם רעוע בתוך ביתו? ת"ל: לא תשים דמים בביתך.

As it is taught: Rabbi Natan says: From where is it derived that one may not raise a vicious dog in his house, and one may not set up an unstable ladder in his house? The verse states: “You shall not bring blood into your house” (Deuteronomy 22:8).⁵

Rabbi Natan teaches us that the Torah's case of a guardrail for a roof is only an example of the precautions one must take to ensure the safety of the home. Rambam codifies this ruling:

אחד הגג ואחד וכל דבר שיש בו סכנה וראוי שיכשל בה האדם וימות, כגון שהיתה לו באר או בור בחצרו בין שיש בו מים בין שאין בו מים - חייב לעשות חוליה גבוהה עשרה טפחים או לעשות לה כסוי כדי שלא יפל בה אדם וימות.⁶

This requirement applies to a roof, and similarly, to any place that might present a danger and cause a person to stumble and die. For example, if a person has a well or a cistern in his courtyard, he must erect a sand wall ten handbreadths high around them or make a cover for them, so that a person will not fall in and die.

Rambam follows this teaching with a broader discussion of the responsibility to protect oneself and others from danger even beyond the home:

⁴ Two verses in Deuteronomy adjure us to “take utmost care and watch yourselves scrupulously” and “For your own sake, therefore, be most careful” (4:9,15, JPS 2006), making an explicit statement about the need to safeguard one's body and physical health, though this is not their biblical context at all. While the biblical verses may be ambiguous, Rambam is clearer in his opinion. He writes at length about the importance of maintaining good health and devotes the entire fourth chapter of *Hilkhos De'ot* to explaining what constitutes good, healthy practice.

⁵ Throughout this *teshuva* we will use translations which are modified from Sefaria for passages from the Talmud, Rambam, and Shulchan Arukh. All other translations are our own.

⁶ Rambam, *Hilchos Rotzeach vShmirat Hanefesh*, 11:4. See also *Shulchan Aruch, Choshen Mishpat* 427:8, who adopts Rambam's language.

וכן כל מכשול שיש בו סכנת נפשות, מצות עשה להסירו ולהשמר ממנו להזהר בדבר יפה יפה. שנאמר (דברים ד:ט) "השמר לך ושמר נפשך". ואם לא הסיר והניח המכשולות המביאין לידי סכנה, בטל מצות עשה ועבר ב (דברים כ"ב:י"ח) "לא תשים דמים."

Likewise, it is a positive mitzvah to remove any obstacle that could pose a danger to life, and to be very careful regarding these matters, as Deuteronomy 4:9 states: "Beware for yourself; and guard your soul." If a person leaves a dangerous obstacle and does not remove it, he negates the observance of a positive commandment, and violates the negative commandment: "Do not cause blood to be spilled."⁷

In this halacha, Rambam quotes *Deut.* 4:9, "But take utmost care and watch yourselves scrupulously." This is a general call to safety, regardless of whose space we are in. He then concludes with דמים "do not cause blood to be spilled" (*Deut.* 22:11), which is taken from the verse commanding a guardrail on one's roof. By quoting both a verse containing a positive commandment (But take utmost care) and a verse with a negative commandment (Do not cause blood...), Rambam is teaching us that when one fails to take proper measures to protect against danger, one is violating both a negative and a positive mitzvah.

Whereas the previous halachot in this chapter of *Mishneh Torah* discuss safety in the home, this halacha does not mention any locale. Instead, it is a call to remove obstacles wherever they may be. It seems that in citing both verses, "לא תשים דמים" and "ושמור נפשך מאוד", Rambam is teaching us, without stating it explicitly, that the responsibility to address potential dangers extends beyond our home. In light of this reading, one may say that Rambam deliberately chose not to quote the full phrase "לא תשים דמים בביתך", leaving out the word ביתך which emphasizes the domestic setting, and instead sufficed with "לא תשים דמים" in order to stress the ubiquity of this requirement.

Admittedly, these halachot discuss obstacles that could be fatal and present an immediate danger to everyone in the vicinity. In contrast, the risk to safety in our case is less explicit, as we are dealing with what are currently unproven accusations. Nonetheless, we can still apply to our case the underlying principle of the above discussion, which is that it is everyone's duty to be cognizant of potential dangers and take preventative action.

