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**If Your Wife Is Short, Bend Down and Hear Her Whisper:  
Rereading Tanur shel Akhnai**

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# IF YOUR WIFE IS SHORT, BEND DOWN AND HEAR HER WHISPER: REREADING *TANUR SHEL AKHNAI*

MIRIAM GEDWISER

Sometimes, returning to a familiar text uncovers something new. In this essay, I hope to reexamine the story of the Oven of Akhnai (a.k.a., the “*lo ba-shamayim hi*” story) on [Bava Metzia 59a-b](#), which has become a staple in many educational settings and is likely familiar to many readers, and uncover a layer that has not, to my knowledge, received much attention. Examining the larger surrounding *sugya* as a whole reveals a complex, multifaceted commentary on gender roles, interpersonal relationships, and the perils of sacrificing ethics for law.

One standard reading of the story focuses on the dramatic confrontation between Rabbi Eliezer and the Rabbis over an obscure question of purity law. Rabbi Eliezer invokes supernatural proofs for his position, culminating in a heavenly voice that declares, “Why do you take issue with Rabbi Eliezer, for the Halakhah follows him in all cases!” Rabbi Yehoshua stands up to declare that “it is not in heaven,” and the law must follow the majority of the rabbis against even the heavenly voice. Rabbi Yehoshua is presented as the hero, and his declaration as a triumph. On this reading, this is an empowering story of human agency and its role in Halakhah.

More recently, it has also become increasingly popular to read the story in its larger literary context. The story appears in the middle of a longer *sugya* about *ona’at devarim*, verbal oppression, and continues past Rabbi Yehoshua’s declaration to describe the emotional devastation experienced by Rabbi Eliezer after he was rejected by his colleagues. In this context, the protagonist is Rabbi Eliezer himself, and the story, read to completion, focuses on his pain and its destructive consequences. (This approach is exemplified by, and generally traceable, to chapter two of Jeffrey Rubinstein’s [Talmudic Stories](#).)

In this essay I would like to take this contextualization one step further. The “*lo ba-shamayim hi*” confrontation appears almost directly between two textual poles: a discussion of rules or general advice for emotionally and spiritually appropriate relationships between husbands and wives on [59a](#), and a story of the interaction between one husband, Rabbi Eliezer, and his wife, Imma Shalom, on [59b](#). As we will see, all three elements have something to do with access to heaven, but, as is often the case, the narrative complicates and in some ways undercuts the legal/advice section that came before.

## **The Sugya**

To begin, in the middle of [59a](#) Rav states: “A man should always be careful regarding the (verbal) oppression of his wife, for because her tears are frequent her oppression is more likely (*kerovah*).” This statement is clarified with reference to an assertion of Rabbi Elazar that, since the destruction of the Temple, “the gates of prayer were locked,” but the “gates of tears” remain open. Apparently, since wives cry easily, their suffering is more likely to provoke divine revenge. The Gemara continues with another statement of Rav: “Anyone who follows his wife’s advice falls into *Gehinom*,” with Ahav cited as proof.

Between his two statements, Rav seems to set out a view of a husband as something of a benevolent dictator: he should not listen to his wife's advice, but he shouldn't make her feel bad about it either.

The Gemara, however, continues:

R. Papa objected to Abaye: But people say, If your wife is short, bend down and hear her whisper! There is no difficulty: the one refers to general matters; the other to household affairs. Another version: the one refers to religious matters, the other to secular questions.

Concerned about the contradiction between Rav's statement and a folk saying regarding the propriety of listening to wives, the Gemara settles on a resolution of separate spheres.<sup>1</sup> Wives deserve deference in matters of the home, or perhaps all worldly matters; husbands deserve deference in matters of Heaven, and perhaps in all nondomestic matters.

Finally (for our purposes), the earlier segment includes the statement of Rav Hisda, who echoes R. Elazar above and states that "all the gates (to Heaven) are locked, except the gates of oppression."

So far for the categorical statements of the *sugya*: Women have such strong feelings that they cry easily; husbands should mind and manage their wives' feelings; men should control matters of heaven; men, presumed to be of higher physical stature than their wives, should bend down to listen (sometimes), a solicitous posture that nevertheless reflects and reinforces their superior stature. Each of these assertions is called into question by the narrative that follows.

After the Sages reject the intercession of a *bat kol* on Rabbi Eliezer's behalf, they excommunicate Rabbi Eliezer and declare impure everything he had declared pure. Upon being informed (gently) by Rabbi Akiva, Rabbi Eliezer's suffering is so powerful that "his eyes flowed with tears. The world was then smitten: a third of the olive crop, a third of the wheat, and a third of the barley crop; and some say, even the dough in a woman's hands spoiled. It was taught, there was great anger on that day, for everywhere that Rabbi Eliezer set his eyes was burned." Rabbi Eliezer's liquid tears transform into fire-eyes that bring destruction to the world.

Rabbi Eliezer's pain even generates a storm that threatens to drown Rabban Gamliel at sea. Rabban Gamliel was not the main sage to confront Rabbi Eliezer - that was Rabbi Yehoshua - but Rabban Gamliel was still accountable by virtue of his role as the *nasi* (head) of the Sanhedrin. Rabban Gamliel saved himself by declaring before God that he acted "not for my honor, and not for the honor of my father's house, but for Your honor, that disputes not proliferate in Israel." This justification only gets him so far, however, as the continuation of the story shows.

