A. Yehuda Warburg

Rabbi Dr. Warburg serves as a dayan in Hasidic, Modern Orthodox and Yeshiva communities in New York and New Jersey

Harnessing the Authority of Beit Din to Deal with Cases of Domestic Violence

The purpose of our presentation is to educate the Jewish community and victims of spousal and child abuse in particular what type of relief can be received through the services of the institution of beit din, which has the authority to resolve certain *monetary* matters relating to such conduct. Our discussion is to demonstrate the nature of these claims and their halakhic underpinnings in order that our battei din will be open to accept such claims and this presentation hopefully may equally serve as an introductory guide to *dayyanim* and *to'anim* (rabbinical advocates) to deal with such claims.

1.

The first part of our presentation focuses upon the right of a wife to advance various monetary claims against her abusive husband. Such a right equally exists for a husband who is a victim of abuse.[1] However, our discussion focuses on the more frequent situation of the abusive husband.

In a hypothetical scenario, a husband and wife are at home with their Jewish maid and suddenly, without any incitement by his wife, the husband hits his wife on her hips and back in front of the maid. The husband denies the allegations and argues that the battery was self-inflicted. In reply, the wife counters by claiming that it is impossible for her to produce self-inflicted wounds on her back. Moreover, the maid corroborates the wife's version of the events. Subsequently, the wife files a police report and a restraining order was issued against him. Based upon professional findings, it is clear that the husband is a bipolar personality and is violent.

[1] In fact, our discussion regarding *kevod haberiyyot* and filing for monetary awards for *tsa'ar and boshet* equally applies in a case of an abusive wife.

TRADITION 45:1 / © 2012
Rabbinical Council of America

In fact, the wife's friends are aware of the husband's abusive relationship with his wife. Fearful for her life, she abandons the marital home and seeks *mezonot*, i.e. spousal support, compensation for lodging expenses and monetary damages for physical and emotional abuse. The couple decides to have their matters resolved in beit din. During the proceedings, health care professionals attest to the husband's proclivity to physical and emotional abuse.

Kevod ha-beriyyot (the dignity of human beings) ought to be one of the governing halakhic norms in our social relations.[2] Thus, a husband has a duty to respect his wife as a member of the human race. Additionally, as a husband it is incumbent upon him to respect her more than he respects himself.[3] Whereas various halakhic guidelines have been established relating to the duty of *kevod ha-beriyyot*, there is a paucity of sources detailing practically how to demonstrate in positive terms one's respect for his wife. Clearly, spousal respect requires intimate and individual answers that emerge from the singularity of persons and their relationships to each other, as well as their fused existence. It seems that halakha has left it up to the husband to determine how to translate into practical terms respect for his spouse.

On the other hand, there are specific acts of dishonor, of demeaning a wife's persona, such as by threatening to assault her or through actual battery which entails a diminution of her honor as a person.[4] Consequently, just as *habbala* (battery) involves transgressing a negative Torah commandment, either upon raising one's hand as if to strike, threatening to assault or actually hitting a fellow Jew,[5] similarly, spousal battery is a violation of *habbala*[6] and is subject to criminal sanctions.[7] In short,

[2] *Berakhot* 19b; *Shabbat* 94b; *Bava Kamma* 79b; *Menahot* 37b-38a. *Talmud Yerushalmi, Berakhot* 6b; *Kilayim* 32a. For many of these sources in our presentation, see Eliav Schochetman, "Violence against Women as Grounds for Divorce" [in Hebrew], ed. Aviad Hacohen, *Jubilee Volume in Honor of Menachem Elon* (forthcoming).

[3] *Shabbat* 59b; *Bava Metsia* 59a; *Yevamot* 62b; *Nedarim* 51a; *Hullin* 84b; *Shulhan Arukh Hoshen Mishpat* 228:3.

[4] *Responsa Maharam of Rothenburg*, Cremona Edition, no. 291; *Teshuvot ha-Rashba ha-Meyuhasot la-Ramban,* no.102; *Responsa Binyamin Ze'ev* no. 88.

[5] Devarim 25:3; *Rambam, Sefer ha-Mitsvot,* negative commandment 300; *Shulhan Arukh, Hoshen Mishpat* 420:1.