Elsewhere, Rambam discusses the task of the court to proactively prevent danger by doing road work at set intervals:⁸

⁷ Rambam, *Mishneh Torah*, Hilchot Rotzech vShmirat Hanefesh, 11:4

⁸ *Hilchot Rotzeach u'Shmirat ha-Nefesh* 8:6. This rule is stated in the context of the roads leading to the cities of refuge due to the specific Torah verse in that context and the need for the unintentional murderer to travel with all possible speed to avoid being killed by the dead person's relatives. While some commentaries see the rule only in this specific context, others see the rule as applying more broadly based on the logic of the *kal va-chomer*: if halacha seeks to protect even the unintentional murderer then

בחמשה עשר באדר בכל שנה בית דין מוציאין שלוחים לתקן הדרכים וכל מקום שמצאוהו שנתקלקל מתקנים אותו, ובית דין שנתרשלו בדבר זה מעלה עליהן הכתוב כאילו שפכו דמים.

Every year, on the fifteenth of Adar, the court would send out emissaries to inspect the roads leading to the cities of refuge. Wherever they found flaws, they would have them repaired. If a court was dilatory regarding this matter, it is considered as if they shed blood.

Rambam goes as far as to say that a *beit din* that neglects the charge of maintaining the safety standards of the roads is like one that has shed blood. For Rambam, failure to act preemptively warrants condemnation in the severest terms, even if in the end no one was actually hurt. Of course, today's community rabbis do not have the status of a *beit din*. However, that should not detract from this halacha's powerful teaching: when leaders shirk their duty to the safety of the community, they are to some degree morally responsible for the consequences. This does not negate the fact that we are dealing with a case of uncertainty, but it shows us how high the stakes are.

b) Bystander's Responsibility

The complementary obligation to removing any obstacles or dangers is the duty to intervene when faced with a potential danger to community members. This obligation is learned from the verses “לא תעמוד על דם דעך” (*Lev. 19:16*) and “והשבתו לו” (*Deut. 22:2*), which mandate that one not stand idly by while another person is in danger.⁹ If one sees a person in danger, one must do what they can to help him/her.

It is clear from several places in the Talmud that stopping wrongdoing is a supreme Jewish value. The Talmud goes as far as to equate one who knew of wrongdoing but neglected to take action with the perpetrator.¹⁰ For example, BT *Shabbat* 55b struggles with conflicting textual evidence over whether Pinchas the son of Eli sinned, or whether it was only his brother Chofni who sinned. The Talmud concludes that Pinchas' transgression was in his lack of protest; because he should have rebuked his brother Chofni and did not, he is considered to have sinned himself. This is a clear value statement against enabling or protecting an abuser. Failure to stop

certainly it would seek to protect the upstanding citizen. See *Yad Pshuta* ad loc. who argues for the broadening of the rule to include all roads, in which case Rambam is writing about the need to proactively prevent even lesser forms of danger.

⁹ See the *beraita* in BT *Sanhedrin* 73a which provides examples of mortal danger; when someone is drowning in a river or being attacked by an animal or by bandits. These cases describe situations in which the threat is obvious and immediate. However, Ran addresses the question of the duty to act even when the level of danger is less clear and is a matter of *safeik*, or doubt (*Hiddushei Ha-Ran Sanhedrin* 73a). Likewise Radbaz also rules that one is obligated to rescue others in cases of uncertain danger (*Shu"t Radbaz, chelek 5 li-leshonot ha-Rambam, siman 218 (#1582)*). However, our case does not directly fit into these categories because it is not an immediate danger.

¹⁰ See also BT *Shabbat* 54b-55a.

abuse can be immoral to the point of earning one the status of an abuser. Again, this deals with a case where one's knowledge is certain, as Pinchas knew with certainty what his brother was doing. It also deals with a case where a ritual transgression was involved. Nonetheless, it also makes the broader argument – given that it is a homiletic teaching – that by standing idly by when a perpetrator does harm, we become parties to his harmful actions.

While the Talmud compares one who failed to intervene with the perpetrator, the *Issur v'Heter* focuses on the plight of the victim. He writes that one who sees his friend drowning or being attacked by an animal and is able to save him yet does not, it is as though he had killed him with his own hand.¹¹ It is clear from here that the awareness of danger imposes upon a person a concomitant responsibility to intervene.