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<sup>1</sup> In an interesting irony given the emphasis on rabbinic authority on the next page, it is worth noting that the Gemara modifies the plain meaning of Rav's statement in light of an unattributed saying of common people.

After that incident, the narrative turns to the interaction between Rabbi Eliezer and his wife (and Rabban Gamliel's sister), Imma Shalom:

Ima Shalom was R. Eliezer's wife, and sister to R. Gamliel.

From the time of this incident onwards she did not permit him to fall upon his face (to recite penitential prayers).

Now a certain day happened to be New Moon, but she mistook a full (thirty-day) month for a defective (twenty-nine-day) one. Others say, a poor man came and stood at the door, and she took out some bread to him.

[On her return] she found him fallen on his face. She said to him, "Get up, you have killed my brother."

Just then an announcement was made from the house of Rabban Gamliel that he had died.

He said to her, "How did you know?"

She said to him: "I have this tradition from my father's house: All the gates are locked, except for the gates of oppression." (modified Soncino transl.)

The story thus comes full circle to the statement of Rav Hisda on the prior page: "All the gates are locked, except the gates of oppression." Indeed, the connection to verbal oppression is the anchor that brings the story to these pages at all. But the story is not simply a case-in-point for the claims about the power of oppression on the previous page. Instead, the story picks up several threads from the legal section, but takes them in unexpected directions.

### **The Connections between Law and Narrative**

On the previous page, Rav warned that a man must heed, even manage, his wife's delicate emotions, lest she come to cry and he deserve punishment for oppressing her. In our story, however, it is the wife, Imma Shalom, who is tasked with managing her husband's strong feelings to prevent punishing destruction. The husband, Rabbi Eliezer, has already cried uncontrollably once (when he first heard the news), and his cries are still so close at hand that they will burst forth at a moment's inattention.

Whereas both opinions on the previous page neatly placed matters of the spirit - "matters of heaven" - into the domain of men, here it is Imma Shalom, the wife, who controls how her husband prays. The subversion is not complete, however, as Imma Shalom does not succeed. Her plan is derailed by one of two things. On one suggestion, she miscalculates the date of the new moon, a mistake regarding heavenly bodies. Perhaps it is her very overconfidence in her mastery of "matters of heaven," the domain that on the previous page was reserved for husbands, that prevents her from succeeding. Alternatively, the Gemara suggests, she is distracted by a poor visitor at the gate. The visitor stands at the nexus of "the home" (a female domain, per the Gemara on 59a) and "the world" (a domain whose spousal purview the same

Gemara leaves as the subject of a dispute). She cannot manage both home and heaven at the same time.

When Imma Shalom leaves her vigil over Rabbi Eliezer's "matters of heaven" for the other realms for just a moment, he succeeds in evading her. Imma Shalom's attempts to control Rabbi Eliezer's heavenly access ultimately fail, either because she has overstepped the bounds of her gender, or, more likely, because in this *sugya* the oppressed Rabbi Eliezer himself has the most complete heavenly access - not the other rabbis, and not his wife. And yet, even though Imma Shalom ultimately fails to save her brother, she still knows about the workings of the heavenly gates. She remains more knowledgeable about at least some "matters of heaven" than her husband.

Finally, on the matter of posture, Rabbi Eliezer does indeed attempt to bend down. But unlike the idealized husband of the previous page, he is not a man of stature politely obliging his lower-stature helpmate. He bends over in subservience to God, but in defiance of his wife.<sup>2</sup>

The story of Imma Shalom and Rabbi Eliezer, then, is a narrative about a husband and wife that undercuts the general statements about husbands and wives earlier in the same *sugya*. Why?

### **When Law and Narrative Meet, Neither Stays The Same**

As a first reading, if we take the bright-line general statements of the Gemara more or less at face value, we can read the story as casting Rabbi Eliezer in the role of the oppressed wife. This highlights his plight by likening him to a relatably vulnerable category of people. What makes oppressed wives especially vulnerable is the power differential - whether in terms of physical, financial, or social power - between husbands and wives. By showing Rabbi Eliezer as the oppressed wife, then, the *sugya* suggests that just as power differentials within marriage carry an inherent potential for abuse, so does rabbinic power, even when wielded against other rabbis.

The rabbis were not, it seems, careful enough to avoid this pitfall, and as a result they face grave risks. At the same time, if Rabbi Eliezer is in the position of "wife," then "matters of heaven" are outside his domain, and the story may contain a subtle rebuke of Rabbi Eliezer himself for seeking to meddle in matters of heaven by invoking the *bat kol* - a female voice that also, it would seem, is overstepping its proper domain.<sup>3</sup>

This first reading takes the Gemara's claims about gender roles on 59a as static, then plays out what they would mean for the story. But from a second perspective, we may read the claims on 59a dynamically, informed by what comes later. In such a reading, the Talmud

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<sup>2</sup> Two manuscripts of our *sugya* have a third posture-related line. In the Munich and Hamburg manuscripts, Elijah reports that God "bent down" when he said "my children have defeated me." Rubinstein (*id.* at 63) sees this variant as a corruption. If it is original, however, it adds an additional layer to this analysis: God, it would seem, takes the popular advice to bend down and listen to those of lesser status, but in this case not as a husband to a wife, but as a father to children.

