

Society's Influence on the Shaping of Halakha

Society's Influence on the Shaping of Halakha Jewish Approaches to People with Disabilities

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1. We all have disabilities

To be a person of Torah is to take on a quest to reveal the light of God which shines out of the Torah, as it has been revealed to human beings. *Halacha* [Jewish law], in as far as it is a translation of the Godly Idea into human behaviour, must radiate that light for which all those who worship the Almighty pray. Among the subjects that linger disconcertingly between light and darkness is society's approach to people with disabilities. Already in the Talmud we find the story of one of the greatest scholars of the Tanaitic period (70-220 CE), Rabbi Simeon ben Eleazar, who studied Torah from Rabbi Meir, and returned home completely caught up in the joy of his studies, which consumed his entire character:

He happened upon a man who was extremely ugly. The man said, "Shalom to you, Rabbi!" Rabbi Simeon did not reply. Instead he exclaimed, "Idiot! How ugly that man is! Could it be that all the people of your city are as ugly as you?"

The man said, "I do not know, why not go to the Artisan who made me, and tell Him, 'How ugly that vessel is that You made!'"

When Rabbi Simeon realized that he had done wrong, he dismounted from his donkey and fell down at the man's feet, saying, "I fully accept – please forgive me." "I will not forgive you," said the man, "until you go to that Artist who made me and tell him, 'How ugly that vessel is that You made.'"¹

The gap between the harmonious light of Torah and this offence to perfection that is the "extremely ugly" man, strikes Rabbi Simeon like a blow. The Torah he has been learning has not refined his character, but rather had sharpened his aspiration to "angelic" completeness, which refuses to encounter an ugly reality.

The "ugly man", then, refers Rabbi Simeon to the source of all ugliness in the world: the Holy One, the Artisan who made him. This is a decisive religious statement, which seeks to cancel out the categories of beautiful and ugly as seen by human beings, and to bring them instead to a more holistic vision, which takes account of the fact that God created all of mankind, in all the forms it may take, in His own image. Not, that is, with a godly body – for God has no body – but rather with an essential nature that is divine, an

¹ *Ta'anit* 20a-20b.

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associate in the creation and advancement of the world. Man created in God's image is not God – he is “a little less” (Ps. 8:6). This is what brings us to the absolute knowledge that all of us are people with disabilities.

It is worth remembering that when we engage with sources from the past we are touching the very pulse of a society's life. The sources of the Oral Law are shaped in a human society and are intimately bound both to the norms of that society and to changes in those norms. What approach has Jewish society taken through the ages to people with physical and cognitive disabilities? Did the Torah lead to these people's acceptance into society, or was she part of the universal tendency to exclude? What attitude has the religious community taken in the modern era, as the world outside goes through a process of acceptance and integration? Has the religious world led this movement, gone along with it, or remained far behind?

There is a genuine expectation that the world of Torah should pave the way when it comes to attitudes to people with disabilities, people who were also created in the image of God. There are also disappointments, as we look at the sources and see where the great minds of the outside world have taken society vast leaps forward with regard to these attitudes, while Jewish scholars merely reacted later on to these ethical advances.

I would like to demonstrate with two examples; one in which the halacha has followed after human progress, and one in which it has led the way for humanity as a whole. First – in relation to deafness, and second – to blindness.

2. The Status of Deaf People – Halacha's Response to a Change in the World

In the Jewish Law of ancient times, deaf people had the same status as the mentally retarded. They were distanced from society and free of its obligations. Until the 18th century, people with severe hearing impairments were not integrated into the education system and nothing useful was expected to come of them. The sages, likewise, related to deaf people as to people with no intelligence, exempt from all the obligations of a mature human being.

With the establishment of schools for the deaf, and the development of sign language, which enables people with severe hearing impairments to communicate with those around them, the world has made huge steps forward in its relations with deaf people. It is fascinating to read the attitudes expressed by rabbis during the period in which people with aural impairments were just beginning to be integrated into society.