II. Acting in Cases of Uncertainty

Although the professional guidelines recommend some form of exclusion for the accused in our case (as we discuss below), as a protective measure, we still must ask if there is a halachic basis for penalizing someone for an act that has not been proven. The charge to judge one's friend favorably would seem to argue against such a course of action. However, Rashi (BT *Shavuot* 30a, s.v. “*heveh dan*”) explains that the principle of judging everyone favorably applies only to a situation in which one witnesses someone else violating a ritual mitzvah. But regarding a transgression that wrongs another person, there is no obligation to seek a rationalization for sinful behavior.

Another talmudic passage that similarly distinguishes between ritual mitzvot and those between fellow human beings concerns the Torah scholar who sins (BT *Berakhot* 19a). While the gemara states that if one sees a Torah scholar sinning at night, one should assume that he has certainly repented by morning, this applies only to ritual transgressions. However, regarding transgressions between fellow human beings (transgressions that have a victim) there is no presumption of repentance. The gemara teaches that regarding a monetary misdeed, one may not assume that the Torah scholar has repented until he has paid whomever he has wronged. The principle that emerges from this teaching is that in cases involving a victim, there can be no automatic assumption of repentance.

a) The Case of the Accused Butcher and Evidence that has been Tampered With

Rivash (Spain, 14th century) is asked to respond to another rabbi who has dealt with a case of a butcher who removed the lungs of a sheep and sold them before anyone could check the animal

¹¹ Sefer Isur ve'Heter ha-Aroch 59:38

for signs of *treifut* (being not-kosher).¹² To make matters worse, upon hearing that they were going to check the lungs, the butcher went to the buyer's home and cut them up so that they could not be examined. When questioned by the rabbi, the butcher claimed that the animal was kosher, yet offered no explanation for his suspicious actions. The rabbi ruled the animal forbidden on the basis of the butcher's duplicitous behavior. Yet, because the rabbi did not have any definite proof that the animal was indeed non-kosher, he did not enjoin the butcher to financially compensate the animal's owner. The rabbi then removed the butcher from his position. The Rivash expresses his approval for the rabbi's actions and the reasoning behind them.

Shulchan Aruch codifies Rivash's ruling:¹³

טבח שמעשיו מוכיחים שהיה רוצה להכשיל הציבור להאכילם טריפות כגון שחתך הסירכות מסלקין אותו
ומכל מקום פטור מלשלם דמי הבהמה לבעלים

A butcher whose actions attest that he wants to cause the public to stumble by eating non-kosher food, such as cutting off the lesions from a lung, should be removed, and in any case he is excused from reimbursing the owners for the value of the animal.

Here, Shulchan Aruch is presenting a split-psak: the butcher is fired based on the evidence in order to prevent a recurrence of the suspicious behavior, and yet the same evidence is inadequate when it comes to monetary issues. The implication of this ruling is that in order to protect the community (in this case, from eating non-kosher meat) one may impose protective measures even if the evidence leaves room for doubt.

If this principle is applicable in the case of a butcher, then it should all the more so be relevant to cases of sexual abuse where the evidence similarly leaves room for doubt. For if we are willing to act when there is incomplete or tampered-with evidence, where the danger is that of a possible violation of Halacha, then we should all the more so act in a place of actual, physical danger. While one may rely on built-in halachic mechanisms that would define the meat as kosher,¹⁴ no halachic principle or reality can save a person from real-life abuse and the scars that it leaves in its aftermath.

¹² Rivash, 113

¹³ YD 119:16

¹⁴ There are legal mechanisms for establishing the kosher status of the meat (or of any item whose halachic permissibility has fallen into question), for example, the butcher's *chezkat kashrut* (presumptive status that he is an upstanding individual who would not trick the public). As long as these mechanisms are applied properly, the meat's kashrut is a halachic "fact", even if in reality the meat did have a defect which would render it non-kosher. However, in a case of suspected sexual abuse the reality of danger trumps other halachic principles.

c) Caution in the Face of Danger

Chazal were aware that the consequences of misjudging a danger can be devastating and therefore ruled חמירא סכנתא מאיסורא – a danger is treated more seriously than a prohibition. We learn from BT *Chullin* 9b that while halacha is happy to rely (when appropriate) on probability when deciding whether an object is permitted or forbidden, that is not the case when an item may have been poisoned. In such a situation, Halacha suspends its rules of probability and forbids consumption of the item, regardless of how unlikely it is that it contains any poison.

Based on this concept, Rema writes:¹⁵

וכן יזהר מכל דברים המביאים לידי סכנה כי סכנתא חמירא מאיסורא ויש לחוש יותר לספק סכנה מלספק איסור

Similarly, he should be careful of all things that cause danger, because danger is stricter than transgressions, and one should be more careful with an uncertain danger than with an uncertain *issur*.