<sup>3</sup> For more on the significance of a *bat kol*, see Ari Lamm, [Talking To and About God](#).

subverts its own clear assignment of gender roles, as if to admit that when such broad rules meet real women and men, they may not hold. Rav tells men not to listen to their wives if they wish to avoid *Gehinom*, but Rabbi Eliezer seems to have no choice but to obey his wife, until she (mistakenly or otherwise) chooses to leave him alone. Even though Imma Shalom ultimately fails to control her husband's heavenly access, the very fact that she tries suggests that the neat division of labor between husbands and wives (home/world/heaven) becomes messy upon practical application. And certainly, the tragic consequences when Rabbi Eliezer does disobey her (Rabban Gamliel's death) hardly suggest that Rabbi Eliezer would have been risking *Gehinom* had he listened to her instead.

Both the legal/advice generalizations on 59a and the story on 59b warn about the dangers of oppression from different angles. First, husbands must treat their wives gently or face consequences. But the bright-line rules - women are emotional, so manage them - are not the end of the story. In the narrative portion, it is not husbands who must be gentle with wives, but rabbis who must be gentle with each other or face consequences. Claims about who owes what to whom based on personal status give way to a situational analysis, where susceptibility to oppression and pain is intensely personal. This shift warns the reader that formal, *a priori* regulations of interpersonal behavior only go so far. We can't simply determine who needs emotional support and who does not by looking at gender, for example. The real work occurs in response to actual human beings, come as they may.

Finally, these two pieces about husbands and wives bracket and complicate the central declaration of "it is not in heaven." Before that central moment, the Gemara concludes that "matters of heaven" should be the domain of men. And, both before and after, we learn that even if the rabbis will not accept communication that flows from heaven to earth, the gates of heaven are open in the other direction: God will accept the communication of the oppressed and suffering. God has not entirely abdicated control of earthly religious matters to the majority of rabbis. Perhaps those rabbis have absolute authority over matters of Halakhah, but, if they create victims, those victims have a powerful voice as well.

Rabbi Eliezer's appeal to heaven in a matter of law is the moment at which his break from the rabbis becomes inevitable. And yet it is his very ability to appeal to heaven in the realm of human suffering and interpersonal justice that drives the rest of the story. It would be a mistake to understand "it is not in heaven" as a totally exculpatory for the Rabbis. "It is not in heaven" operates as a legal justification, but on the ethical plane matters *are* in heaven. The tragedy of the story is that the rabbis feel that to defend the law they must separate heaven and earth, interpersonal justice and law.

The *sugya* seems on the one hand to accept Rabban Gamliel's justification for this bifurcation: he acts for the sake of avoiding intractable disputes. Perhaps the path of separation is truly the only option given Rabbi Eliezer's notoriously abrasive (cf. [Megillah 25b](#)) and inflexible character. Rabbi Eliezer, after all, is a firebrand whose anger causes his gaze to literally burn the world around him. Even with someone as difficult to get along with as Rabbi Eliezer, the rejection of him and his Torah has inescapable, negative consequences. Indeed, the rabbis never seem to come fully to terms with these losses, even through the moment of Rabbi

Eliezer's death. (See [Sanhedrin 68a](#).<sup>4</sup>) When the rabbi in the minority is less of an inflexible zealot than Rabbi Eliezer, the justification for risking such consequences due to majority inflexibility becomes concomitantly weakened.

As we learned on 59a, while heaven and earth, law and interpersonal ethics, may be separate, it is best when they are married together. Taken as a whole, the *sugya* demands that rabbis take full responsibility for the interpersonal consequences of their legal decisions. But beyond that, the tragedy and intractability of the Talmudic conflict and its consequences, once set in motion, serve as a warning for future generations. Before embarking on the path of isolating a colleague, or of forcibly imposing the will of the majority, contemporary rabbis would also be wise to take the time and effort needed to find a third path, one that marries law and ethics without doing damage to either.

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<sup>4</sup> A full treatment of the story of Rabbi Eliezer's death is well outside the scope of this piece. For one fascinating reading of that story, and its relationship to the Oven of Akhnai events, see Devora Steinmetz, "Like Torah Scrolls That Have Been Rolled Up: The Story of the Death of Rabbi Eliezer in bSandedrin 68a," in Joel Roth, Menahem Schmeltzer, and Yaacov Francus, eds., [Tiferet Le-Yisrael](#) (JTS, 2010).

# JEWISH JUSTICE AND #METOO

JOSHUA YUTER

## Introduction

The purpose of this essay is to explore the dimensions of “justice” as defined by rabbinic Judaism, particularly as it pertains to the challenges posed by allegations of sexual harassment and abuse.

The recent #MeToo and #TimesUp movements have been instrumental in lowering society’s tolerance for sexual harassment, abuse, and assault. What might have been “socially acceptable” a few years ago may now result in public excoriations. More women<sup>5</sup> are publicizing their experiences, including those which occurred many years ago. By their nature, claims of sexual abuse are rarely accompanied by evidence or witnesses, and the #MeToo movement has adopted a slogan of “[believe women](#)” to bestow default credibility upon such allegations.

Unsurprisingly, there has also been some pushback. The default posture of “believing women” conflicts with conceptions of justice predicated on the presumption of innocence, and that guilt must be established beyond a reasonable doubt. In practice, this can shift the injustice from the accusers to the accused, as Emily Yoffe demonstrates [in a series of essays for The Atlantic](#) regarding policies on university campuses. As Yoffe [writes elsewhere](#), “If believing the woman is the beginning and the end of a search for the truth, then we have left the realm of justice for religion.”