[6] *Shulhan Arukh, Even ha-Ezer* 154:3, *Rema,* ad. loc. Moreover, the batterer is invalid to be a witness in a beit din proceeding. See *Shulhan Arukh, Hoshen Mishpat* 34:4; *Responsa Mahari Weil* nos. 28 and 87; *Responsa Mabit*, Vol 1, no. 291; *Responsa Maharit*, Vol. 2, *Even ha-Ezer,* no. 43.

[7] *Beit Yosef, Tur Even ha-Ezer* 154; *Darkhei Moshe, Even ha-Ezer* 154:20.

whereas halakha has given latitude for a husband to determine how to translate his duty of spousal respect into practical behavior, nonetheless, in situations of violating her persona by means of assault, halakha sets out guidelines for how to address such behavior.

The seriousness of the *issur* of battery expresses itself in a husband's liability for injuring his wife while engaging in *onah* (conjugal relations).[8] The duty of a husband to engage in *onah* is *mi-dioraita*.[9] Lest one argue that engagement in a mitsva exempts one from responsibility from injury caused during its performance, halakha states otherwise.[10] Hence, Hazon Ish contends that engagement in the mitsva of onah does not serve as a defense.[11] Even if the husband unintentionally injured his wife due to losing self- control, i.e. *ones*, nevertheless, regarding any assault against another person, *adam muad le-olam,* a person is always deemed forewarned.[12] Consequently, it is no surprise that numerous posekim argue that it is the husband's responsibility to foresee the possibility of potential injury and therefore, if injury nevertheless transpired, he is negligent.[13] Similarly, a husband who argues that he lost self-control and therefore assaulted his wife will be equally responsible. As R. Shlomo Luria notes, if a husband is liable for any injury caused to his spouse during *onah*, *a fortiori*, should he become angry and assault his wife at any other time, he is liable.[14] A husband must control his desires and not injure his wife under any circumstances. Moreover, neither the establishment of marriage nor a mutual agreement between spouses to sanction a husband's assault of his wife even for her enjoyment may serve as grounds for a husband's exemption from liability for any ensuing damage.[15]Any agreement between two individuals to be a subject of battery is prohibited.[16]

Given that a husband is responsible for the injury he causes his wife, how would a beit din assess the damages? At first glance, there are seemingly

[8] *Shulhan Arukh, Even ha-Ezer* 63 (end); *Shulhan Arukh, Hoshen Mishpat* 421:12.

[9] Shemot 21:10; *Tur*, *Even ha-Ezer* 69; *Shulhan Arukh*, *Even ha-Ezer* 69:6.

[10] *Talmud Yerushalmi, Bava Kamma* 6:13; *Shulhan Arukh, Yoreh De'ah* 340, *Hoshen Mishpat* 418:12; *Responsa Havvot Yair*, no. 207; *Responsa Be'er Sarim*, Vol. 1, no. 10. For exceptions to the rule, see *Rambam*, *Hilkhot Hovel u-Mazzik* 6:8; *Shulhan Arukh, Hoshen Mishpat* 359:4.

[11] *Hazon Ish, Bava Kamma* 11:21.

[12] *Shulhan Arukh, Hoshen Mishpat* 378:1; Hazon Ish, supra n. 11. Cf. *Tosafot, Bava Kamma 27a s.v. u-Shemuel amar*; *Tosafot Bava Metsia* 42a, *s.v. amar Shemuel.*

[13] *Piskei ha-Rosh, Bava Kamma* 2:10.

[14] *Yam Shel Shlomo, Bava Kamma* 3:21.

[15] *Revid ha-Zahav* 42:3.

[16] *Bava Kamma* 93a; *Teshuvot ha-Rosh* Kelal 68:10; *Shulhan Arukh, Hoshen Mishpat* 421:12.

no grounds for awarding monetary damages to a victim of abuse. As we know, there are five types of payment which are to be made in case of assault: permanent injury *(nezek*), physiological pain *(tsa'ar*), medical expenses (*rippui*), loss of earnings *(shevet*) and shame (*boshet*).[17] Following in the footsteps of Rambam,[18] Shulhan Arukh rules that today we can only advance a claim for medical expenses and loss of economic earnings.[19] However, Rema disagrees and argues that the practice is that even such types of payments cannot be collected.[20] In short, all five types of damages are not collectible today in a beit din. In the absence of the five payments, pursuant to numerous Responsa of Geonim, Shulhan Arukh and Rema rule that the parties themselves or a third party such as a beit din ought to attempt to mediate the matter with the goal of appeasing the victim by offering appropriate compensation for the injury inflicted upon him.[21] Should mediation fail, according to Rambam, if a husband assaults his wife, it is incumbent upon beit din to take a portion of the husband's assets and purchase real estate (*karka*) and transfer this asset to his wife. All profits from the acquisition accrue to his wife.[22]