The discussion centred around the question of whether the change in the status of deaf people in society should influence their status in halacha; are these people now obligated by the commandments? Are they able to be married and divorced? May they perform other legal actions that require mature awareness? In the words of Rabbi Azriel Hildesheimer (late 19th century) we may find an interim summary:

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In the case of a deaf person who has been taught to speak in a school for the deaf (in the technique that has been developed in recent years), such that there is no difference between him and other people, apart from lacking the sense of hearing and a certain degree of speech impediment, while his intellect and understanding in all dealings are as those of any hearing person, the leading authorities of our generation are in disagreement. Some say that such a person is like a hearing person in every way, and has the legal status of one who speaks but does not hear. Others categorize him as a 'retarded person', giving him the same status as one who neither speaks nor hears. Other authorities are undecided and judge strictly in each case, because of the doubt.²

One of those who deemed this group to be 'like any hearing person' is the Great Rabbi Chaim of Sanz, of blessed memory, who wrote a responsum³ to Rabbi Yehuda Libush of Levov, to demonstrate that a deaf person who has learnt to communicate is like a hearing person, with the legal status of one who 'speaks but does not hear'.

Among those who did not reach a decision on the matter was the great Rabbi M. Shik. Rabbi Shik investigated the matter in depth in his responsum (Even Ha'Ezer 79), and his indecision is implied the conclusion of a long discussion of several different categories of deaf people:

And all the same it seems that a deaf person who has accustomed himself to speak at a school still has not removed himself from doubt. He is not to be considered a person of full intellect, and is not to be counted in a *minyán* [quorum of ten men needed for communal prayer], or relied upon to fulfill ones' obligations [vicariously, eg by making the collective blessing over wine on Shabbat], and one cannot eat meat that he has slaughtered; in my humble view this is the correct approach to take.

The doubt over which these authorities are debating is the question of whether a deaf person's intellect is normal or defective. Professor Victor Jenner brought about a global change in this area when he published his pedagogical treatise for the training of deaf and dumb children (1832-6). He proved that people with hearing impairments have full capability to acquire spoken language: they have sufficient intellect to learn languages, the necessary speech organs, the senses required to take in linguistic forms, and that beside all this they also have other means of communicating with others. This research took root in the world, and from the mid-19th century onwards, attitudes to deaf people in Western Europe improved immensely.

Rabbi Hildesheimer lived at the end of the 19th century, read the relevant studies, and saw the educational achievements of the schools for the deaf. As a result of all this he reached the following conclusions:

² *Responsa of Rabbi Azriel Hildesheimer*, II, Even Ha'Ezer, Hoshen Mishpat ve'Miluim, 58.

³ *Divrei Chaim* II, Even Ha'Ezer 72. Printed previously by Rabbi Yehuda Levov in *Malechet Heresh*, Vienna, 1864.

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The realities have disproved the view expressed by the great Rabbi M. Shik, that a deaf person who is educated acts like an ape; namely, that he does nothing but what has been fixed and imprinted in him through repetition and rote-learning, and that he has no free choice or intellect.

Rabbi Hildesheimer's responsum proceeds to demonstrate that the rabbis of mid-19th century Germany had continued to debate the point, without fully accepting the change in the legal status of people with aural impairments. A generation later, however, Rabbi Hildesheimer himself was well aware of the implications of the scientific and pedagogic changes that had taken place in the area of hearing impairment. In response to those rabbis continuing to relate to the deaf as to people without mental faculties he writes:

... This, however, was the prevalent attitude to deaf people at that time (*Sha'ar Haz'kenim* was published in 1830, and it is not recorded when that specific responsum was written. Rabbi Y.D. Bamburger's responsum, likewise, does not record the time of its writing). Medical writings from that period upheld the same views, and it is only later on that the doctors' opinions were amended, until they reached the conclusion that deaf people have mental powers (and only a difficulty in bringing this potential into full expression) and this view has been borne out in the experience of our own times. There is no contradiction here with the words of our sages, who only referred to deaf people with no opportunity to access their own intellectual potential. In my humble view we must not follow these great minds in deciding that a deaf person's education has no significance. In post-factum cases, however, we must certainly make efforts to rely upon their words.