At this point, I suggest we distinguish between implications for “believing women.” To take a clear-cut case, someone who provides empathy and understanding for an alleged victim does so without imposing a cost on anyone else. I believe the tension arises when the implications of believing an accusation means taking punitive action. In other words, the resistance is less about “believing women,” and more about imposing the *consequences* of believing women.

Typical Western judicial systems are regulated by robust rules of civil procedure and due process, and are administered by professionals trained in evaluating evidence. Many include an appeals process that provides a check against errors. The punishments imposed by a court can be severe, but there are also higher standards to ensure a person is guilty and deserving of punishment.<sup>6</sup>

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<sup>5</sup> Abusers and victims can be of any gender. However, since the [overwhelming majority of sexual assaults reported](#) are by men against women, my formulation assumes that men would be the abusers and women the victims. Note that statistics only reflect what is *reported*, and may not accurately reflect reality.

<sup>6</sup> Note that the judicial system does not always work as intended. Judge Alex Kozinski of the ninth circuit wrote a [scathing review of the criminal justice system](#), though two years later he himself resigned his position due to [allegations of sexual misconduct](#). The point remains that if the judicial system with its rules and procedures can make mistakes, then social enforcements without the protections of such rules or appeals are more likely to err on either side.



But while the punishments imposed by a society or organization might generally not be as severe as those of legal systems, such groups are not bound by the same rules of due process, evidence, or appeals. Expulsion from one's profession,<sup>7</sup> university, or community is a trivial inconvenience compared to the trauma endured by abuse victims. However, for those who are falsely accused, these can be monumental and possibly ruinous life disruptions. Consequently, even those who would unconditionally believe women when it comes to providing support, may be unwilling to take action against the accused based on those same allegations. By acting on the allegations, they assume responsibility for their decisions. On a broader level, they may also be averse to fostering a society in which allegations alone are sufficient to ruin someone's life.

At the same time, there are undeniable consequences to *not* believing legitimate allegations. The immediate consequences are obviously felt by the victims themselves, to whom insult is added to injury. And abusers who retain official positions may continue to abuse others, especially knowing that they face no accountability, which in turn begets even more abuse. At the same time, the societal risks of not addressing abuse are no less significant: it is hard to have faith in a community in which abusers thrive with impunity.

And if "believing women" only requires a serious investigation (as opposed to automatically assuming guilt), there would still need to be standards to determine when action should be taken against someone. Overzealousness can result in unjust punishment, while equivocation can result in unjust exculpation. We must remember that whether or not someone was harassed or abused is a matter of fact. The problem is that the rest of us do not necessarily know what happened without proof.

### **Rabbinic Judaism**

In seeking general guidance as to how to best navigate these difficult tensions, it is worth exploring the ways in which the Rabbis addressed many of these issues. The Sages confronted similar challenges in creating legal and social systems which simultaneously addressed the competing needs of protecting the innocent, punishing the guilty, and maintaining the integrity of Jewish society. In doing so, they adopted seemingly contradictory approaches towards achieving justice which parallel the contemporary debates.

One source illustrating this tension discusses the difficulty in securing capital convictions under Jewish law. R. Tarfon and R. Akiva boast that had they had been on the Sanhedrin, due to their diligence in interrogating witnesses, no one would have been executed. This would seemingly be a positive outcome, following the principle that it is better to let the guilty go free than convict the innocent.<sup>8</sup> However, R. Shimon ben Gamliel responds to R.

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<sup>7</sup> Halakhah does not take loss of income lightly. [Deut. 24:6](#) and [Shavuot 45a](#) equate one's wages with one's "life," not unlike the English term "livelihood."

<sup>8</sup> Judge William Blackstone [wrote in 1753](#), "for the law holds that it is better that ten guilty persons escape than that one innocent suffer." This eventually became known as "[Blackstone's Ratio](#)." Maimonides expressed a similar sentiment with a different ratio, saying "It is better to acquit one thousand murderers than it is to kill one innocent" (*Sefer ha-Mitzvot* Negative Commandment 290). For a wonderful history of this idiom and the variations of how many guilty are weighed against one innocent, see Alexander Volokh's "[n Guilty Men](#)."

Tarfon and R. Akiva that they would have increased murders in Israel due to the number of murderers they would have released ([M. Makkot 1:10](#)).

I do not see R. Shimon ben Gamliel's comment as expressing a disagreement in law as much as reminding R. Tarfon and R. Akiva that even if it is preferable to acquit the guilty over punishing the innocent, doing so is not without its own costs. That it is worse to punish the innocent in no way implies that letting the guilty go free is a desirable outcome either.

With this in mind, we see that the rabbinic tradition records conflicting approaches regarding imposing severe punishments or social sanctions. In these cases, some sources strictly adhere to due process, while others allow greater judicial and social discretion in imposing various punishments or sanctions. I attribute this latitude to the scope of rabbinic jurisdiction, which covers religious and moral infractions in addition to civil and criminal cases.

Depending on the circumstances, cases falling under #MeToo could be classified under "damages," which would result in monetary compensation to the victim,<sup>9</sup> or as religious transgressions, for which abusers may face other penalties instead of monetary restitution.<sup>10</sup> As we will see, the rabbinic Sages understood the importance of due process, but also appreciated the need to use whatever tools they had at their disposal to ensure the integrity of religious society.