Should the couple be unable to settle the matter between themselves, the husband and wife may submit to a beit din to address the wife's claim for monetary claims relating to spousal abuse. The couple would sign an arbitration agreement (*shtar borerut*) accompanied by executing a *kinyan* (i.e. a symbolic act of undertaking this duty) which empowers the panel to halakhically[23] and legally[24] issue a decision. Optimally, the *shtar* should specifically authorize the panel to resolve claims relating to personal injury and thus would allow the beit din to issue an award of any of the aforementioned payments, should the circumstances dictate such relief. The significance of this arrangement is that, though, as we pointed out, normative halakha precludes a panel from addressing such matters,

[17] *Mishna Bava Kamma* 8:1; *Shulhan Arukh, Hoshen Mishpat* 420:3.

[18] *Hilkhot Sanhedrin* 5:10

[19] *Shulhan Arukh, Hoshen Mishpat* 1:2.

[20] *Rema, Hoshen Mishpat* 1:2. Cf. *Shakh, Hoshen Mishpat* 1:7.

[21] *Tur, Hoshen Mishpat* 1:11; *Shulhan Arukh, Hoshen Mishpat* 1:5; *Rema, Shulhan Arukh, Hoshen Mishpat* 420:38.

[22] *Rambam, Hilkhot Hovel u-Mazzik* 4:17; *Shulhan Arukh*, *Even ha-Ezer* 154:1. Others argue, pursuant to *Tosefta Bava Kamma* 9:14, that the wife retains title; however, the profits (*perot*) belong to the husband. See *Ra'avad*, ad. locum; *Sema, Asin* 70; *Hiddushei ha-Rashba, Ketubbot* 65b; *Hiddushei ha-Ritva, Ketubbot* 66a.

[23] *Rema, Shulhan Arukh, Hoshen Mishpat* 12:7; *Sma, Hoshen Mishpat* 12:18.

[24] Assuming the decision complies with the rules of civil arbitration procedure, it would be legally enforceable in a competent civil jurisdiction in the United States; see Uniform Arbitration Act, sec. 1.

nevertheless, should the parties obligate themselves to accept a beit din's decision regarding this matter, such a *shtar* is valid. In other words, the authority to issue a decision is grounded in the parties' willingness to fulfill their respective obligations, no different than complying with a contractual agreement rather than based upon the judicial authority of a beit din to render a decision.[25]

Nevertheless, even in the absence of a provision in the *shtar* which allows the panel to render a decision in matters relating to personal injury, a panel may attempt to appease the victim by offering him appropriate compensation for the injury the batterer caused. [26]

Alternatively, minimally, the signing of the *shtar borerut* will legally empower a beit din to address this *nezikin* (tort) claim within the context of a divorce proceeding, which addresses all the end-of-marriage issues, or a non-divorce proceeding, which is limited to resolving this claim. However, given that halakha does not authorize *dayyanim* in contemporary times to award any of the five *nezikin* payments, on what grounds can a panel issue any potential award? Moreover, what type of *nezikin* awards can be rendered by a beit din today? Prior to the mid-fourth century CE, arbiters who had received *semikha* (rabbinic ordination) were authorized to resolve monetary matters including the assessment of the five aforementioned payments as a form of a compensation for both injurious and non-injurious physical abuse. After the lapse of the ordination process in the fourth century CE, non-ordained arbiters lack authorization to impose these five payments.[27]

Nevertheless, *dayyanim* today[28] are empowered to mete out monetary damages based upon "*beit din makkin ve-oneshin she-lo min ha-din*,"[29] (a court may render punishment not prescribed by the Torah, *le-migdar milta*[30] (for protective measures) and *ha-sha'a tzerikha le-kakh*[31] (the time

[25] Yaakov Eli'azrov, "A Claim for Damages for Bodily Torts [in Hebrew]," 14 *Shurat ha-Din* 387, 388 (5768). Cf. *Sha'ar ha-Mishpat, Hoshen Mishpat* 1:1; 2:1 who casts doubt upon this conclusion.