Behind the debate on the status of people with hearing impairments stands a deeper disagreement on the ability of society and scientific progress to affect basic assumptions in the world of the Torah. Rabbi Hildesheimer, aware of this anxiety, reassures his readers:

There is no doubt that research in the natural sciences has no authority to contradict the traditions received from the sages. Here, however, we are simply interpreting the sages, to determine whether they made no distinction between one deaf person and another, or whether their intention was only to rule on a deaf person without education.

A hundred and fifty years have passed since this was written, and today almost all *halachic* authorities agree that people with hearing impairments may be integrated into social frameworks, and so, without question, also into religious ones. This is a rare and definitive development, which points to society's power to influence legal attitudes, and among them those of our own *halacha*.

3. The Status of the Blind – *Halacha* as a Pioneering Force

Like deaf people, people with severe visual impairment have also experienced a remarkable improvement in their status. In the past it was commonplace to alienate blind

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people and to degrade them. Blind people had no means of earning a living, and instead went begging from door to door or on street corners. Most blind people were condemned to lives of suffering and could aspire to no personal achievements. The exceptional few, Homer, Braille, Helen Keller and others, showed outstanding talents and were the exceptions that prove the unproductive rule. As in the case of deaf people, here too attitudes have changed in the modern age, with the establishment of schools using Braille script (invented in 1829).

In contrast with deafness, blindness was an area of disagreement among the *Tana'im* [sages of the Mishnaic period, c. 70-220 C.E.]. Rabbi Yehuda deemed a blind person to be exempt of all religious obligations, while the other sages judged him to be obligated. The Mishna in Tractate Bava Kama states that 'One who humiliates a blind person is found liable'. The Mishna here is raising the question of the damages payments one might be required to pay a blind person upon whom one has inflicted bodily harm. Harming a 'normal' person requires one to pay, among other expenses, a payment for the humiliation involved. Without entering into the intricacies of the discussion, we may understand that 'humiliation' payments are paid to a person in response to the damage rendered to his standing in society. The very ruling that one who humiliates a blind person is expected to hand over a humiliation payment raises the possibility that somebody must have thought otherwise. The Talmud, indeed, seeks to claim that this *mishna* does not correspond to the attitude of Rabbi Yehuda, one of the Galilean sages of the latter half of the second century:

This *mishna* is not compliant with the view of Rabbi Yehuda, as we have been taught, "Rabbi Yehuda says: A blind person has no humiliation payment; and in this way Rabbi Yehuda would offer reprieve to people who would otherwise be condemned to exile [for manslaughter], to lashes and to the death penalty."⁴

The Talmud offers formal rationales to explain the attitude of Rabbi Yehuda, but these are not our concern. Of interest to us is the bottom line, and its significance is that a blind person is in no way integrated into the family of man. The Tosafists (of twelfth century France) experienced unease with the definition of blindness in Rabbi Yehuda's teachings, and qualified his position:

A blind person who humiliates another is exempt [from payment], but one who humiliates a blind person is obligated, for it does not make sense that he should be exempt.⁵

The statement here is an interesting one. The blind person is liberated from responsibility, but society is not liberated from the responsibility to care for him. In relation to the blind, then, we find enormous responsibility on the part of the sages, who consistently seek to include the group in the community. One prominent example of this is the question of calling a blind man up to make a blessing over the Torah scroll in the synagogue. The

⁴ Bava Kama 86b-87a.

⁵ Ibid.