### **Due Process in the Rabbinic Judicial System**

In the rabbinic tradition, it is not only capital cases which must be treated with awe and reverence, but civil cases as well. In particular, R. Shmuel b. Nahmani cites R. Yohanan as saying that if a judge wrongfully takes money from one litigant and gives it to another, God "takes his soul from him" ([Sanhedrin 7a](#)), and that "a judge should imagine himself with a sword between his thighs and Gehinnom opened beneath him" ([Yevamot 109b](#)). A judge should know whom he is judging and *before Whom* he is judging, and may "only judge that which his own eyes can see" ([Sanhedrin 6b](#)).

With this in mind, we would expect Jewish law to hold courts to high standards of due process and integrity before issuing a judgment. Space does not allow me to list every detail of Jewish civil procedure, but I will cite a few which I think are particularly relevant to our discussion.

First, judges are supposed to be impartial. They are prohibited from "recognizing faces" ([Deut. 16:19](#)) or favoring either the wealthy or the poor because of their status ([Lev. 19:15](#), [Ex. 23:3](#), [Ex. 23:6](#)). Even those who are "lacking in the commandments," i.e., those who are not observant Jews, are entitled to due process ([Mekhilta de-Rabbi Yishmael Mishpatim 20](#)).

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<sup>9</sup> Jewish law designates five categories of payment for personal damages: the damage, pain, lost wages, healing, and embarrassment ([M. Bava Kama 8:1](#)). The Talmud discusses at length how each of these categories is calculated ([Bava Kama 83b](#)). Jewish law also includes punitive fines in certain cases, but not all courts have the authority to impose them. See [Sanhedrin 31b](#).

<sup>10</sup> When one violates multiple violations with the same action, the general rule is only the most severe punishment is applied. See, for example, [Ketuvot 33b](#).

Judges must take steps to eliminate some of the unconscious bias by treating litigants identically. For example, both litigants may be either standing or seated, but one cannot stand while the other remains seated ([Shavuot 30a](#)). Both litigants must be dressed similarly, such that judges require a wealthier litigant to dress like his poorer opponent, or provide the poorer opponent with better clothing ([Shavuot 31a](#)).

Second, the burden of proof falls on the claimant. For civil disputes this means that whoever wishes to extract money from someone else is responsible for providing the evidence to support the claim; it is not up to a defendant to prove his innocence. This rule is so fundamental to Jewish civil law that it is even called “a great principle” ([Bava Kama 46a](#)).

Finally, claims are generally validated and enforced by the testimony of two witnesses. For monetary disputes, a single witness may be sufficient to force a litigant to take an oath of absolution ([Shavuot 40a](#)), but not to pass judgment for or against a side.<sup>11</sup> For violations of religious law, a single witness is not only insufficient for a conviction, but the witness himself may be subject to punishment on the grounds that he is simply besmirching someone’s reputation by testifying in court knowing that a conviction is impossible ([Pesahim 113b](#)).

Following these rules of strict justice, many #MeToo allegations would be difficult to prove in a Jewish court of law. Cases of “he said-she said” would have to favor the defendant in the absence of evidence or witnesses. Even multiple accusers would not be sufficient, as each would have to stand as an independent claim, thus requiring independent evidence or witnesses for each incident.<sup>12</sup> “Believing women” as a rule is not a viable option because of the prohibition against “recognizing faces.” Women who have been previously abused already face self-doubt, shame, and ridicule when they come forward, even when there is corroborating evidence. Imagine how much more these women would be silenced if faced with a formal punishment for coming forward without evidence.

### **Exceptions to Due Process**

Our first indication of the Rabbinic range of approaches is that the general rules of due process mentioned, namely impartiality, the burden of proof, and requirement of witnesses, the Talmud records exceptions. For example, we find two instances of Rava demonstrating partiality in judgment. In one case, Rava boasts, “I should be rewarded for the times when a Torah scholar was before me in a lawsuit, and I didn’t go to sleep until I reversed the decision in his favor” ([Shabbat 119a](#)). In another instance, he accepts his wife’s claim—not testimony—that a litigant in his court was suspected of lying. Rava did not extend this trust to everyone. In a similar instance, Rava rejected the input of Papa on the grounds that he was certain about the trustworthiness of his wife, but not of his rabbinic colleague ([Ketuvot 85a](#)). While Rava might not have shown partiality between the litigants, he privileged the extrinsic contributions of individuals to render a decision.

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<sup>11</sup> One of the rabbinic critiques of the gentile court systems of their day was that they expropriated money on the basis of a single witness, as opposed to the two required by Jewish law. See [Bava Kama 113b-114a](#).

<sup>12</sup> The Talmud also cites a concern for a judge inappropriately comparing one case to another, as opposed to consulting a teacher for the proper answer ([Yevamot 109b](#)).

The rules for the burden of proof may be reversed in extenuating circumstances. In a case involving a powerful litigant against whom witnesses were afraid to testify, R. Hisda required the powerful litigant to prove his case even though he was not the claimant. Despite the “great principle” of the burden of proof falling on the claimant, the concern for witness intimidation was sufficient to reverse the normal procedure ([Ketuvot 27b](#)).

Finally, one notable exception to the “two witnesses” rule is the case of the [Sotah](#), in which a wife is suspected of committing adultery with a specific person ([Num. 5:11-31](#)). Following the rabbinic tradition, the Sotah only applies when the husband formally warns his wife in the presence of two witnesses to avoid the person in question ([M. Sotah 1:1](#)). In this case, because the wife was warned in front of two witnesses beforehand, one witness is sufficient to testify that the wife secluded herself with that person ([Sotah 3a](#)).