[26] *Responsa ha-Radvaz*, Vol. 4, no.1291; *Responsa ha-Mabit,* Vol. 1, no.93; Hayyim Rabinowitz, "A Claim for Damages for Bodily Torts [in Hebrew]," 14 *Shurat ha-Din* 382,383 (5768). See also File no. 9326-35-1, The Great Rabbinical Regional Beit Din, August 25, 2008, *Ploni v. Almoni.*

[27] See supra n.18-20.

[28] And for that matter such empowerment extends to all *dayyanim* who functioned in the earlier periods of Jewish history. See *Yevamot* 90b; *Sanhedrin* 46a.

[29] Supra n. 28.

[30] *Yevamot* 90a.

[31] Supra n. 28.

requires it). But under what circumstances can a *dayyan* exercise such authority? Three different views emerge from the works of Aharonim:[32]

> "Falk,[33] in his commentary on Karo, attempts to delineate express guidelines. He states that if all the people are not dissolute as to certain matters, an individual may not be punished under this authority unless he is a habitual wrongdoer… Shakh[34] views this analysis as an appropriate restatement of the principles as derived from the Talmud and as codified by the Tur. Falk's approach is cited with approval by…Netivot,[35] and Beer Hagola[36]…
>
> Shaar Ephraim[37]… held that only if many people in the community are engaging in this type of conduct may an individual be punished.
>
> This opinion… is in conflict with the holding of Falk and Maharam.[38] For Falk holds that even where the majority of the people are not dissolute, if the individual is dissolute he may be punished by the court invoking its… power. And Maharam holds that even if the community is not dissolute or the individual is not dissolute, if a court feels that failure to punish this person may cause other people to feel that they might act in a similar fashion with impunity, the court may impose… sanctions.

In short, pursuant to the views of R. Falk, Shakh, Netivot ha-Mishpat, Be'er ha-Gola and Maharam, if the individual is a habitual wrongdoer with regard to a certain practice or has frequently committed a transgression in public,[39] an emergency situation exists and we cannot allow the individual to continue acting improperly without imposing punishment. In such circumstances, a beit din may mete out punishment as a deterrent, to forestall the danger that others will emulate the transgressor's conduct if it goes unpunished. The imposition of such damages may be handed down by lay arbiters (*beit din shel hedyotot*).[40]

[32] E. Quint and N. Hecht, *Jewish Jurisprudence: Its Sources and Modern Applications* (Chur,Switzerland:1980), 174-175.
[33] *Sma, Shulhan Arukh, Hoshen Mishpat* 2:2.
[34] *Shakh, Shulhan Arukh, Hoshen Mishpat* 2:2.
[35] *Netivot ha-Mishpat,* 2:1.
[36] *Be'er ha-Gola, Shulhan Arukh, Hoshen Mishpat* 2.
[37] *Responsa Sha'ar Ephraim,* no. 72.
[38] *Responsa Maharam Lublin*, no. 138.
[39] *Responsa Shevut Ya'akov*, Vol. 1, no. 136.
[40] *Responsa Tashbetz,* Vol. 1, no. 161; *Responsa Rashba* , Vol. 3, nos. 385,393; *Responsa Rivash*, no. 265; *Responsa Ran* no. 41;*Responsa Rashbash*, no. 211;*Rema, Hoshen Mishpat* 2:1; *Levush Ir Shushan, Hoshen Mishpat* 2; *Sma, Hoshen Mishpat* 2:9;

Given that a contemporary beit din is empowered to impose such measures, it is our opinion that spousal physical abuse ought to be compensated in situations of repeated abuse lest others emulate the batterer's ways. Compensatory damages represent the financial equivalent of the loss or harm suffered by the victim, to restore the injured victim to the position he was in prior to the *nezek*.[41]