We should be more concerned about an uncertain danger than an uncertain prohibition. When it comes to protecting ourselves and others, the rules of probability must give way to the value of avoiding unnecessary risk. In the current case, despite the uncertainty, we must bear in mind that חמירא סכנתא מאיסורא, when assessing the level of risk which would require a response; even the smallest of risks is significant when dealing with real-life danger.

b) Acting on the Basis of *Lashon ha-ra*

Supporters of an accused abuser can point to the laws of *lashon ha-ra* as forbidding giving credence to unproven rumors. However, Halacha is not unequivocal on this point. In fact, the Talmud teaches us that there are cases when one must take *lashon ha-ra* into account:

אמר רבא האי לישנא בישא אע"פ דלקבולי לא מבעי מיחש ליה מבעי הנהו בני גלילא דנפק עליהו קלא דקטול נפשא אתו לקמיה דרבי טרפון אמרו ליה לטמרינן מר אמר להו היכי נעביד אי לא אטמרינכו חזו יתייכו אטמרינכו הא אמור רבנן האי לישנא בישא אע"ג דלקבולי לא מבעי מיחש ליה מבעי זילו אתון טמרו נפשייכו¹⁶

Rava said: this *lashon ha-ra*, even though one should not accept it, one is required to be concerned about the harm that might result from ignoring it. There were these people of the Galilee about whom a rumor emerged that they had killed someone. They came before Rabbi Tarfon and said to him: Will the Master hide us? Rabbi Tarfon said to them: What should we do? If I do not hide you, your pursuers will see you and kill you. If

¹⁵ Rema, YD, 116:5

¹⁶ BT Nida 61a

I do hide you - didn't the Rabbis say: this lashon harah, even though one should not accept it as true, one is required to be concerned about the harm that might result from ignoring it? Therefore, you must go and hide yourselves.

Tosafot explains that R. Tarfon could not hide the people from the Galilee rumored to have killed someone because the Roman authorities would kill R. Tarfon if they found out. Tosafot concludes from this story that one may act upon a rumor in order to protect oneself and others.¹⁷

By distinguishing between accepting the *lashon ha-ra* as true and taking precautionary measures, the Talmud and Tosafot in its wake have created an intermediate space between belief in the rumor and its rejection, in which one can uphold both the values of judging favorably and personal/communal safety.

Shoel uMeishiv, R. Shaul Nathanson, is ready to act on testimony that falls short of the usual halachic standards in the case of a *melamed tinokot* (teacher of children) accused of sexually abusing his students.¹⁸ The testimony came from two young men, aged 13 and 15, who both said that “in their childhood, when they were studying with this teacher at the age of 9 years or less, he would defile them in bed.” This same *melamed* has applied for a job in another town and has supporters who claim that the testimony of the young men is invalid, as it refers to events that happened when they were minors. Shoel uMeishiv justifies debarring the *melamed* from teaching based on this testimony on two counts.

First of all, he cites Rema (*Choshen Mishpat* 35:6) who rules that a person who had witnessed something as a minor and testified about it once he had reached majority is believed in matters concerning Rabbinic regulations, among which, Shoel uMeishiv explains, falls the question of whether to ban someone from teaching children. In addition, R. Nathanson points out that due to the nature of the abuse, it is nearly impossible for an adult to witness the violations taking place. For these reasons, he is comfortable using the boys' testimony.

Moreover, argues Shoel uMeishiv, he is not seeking to strip the teacher of his status as a kosher witness or of his ability to swear an oath in *beit din*, two severe penalties for someone deemed reprehensible. Instead, he is merely seeking to protect children from future harm. He cites the gemara from Nida 61a mentioned above – regarding the need to be “*chosheish*” for *lashon ha-ra*

¹⁷ *Tosafot* Niddah 61a, s.v. “*atamrinchu*.” Ultimately, being “*chosheish*” for the rumors is not making a statement about the truth, but simply being cautious. See also *Rosh*, *Niddah* 9:5 who clarifies that we need to be cautious about the contents of *lashon ha-ra* when not taking it into account may be damaging for the self or for others. In cases of abuse, protecting others is paramount. A poignant example of the potentially fatal consequences of disregarding what one thinks is *lashon ha-ra* is mentioned earlier in the passage in BT Nida 61a. Gedalyah ben Achikam is described as having killed people in Jerusalem (*Jer.* 41:9) even though Yishmael had in fact killed them. The Talmud explains that because Geldalyah hadn't accepted the warning message of Yochanan ben Kerach, he was blamed for the killings.