These exceptions may be no less relevant to cases of #MeToo. Perhaps we can take action against others based on the testimony of individuals whom we know to be credible, or perhaps we can reject the claims of those whom we know to be untrustworthy. There have been times when victims of or witnesses to sexual assaults have been too intimidated to go public due to the power and influence of the accused. Perhaps in these cases the burden of proof may be similarly shifted. With increased awareness of harassment and assault and, in some cases, required compliance training, we may be able to assume, following the precedent of the Sotah, everyone is considered formally “warned” such that the standard for evidence may be adjusted.

There are two additional exceptions worth mentioning, though I do not believe these are applicable to #MeToo cases. The first is *peshara*, or “compromise,” which gives judges more leeway to find a resolution. There is a rabbinic dispute over whether or not compromise is inferior or preferable to a formal trial ([Sanhedrin 6a](#)), but even assuming that compromise is desirable, it requires the consent of both litigants ([Sanhedrin 7a](#)). This would mean in order for a Jewish court to avail itself of the legal latitude provided by *peshara*, the defendant would have to agree to the terms. Of course, should a defendant willingly waive certain rights, the entire calculus of “justice” changes.

The second exception is that admission of circumstantial evidence or conjecture, also known as *umdena*. Normally this evidence is inadmissible for both capital and civil cases ([Sanhedrin 37b](#)), though this, too, may be a matter of dispute. In a case where an injured camel was found near where another camel was rampaging, R. Aha relied on the circumstantial evidence of proximity to assess damages, even if there is no direct evidence that one camel injured the other ([Shevuot 34a](#)). However, in R. Aha’s example, there is demonstrable evidence of injury and an observable proximate cause. Neither of these criteria are necessarily available for #MeToo allegations.

There are two other relevant features of Jewish law worth mentioning here. First, the accused has the right to face the accuser. R. Yohanan describes someone who explains her case to the judge before the opponent arrives as a “cunning, wicked” person ([Sotah 21b](#)). R. Hanina interprets the biblical commandment to “hear the disputes of your people and judge them fairly” ([Deut. 1:16](#)) as a warning to both the court and litigant not to listen to or issue claims in the absence of the other party ([Sanhedrin 7b](#)). Another rabbinic teaching equates hearing one side in absence of the other with falsehood ([Shavuot 31a](#)). This requirement to

face an accuser would ostensibly preclude accepting anonymous allegations or restricting a defendant to challenge the accuser's testimony. Unlike the previous examples, I know of no rabbinic exception to this rule.

Second, there are varying rules for when a person's confession is admissible in court. In monetary cases, "the admission of a litigant is like the testimony of one hundred witnesses," acceptable to hold the person liable for the principal amount (not including punitive fines). Confession is also acceptable to obligate an individual to bring a sacrifice of atonement ([Bava Metzia 3b](#)). But for capital or corporal punishment, Jewish law precludes self-incrimination on the grounds that "a person cannot render himself wicked" ([Sanhedrin 9b-10a](#)). Therefore, whether or not an abuser's confession (or even partial confession) is admissible in a Jewish court will depend on the classification of the offense and which penalties, if any, may be imposed.

While Jewish law provides latitude for exceptional circumstances, following the strict rules for due process would make it difficult to secure convictions or judgments against offenders, and may discourage people from coming forward. But rabbinic law is not without its solutions, and has several options at its disposal to dispense a form of moral justice, both inside and outside the courtroom.

We find rabbinic sources which allow Jewish courts to impose punitive measures outside the normal rules of due process, even including the death penalty. In capital cases where there is sufficient evidence that someone committed murder, but insufficient evidence for a conviction by the standards of Jewish law, the court imprisons the defendant and feeds the individual a diet which would cause death ([M. Sanhedrin 9:5](#), [Sanhedrin 81b](#)).<sup>13</sup> Furthermore, the Talmud records examples of Jewish courts executing transgressors when their violations do not warrant capital punishment by Torah law because "the hour demanded it" due to widespread violations of Jewish law ([Yevamot 90b](#)). Sarah Zagler explains these actions as a form of court-sanctioned "[moral outrage](#)" that enables judges to punish those who would otherwise escape punishment.

### **Rumor and Reputation**

Even without evidence or accusations, serial abusers can develop a reputation. After the Harvey Weinstein scandal became public, several media outlets reported that his behavior was an "[open secret](#)" in the industry. In fact, references to his behavior were [scattered in various television programs and appearances](#).

Under normal circumstances, Jewish law prohibits spreading rumors, even if they are true, though there may be an exception if the rumors are public knowledge ([Bava Batra 39a-b](#)). Maimonides identifies three categories of rumors. "Gossip," or *rekhilut*, is when the rumors are true and value-neutral. "*Lashon Hara*" refers to gossip when the content is negative. And "*motzi shem ra*" is violated when the content of the rumor is defamatory ([Hilkhhot De'ot 7:2](#)).

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<sup>13</sup> Capital convictions normally result in one of four methods of execution: stoning, burning, decapitation, and strangulation ([M. Sanhedrin 7:1](#)).