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medieval Jewish legal authorities debate the ability of a blind man to bless over the Torah, when he clearly cannot read the words, for ‘words in writing are not to be said from memory’. In conclusion, however, many of these authorities agreed that this was a case worthy of the principle ‘It is time to act for God; they are uprooting Your Torah’.⁶ Rather than risk losing the human being within the blind man they agreed to rule that he should be called up to the Torah and bless over it, just like any other, fully obligated man. The decision was made hundreds of years before any mainstream social awakening with regard to the needs of the blind community.

4. *Halachic* Attentiveness to Social Trends in Relation to the Place of People with Disabilities in Society

As we have seen in these two examples, *Halacha* is not indifferent to changes in the status of people with disabilities in society. At times it creates the change; at others it responds to it. Today we witness significant social alertness to the place of people with disabilities within our society. Accessibility for people with mobility problems, subtitles for people with hearing impairments, Braille for people with visual impairments and so on and on. The State of Israel devotes significant budgets to this issue, and there is a special chair in the Law Ministry for dealing with issues relating to people with disabilities.

Halacha must listen to the voices welling up from the depths of society, and respond to them. The public’s attitude to people with disabilities is awakening the world of the *halacha* to find within itself the mechanism that will make it possible to include all people with disabilities within it. I will demonstrate this through a discussion of the question of whether a *cohen* with a physical blemish may go up to the ark to bless the congregation with the priestly blessing.

The Mishna in Tractate Megilla lays down that “a *cohen* who has blemishes may not raise his palms [to participate in the priestly blessing]”.⁷ The Talmud understands the *mishna* in its broad sense, describing all the kinds of blemish that could invalidate a *cohen* from raising his palms. The *amoraim* [sages of the Talmudic period, c. 220-550 C.E.] rise to the occasion and offer their own contributions to this list of disqualifiers:

Rav Huna said: A *zavlagan* [the medieval commentators were divided as to whether this describes a person with a disease causing excessive tearing or salivation] may not raise his palms.

This brings the Talmud to raise an objection:

Yet there was a certain *zavlagan* [priest] who lived in Rav Huna’s neighbourhood, and he used to raise his palms!

⁶ The principle is brought into play in extreme cases when it is deemed necessary to contravene a Torah injunction in order to preserve the spirit of the law (translator’s note).

⁷ Megilla 24b

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Could it be that Rav Huna does not practice what he preaches? The answer follows:

That [particular priest] was familiar in his own city.

As the discussion continues, an early source is brought, declaring that a man's familiarity in society is the factor that determines whether he may take part in the priestly blessing, or whether his presence, with his physical deformities, will cause a social problem. The section continues to tell exactly the same story, as an event that took place in the *beit midrash* [study hall] and city of Rabbi Yochanan, Tiberius:

Rabbi Yochanan said: A [priest] who is blind in one of his eyes may not raise his palms. Yet there was a certain man [like that] in Rabbi Yochanan's neighbourhood who did raise his palms! That man was familiar in his own city.

Here the case in question is not that of a *zavlagan* but of a man who is partially sighted. In principle, such a man is disqualified from giving the priestly blessing – but the community have the power to rule otherwise by their actions. If the man is familiar in his own city, then he raises his hands to bless the congregation.

This distinction is delineated in the *halacha*.⁸ It is clear that if the community had not reacted to those 'blemished' people with acceptance, the attitude of the *halacha* would not have changed; neither in the eyes of Rav Huna nor in those of Rabbi Yochanan.

If this is the case, the public has enormous power to define the place and standing of people with disabilities in society. Our attitude towards the disabled is not decreed from heaven. It rests upon the attention and responsibility of the entire community. If we know to see the good and the light within each one of us, we will succeed in containing every creation, in fixing the place of people with disabilities in the very heart of the community, and in allowing each and every person to take a part in our shared effort to repair the world by the light of the Torah.

⁸ *Shulchan Aruch*, Orach Chayim 128