¹⁸ *Shoel uMeishiv*, *mahadura aleph* 1:185.

– as the basis for this protective measure. Here too, the facts are uncertain and have yet to be clarified. In this liminal space, it would be inappropriate to condemn the accused outright, but it is appropriate to be cautious where safety is concerned, in light of the accusations.

III. The Complexity of *Teshuva*

The accused and his friends and supporters might also mention Judaism's belief in the possibility of *teshuva* in almost all situations. While this is of course true, it is important to remember that forgiveness from God, which is *teshuva*'s ultimate goal, and reintegration into a community are two different things. It is not anyone's place to enter into the Godly side of *teshuva*. Rather, the responsibility of the community is to re-establish trust, which would allow a person to re-enter community life. There are various sources which address these questions, and we will begin with the source of the butcher, about whom we saw a different case earlier.

The gemara discusses the case of a suspicious butcher (BT Sanhedrin 25a):

ההוא טבחא דאישתכח דנפקא טריפתא מתותי ידיה, פסליה רב נחמן ועבריה. אזל רבי מזה וטופריה. סבר רב נחמן לאכשוריה. אמר ליה רבא: דילמא איערומי קא מערים? - אלא מאי תקנתיה? כדרב אידי בר אבין. דאמר רב אידי בר אבין: החשוד על הטריפות - אין לו תקנה עד שילך למקום שאין מכירין אותו, ויחזיר אבידה בדבר חשוב, או שיוציא טריפה מתחת ידו בדבר חשוב משלו.

There was a certain slaughterer about whom it was discovered that a *tereifa*, an animal with a wound that would have caused it to die within twelve months, emerged from his possession. Rav Nahman disqualified him [from bearing witness] and removed him [from his position as a slaughterer]. The slaughterer went and grew his fingernails and his hair [out of remorse over his actions]. Rav Nahman thought to deem him fit [for bearing witness, since he clearly repented]. Rava said to him: Perhaps he is employing artifice. Rather, what is his remedy? It is in accordance with Rav Idi bar Avin; as Rav Idi bar Avin says: One who is suspected of selling *tereifot* has no remedy until he goes to a locale where they do not recognize him and returns a lost item of substantial value, or removes his own *tereifa* meat of significant value from his possession.¹⁹

In this case the slaughterer's crimes are certain enough that he is removed from his post and disqualified from serving as a witness. And yet, the possibility of his repentance is immediately raised. While Rav Nahman is willing to see his overgrown finger-nails and hair, which are external manifestations of regret, as enough to restore his status as a kosher witness, Rava

¹⁹ Translation from Sefaria.

requires a more rigorous process of *teshuva*, which is more closely linked to the wrongdoing. Shulchan Aruch rules according to Rava.²⁰

The repair required when one has violated communal trust cannot be merely an external display or a general expression of remorse. Rather, the repair must go deeper and relate to the type of wrongdoing involved. External changes which also don't relate to the sin, can be a trick or an act; and in our case, they also do nothing to make amends to any victims. The *teshuva* that is needed for the butcher is one that shows, beyond doubt, that his problematic relationship to money (which led him to pass off treif meat as kosher) has been cured. When one shows a sensitivity to the money of another in exile by returning an expensive lost object, we can be sure that he/she is not motivated by communal pressure or the need to maintain a good image.²¹ And when one admits that something he has slaughtered for himself is *treif*, which means incurring a significant financial loss, he is modeling a healthier relationship to money.

Taz quotes Maharshal who rules that if it is impractical for the butcher to relocate to an unfamiliar place (due to family considerations, for example), then he may undergo the process of repentance in his hometown.²² Moreover, rules Maharshal, the community leaders need not follow the talmud's specific *teshuva*-formula for the butcher and instead they may use their own judgment to decide if he has genuinely mastered the temptation to pass off treif meat as kosher. In other words, for Maharshal and Taz, the Talmud's requirements for the rehabilitation of the butcher are suggestions that teach the principle that only through regaining the trust of the community may one re-enter as an active member.