There are many rabbinic statements stressing the severity of gossip. According to one opinion, someone who “tells stories” will not merit redemption. Another opinion even equates relaying *lashon hara* to denying the fundamentals of Torah ([Arakhin 15b](#)). Furthermore, aside from speaking *lashon hara*, even *accepting* or *believing* negative rumors is problematic. In one phrasing, whoever accepts *lashon hara* is “worthy of being thrown to dogs” ([Pesahim 118a](#), [Makkot 23a](#); also see [Shabbat 56a-b](#) and [Pesahim 87b](#)). We have already seen one example of a court equating the testimony of a single witness with slander. Even if the testimony was accurate, because it was insufficient to secure a conviction, it only served to damage someone’s reputation ([Pesahim 113b](#)).

It is easy to see how victims raised with this ethic against gossip may be reluctant to report abuse, but we can also imagine how those in authority can use these sources to suppress reports. At the same time, knowing the severity of *lashon hara* helps us appreciate the following examples, in which rumors and reputation are taken seriously enough to warrant legal and social punishments.

According to Rav, a court may administer punitive lashes based on disseminated rumors ([Kiddushin 81a](#)). Maimonides elaborates:

Similarly, at any time, and in any place, a court has the license to give a person lashes if he has a reputation for immorality and people gossip about him, saying that he acts licentiously. This applies provided the rumor is heard continuously, as we explained, and he does not have any known enemies who would spread this unfavorable report ([Hilkhot Sanhedrin 24:5](#)).

Following this approach, courts could impose corporal punishment on individuals based solely on their reputations, even without formal evidence or testimony. This ability gives courts far more latitude in cases of serial abuse, though this, too, must be used with caution.

### **Social Sanctions**

Not all punishments must be meted out by the court system. Rabbinic law also incorporates rules for social sanctions which are not subject to the same requirements as the judicial system. For example, a rabbinic idiom states, “Regarding bad speech, even though we do not accept it (as fact), we should suspect (because of it).” Following this principle, R. Tarfon refused to provide sanctuary to people who were rumored to have committed murder ([Niddah 61a](#)). In another instance, R. Ashi maintains that one is permitted to humiliate someone who has a reputation for being a philanderer ([Megillah 25b](#)). Maimonides accordingly rules, “A person with such an unsavory reputation may be humiliated, and scorn may be heaped on his mother in his presence” ([Hilkhot De’ot 7:2](#)).

There are additional concerns regarding the reputation of religious authorities, particularly Torah scholars. Torah scholars hold a prominent position in Jewish society.<sup>14</sup> Because following Torah is fundamental to living a Jewish life, a Jewish society requires the best

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<sup>14</sup> A [mamzer](#) who is a Torah scholar takes precedence over an ignorant High Priest ([M. Horayot 3:8](#)). A student returns the lost object of a teacher before a father because “his father brought him into this world, [while] his teacher who taught him wisdom brings him to the world to come” ([M. Bava Metzia 2:11](#)).

teachers. At the same time, Torah scholars are living ambassadors of Torah, and are held to higher standards of behavior (see [Shabbat 114a](#) and [Hullin 44b](#)).

For example, in an instance where one Torah scholar had developed a poor reputation, R. Yehuda was uncertain how to respond. The Sages needed him as a teacher, but God's name was being profaned through his actions. When R. Yehuda was informed of R. Yohanan's opinion that teachers must be like angels of God, R. Yehuda excommunicated the offending Sage ([Moed Katan 17a](#)).

Similarly, R. Huna reported that the Sages of Usha decreed that a head of court who sinned would be told to stay home, yet would not be publicly excommunicated unless he persisted in sinning. On the other hand, Reish Lakish ruled against public excommunication under all circumstances. Instead, one should "keep it dark [secret], like night" ([Moed Katan 17a](#)).

I believe that the concern of a *hillul Hashem*—desecration of God's name—applies on both sides of the equation. On one hand, exposing wrongdoing by Torah scholars causes a profanation of God's name ([Yoma 86a](#)). On the other hand, the violations themselves are desecrations of God's name, a concern which supersedes a Sage's honor ([Eruvin 63a](#)). Furthermore, in today's climate, failure to censure a prominent figure results in an even greater desecration of God's name. An abuser discredits himself, but the institution which protects the abuser discredits the moral integrity of the entire institution.

The contemporary rabbinate may not be held in the same esteem as it once was, but there is still a modicum of social power which, unfortunately, [has been repeatedly abused](#). In some cases, the abusive behavior is systematic enough to constitute its own "[open secret](#)." Even though there might not be definitive evidence in these cases, rabbinic law does provide for action to be taken based on nothing more than rumor and reputation.

### **Risks of False Accusations**

It is worth mentioning that rabbinic Judaism is also aware of the ramifications of false allegations. The immediate cost to an individual's reputation is obvious, but there are also secondary costs: false accusations result in greater skepticism of future accusations.

The Talmud relates an incident in which R. Hanina would regularly give charity to someone every Friday. One day, the recipient's wife told R. Hanina that they didn't need it, reporting that she heard him ask, "On what will you eat, the silver or gold plates?" R. Hanina quoted in the name of R. Eliezer, "Let us be grateful for the frauds, because were it not for them, we would be sinning every day" by not giving charity ([Ketuvot 67b-68a](#)).

The existence of fraud provides an excuse for skeptics of even legitimate claims. In addition to preventing the injustice of punishing an innocent person, careful examination of every allegation is essential to minimize the secondary risks of disbelieving actual victims.

### **Repentance and Redemption**

The #MeToo movement has empowered women to come forward with their experiences even after [many years of silence](#). This means that people are now being held accountable for actions which took place years ago. Jewish law [does not have a statute of limitations](#) for either civil or religious infractions. Just because an offense took place in the distant past does

not by itself absolve an individual.<sup>15</sup> However, it is possible that a person changed his ways and repented in the intervening years.

What would be involved in repentance? First and foremost, a person would have to ask for and receive forgiveness from his victim ([M. Bava Kama 8:7](#), [Bava Kama 92a](#)). Some prominent offenders have issued public apologies for past behavior. One difficulty with public apologies is that it can be difficult to distinguish between a sincere expression of regret and an apology performed for the sake of reputational rehabilitation.

For example, the Talmud relates a story in which a slaughterer was caught selling non-kosher meat. R. Nahman disqualified the individual and fired him from his position. R. Nahman later saw the slaughterer grow out his hair and nails. R. Nahman interpreted this gesture as a sign of public penance and wanted to reinstate the slaughterer. Rava, however, cautioned R. Nahman, “perhaps he is only pretending” ([Sanhedrin 25a](#)).

Indeed, the passage goes on to cite R. Idi b. Avin’s criteria that in order to demonstrate authentic repentance, the slaughterer would have to go to a place where he is unknown, and either return a lost object of value or disqualify his own valuable meat ([Sanhedrin 25a](#)). In other words, the way one repents for a sin motivated by greed is to not repeat the sin by personally accepting a financial loss in the course of following a commandment.

Similarly, R. Yehudah says that a “*ba’al teshuvah*”—someone who is considered to have repented—is defined as someone who refrains from repeating the sin when faced with the opportunity. R. Yehudah’s standards are more exacting than those of R. Idi b. Avin, in that R. Yehudah indicates that repentance is limited to a case in which one avoids sinning with the same woman, in the same scenario, and in the same place ([Yoma 86b](#)).

Defining a *ba’al teshuvah* is important because, according to rabbinic law, once someone has repented it is forbidden to bring up that person’s past transgressions, which would violate the prohibition of “oppressing with words” ([Lev. 25:17](#) per [M. Bava Metzia 4:10](#)). Not every offender repents, but for those who have repented, Jewish law would also prohibit holding that person’s past behaviors against them.

This, of course, assumes that forgiveness is sincere and not [coerced through guilt or intimidation](#). Furthermore, even if one does not remind a repentant abuser of past transgressions, the [risk of recidivism](#) must be evaluated, particularly regarding child abuse. As noted earlier, rabbis may be fooled by superficial gestures of repentance and may mistakenly believe an abuser no longer poses a risk. We find two such examples in the cases of [R. Moti Elon](#) and [R. Mordechai Gafni](#), both of whom benefited from rabbinic support. It is not my place to suggest how one calculates the risk of recidivism or the [efficacy of treatment](#), but it must be addressed by those who have professional expertise to evaluate specific situations.

## Conclusions and The *Deus Ex Machina* of Jewish Justice

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<sup>15</sup> However, it is possible that a person’s recollection of traumatic events may [become distorted over time](#). Inconsistencies [may not imply falsehood](#), but they do make it difficult to rely on such reports.



The sources above demonstrate that there are different approaches in the rabbinic tradition for how to respond to cases similar to those associated with #MeToo. We find precedent for emphasizing due process in order to avoid the risk of punishing an innocent person, as well as precedent for relying on extra-judicial criteria to ensure the guilty do not go unpunished or, worse, remain free to victimize others.

However, it is worth keeping in mind that there is no perfect formula which ensures that all guilty—and only the guilty—will be punished appropriately. Due to flaws of human biases, lack of evidence, or outright corruption, all judicial systems defined and enforced by humans are limited in their capacity to achieve perfect justice.

Despite the inevitable flaws in our judicial systems, the Torah nevertheless obligates people to establish justice,<sup>16</sup> which means we attempt to achieve justice to the best of our ability. At the same time, rabbinic Judaism's vision of justice is predicated on faith in God to correct the limitations of human justice. This may take the form of God punishing people for transgressions. For example, some deaths are attributed to God punishing an individual for having committed murder ([M. Avot 2:6](#), [Sanhedrin 37b](#)). A person may also be judged in the afterlife for sins committed in this world ([M. Sanhedrin 10:3](#)). In the words attributed to R. Eliezer, "If justice is carried out [on earth] below there will be no further judging [in heaven] above, but if there is no justice below there will be judging above" ([Deut. Rabba 5:5](#)). Humans are obligated to seek justice to the best of our ability, and we may not correct one injustice by causing another. Rather, it is up to God to "balance the scales."

Having faith in God is praiseworthy in religion, but it is a deeply unsatisfying solution for victims in a secular society. For this reason alone I would be wary of imposing religious analogs onto secular society. However, those who look to the Jewish tradition for precedents regarding how to approach contemporary cases will find many approaches from which to choose. Those who advocate for strict due process have sources on which to rely, as do those who rely on lesser standards of believability for taking action against someone.

My point is that the rabbinic tradition struggled with defining and executing justice, and those who look to the Rabbinic tradition for answers will find conflicting directives. In short, there is no simple solution. Regardless of the approach one chooses to take, it is imperative that people are "deliberate in judgment" ([M. Avot 1:1](#)). There is too much at stake to do otherwise.

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<sup>16</sup> Per the Noahide commandments, even gentiles are required to establish laws ([Sanhedrin 56a](#)).