Both the case of the butcher and that of sexual abuse concern a breach of trust. However, the similarities end there. Whereas the butcher harmed others by causing them to eat non-kosher meat, a sexual offender has inflicted unspeakable pain on another person. Nonetheless, we can learn from the halachot of a butcher caught selling non-kosher meat that external displays of repentance are not admissible factors when considering whether and when to re-admit an accused or even convicted sexual abuser. Although that kind of repentance might play a role in the repair of one's relationship to God, it is irrelevant when deciding when it is safe to re-admit this person to the community.

Decision and Policy Recommendation

In our response, we have demonstrated that you, as the rabbi of your community, have a responsibility to ensure the safety of its members. Likewise we have shown that even absent

²⁰ YD 119:15

²¹ See both *Rashi* and the *Yad Ramah* ad loc, which explain the importance of exile in ensuring the authenticity of the process.

²² Taz on YD 119:15, s.v. למקום שאין מכירין

confirmed evidence, you may take action against the accused if it serves the interest of communal safety.

The principle of acting on *lashon ha-ra* without granting it full credence is helpful in balancing the competing values of safety and of giving others the benefit of the doubt. Moreover, it is an instructive example of Halacha's provision for this type of philosophical conflict. We must suspect that the *lashon ha-ra* might be valid and take protective measures. At the same time, we acknowledge that the accusations have not yet been confirmed, thereby upholding two cherished values: safety and faith in humanity.

A related notion that emerges from this principle is that community leaders are not responsible for seeking the truth, what "really happened." That job falls under the purview of the legal system. As a rabbi, your task is to assess whether the accusation demands a policy-response.

Whereas it was clear to R. Tarfon in the story of the people from the Galilee accused of murder that he could not hide them in his home, the policies that you must adopt, as the communal rabbi, are far from obvious. Only a professionally trained expert on risk-assessment can recommend the best steps forward in this case. Therefore, one of the first actions should be a consultation with an expert on how to proceed.²³ There will be many considerations to bear in mind. Below are five essential points for moving forward:

1. Keeping the accused individual within the community

For many people – especially in the current climate of cancel culture – the immediate response to allegations is the desire to distance themselves from the potential abuser. But while the desire for distance may be natural, and may also be legitimate on a personal level, on a communal level we cannot condemn someone who has not yet been convicted. The responsibility of the community is to keep itself safe and focus on protection of all members, which is not the same as taking a stand on the legal issues.

As difficult as it may feel to keep the individual within the community at such a difficult time, it is generally the most appropriate course of action for several reasons: Firstly, it is the one way to actually maintain neutrality and to allow the legal system to operate. Secondly, in expelling the individual, the risk of their reoffending increases.²⁴ And thirdly, in keeping him/her within the community, you are better able to maintain safety for the entire community.

²³ Dr. Shira Berkovits advises against one on one meetings in these cases to ensure complete transparency and accurate recording (p. 27)

²⁴ See Berkovits, GET REF.

2. Imposing limitations on the accused individual for the safety of the whole community

Although it is important to keep the accused within the community, he/she cannot enjoy the same status as before the accusations were brought. Failure to impose some limitations could potentially put the entire community at risk. The precise restrictions may vary depending on the nuances of the accusations and on the recommendations of the professional consultant. But in general the limitations should be composed of two different categories: limitations that are designed for safety reasons and limitations designed to reflect a change in status. The former could include limiting access to only the most open areas of the shul, as well as appointing two or three chaperones who will enforce these restrictions and discreetly shadow the accused. As to the logic of appointing two to three chaperones, rather than just one, this is due to common sense as articulated by halachah: When a man accuses his wife of being a *sotah*, the sages mandate that he be accompanied by two chaperones on the journey to Jerusalem.²⁵ The reason for two chaperones given is that should one need to urinate then the other will guard the couple; if there were only one chaperone then any time he was unavailable, we would suspect the couple of wrongdoing. Therefore, in the synagogue context as well, where people have competing commitments, it is important to ensure that the accused has a chaperone with them at all times, and we therefore recommend appointing two to three people for this purpose.

Status limitations include the accused not receiving any public honors, such as *aliyot* and serving as the *shaliach tzibbur*. These limitations are important for the public statement they make. This individual is currently under a cloud of very serious accusations. Not giving this person public honors reflects the complexity and the ambiguity of his/her current status. It also, albeit quietly, makes a communal statement about what is or is not acceptable. In so doing, it acknowledges the pain of past victims and also makes a broader statement about the shul: it is not accepting gossip as truth but at the same time, it is being cautious. And part of that caution means not publicly honoring someone who very well may not be worthy of the honor.

However, there is an important caveat to the restrictions discussed in this section: Restrictions such as these – otherwise known as “Limited-access agreements” – can only be as effective as those who will ensure their adherence. Should the accused be unwilling to cooperate, or should the shul not have two to three people to serve as chaperones and to ensure that no public honors are being given to the accused, then the limited-access agreement may not be feasible. In addition, even in cases where such an agreement is in place, the shul committee needs to be aware of ongoing developments in the case that might require real-time adaptations (for example, if further, or more serious, accusations emerge at a later date). Should a limited-access agreement prove impossible, a shul may need to ask the accused to refrain from entering the synagogue for

²⁵ BT Sotah, 7a

the safety of all individuals. Safety is the top priority, even if it needs to come at the expense of maintaining the appropriate nuance.

3. Being sensitive towards family members of the accused

Once accusations have been brought against a person, whether or not they are later substantiated, those who are perhaps most destined to suffer are his/her family members. The spouse and children of the accused may endure feelings of deep shame and social ostracization that are unjustified. In cases that become very public, sometimes just carrying the family name can be a source of embarrassment as one's presence becomes a source of whispers and stares.

In addition, the family of the accused is presumably facing its own complicated feelings regarding questions of alliance and affinity: should they stand by their family member at all costs? Should they renounce them as others have? At times the family members may also be victims and be grappling with an even more complex set of questions. In any case, at a time when accusations may fly unchecked, it is important to maintain sensitivity towards the family.

How that sensitivity can translate into action may vary depending on the community. A few potential practical steps include: continue to extend honors to the children of the accused (be it an *aliyah*, *glilah*, or an offer to sing *An'im Zemirot* for younger boys); invite the family members for a Shabbat meal (assuming they would welcome some space from the accused); friends of the wife and individual children should continue to maintain friendly social interaction with them. Remaining friendly and supportive to the family members does not constitute an act of supporting an abuser or of taking sides. It is a basic act of *kevod ha-briot*, allowing the family members to maintain their basic dignity and perhaps a semblance of normalcy, during a most trying time.

4. Measures to take if the accused leaves the community

A word should be said about what happens if the accused makes the decision to leave his home community in order to get away from the scandal to make a clean start; or if the accused leaves the community because circumstances make a limited-access agreement impractical. Today, the world is global and leaving a community does not necessarily mean the ability to run away from one's past. However, depending on the distance of the move and the level of publicity of the allegations, the accused may be able to enter a new community *tabula rasa*.

We would suggest that a member of the home community be appointed to sensitively disclose the nature of the accusation to the rabbi or director of the new shul. Absent such an informative disclosure, the first community is being negligent in perhaps preventing a danger to the new community.

5. Creating Guidelines and Publicizing them

Of course, one hopes that the community never faces the threat of sexual abuse. However, if a community is prepared with guidelines in their by-laws, some of the tension and anxiety that accompanies these cases can be alleviated.²⁶ First of all, instead of an initial sense of confusion, community leaders will know how to proceed. If the accused objects to any of the policies, one can explain that they are not being applied out of malice but rather because they are the agreed upon approach. Moreover, policies that ban potentially dangerous behavior (for example, adults unconnected to the children's programming from being in the youth-area) make it easier to ask people to avoid certain spaces in the shul or refrain from certain behaviors – not because we suspect him/her but because that is simply the rule. It's not about a specific individual, it's about a policy that is designed to protect everyone – both the community members and the one being accused of abuse. By having clear by-laws, the community as a whole, including the accused and his/her family, can be spared much grief.

* * *

The obligation to protect people's safety, including protection from danger to psychic and emotional well-being, would require us to exclude from our shul a person who had committed such acts as this person is accused of. Although it has not yet been established that this person has indeed committed these acts, and we should assume innocence until proven guilty on the legal level, the laws of being *chosheish* for *lashon hara* obligate us to act on the possibility that these accusations are truthful to protect ourselves and those in our community. The principle of *חמירא סכנתא מאיסורא* likewise teaches that we must treat even unlikely dangers seriously. Implementing safety measures against the accused will inevitably be upsetting to him. Making clear that these precautions do not represent an assumption of guilt but are rather Halacha's response to the ambiguity of the circumstances might to some extent alleviate some of the pain, as well as guide the community as a whole as it grapples with what is a communal crisis.

²⁶ Berkovitz, pp. 16-18