Moreover, feelings of embarrassment and shame which are engendered by acts of spousal abuse may serve as grounds for a monetary award. Compensation for *boshet* (shame) engendered by bodily injury is recognized[42] and the payment may vary from victim to victim, depending upon his social status.[43] The amount of *boshet* incurred by a person who has achieved a degree of communal approbation and/or honor will be greater than the shame experienced by "a commoner." Additionally, a beit din should factor into the calculation the circumstances surrounding the shame and the intensity of the humiliation.[44] For example, the assessment should take into account if the bodily injury is exposed and therefore the humiliation is experienced after the time of injury or if people remind him of the battery (without ensuing injury), and he experiences humiliation.[45] Today, though *min ha-din,* pursuant to black-letter law *dayyanim* are not empowered to assess *boshet's* claims due to physical abuse[46], nonetheless, a contemporary beit din is empowered *le-migdar milta* to impose such measures. Hence, spousal physical abuse ought to be compensated in situations of repeated abuse lest others emulate the batterer's ways.[47] Such *le-migdar milta* awards are not unusual and in the past have been issued in cases of character defamation and in situations of broken

Netivot ha-Mishpat, Hoshen Mishpat 2:5; *Arukh ha-Shulhan*, *Hoshen Mishpat* 2:2; *Perisha, Tur Hoshen Mishpat* 2. For additional sources, see this writer's, "Toward Recovery for Infliction of Emotional Distress: Toward Relief for the *Agunah*" (hereafter: "Emotional Distress"), 18 *Jewish Law Annual* 213, 237-238 (2009) accessible at http://www.yutorah.org/lectures/lecture.cfm/744980/Rabbi_Dr_Ronnie_Warburg/Toward_Recovery_for_Spousal_Emotional_Stress:_Proposed_Relief_for_the_Modern_Day_Agunah, at 222. Cf. others who require that the authority must be the greatest scholar of the generation. See *Piskei ha-Rosh, Bava Kamma* 9:5; *Bah, Tur Hoshen Mishpat* 2; *Shulhan Arukh, Hoshen Mishpat* 2; *Yam Shel Shlomo, Bava Kamma* 9:7.

[41] *Shulhan Arukh,* Hoshen Mishpat 420:38; Rema, ad. locum.

[42] *Bava Kamma* 91a, *Shulhan Arukh, Hoshen Mishpat* 420:3.

[43] *Shulhan Arukh, Hoshen Mishpat* 420:24.

[44] *Sma, Shulhan Arukh Hoshen Mishpat* 425:25.

[45] *Shulhan Arukh, Hoshen Mishpat* 420:6; *Teshuvot ha-Rosh* Kelal 101:2.

[46] See supra text accompanying note 19-20.

[47] See supra text accompanying notes 28-40.

engagements.[48] In 1965, invoking their power of *le-migdar milta*, the members of the Supreme Rabbinical Court in Yerushalayim, Rabbis Abudi, Elyashiv and Goldschmidt marshaled numerous responsa to support their position that damages for *boshet* can be awarded in the case of a broken engagement.[49] Pursuant to the standards outlined above, the assessed damages were based upon the discretion of the *dayyanim*.[50]

Similarly, a claim for *tsa'ar* (emotional stress), even feelings of emotional pain which transpire during the healing process, will be awarded by a beit din.[51] Halakha awards compensation for *tsa'ar* related to cases involving or not involving the loss of a limb, provided that the pain is associated with a blow.[52] Pursuant to Shulhan Arukh, regardless of whether we are dealing with pain associated with an injury or not, the award is based upon an assessment of how much money would expend in order to prevent undergoing such *tsa'ar*.[53] In the absence of physical contact, *le-migdar milta* awards for *tsa'ar* may be rendered.

On the other hand, seemingly, in the absence of a physical contact, a beit din cannot hold an offender responsible for a person who feels emotionally abused, i.e. *boshet devarim*, and thus demands relief. According to the strict law (*dinei nezikin min ha-din*), responsibility for *boshet* requires that the victim has been physically contacted by the batterer.[54] Nonetheless, a beit din today is empowered *le-migdar milta* to apply the identical standards employed to assess shame engendered by physical violence to situations of *boshet devarim*, provided that we are dealing with frequent instances of abuse and want to deter others from emulating a batterer's behavior.[55] In fact, throughout different periods of Jewish history dating back to medieval times and until to the contemporary period, arbiters have meted out compensatory awards based upon *boshet* and *tsa'ar* claims.[56]

[48] See infra note 56.

[49] *Piskei Din Rabbaniyyim* (hereafter *PDR*) *PDR* 5:322,327.

[50] *Responsa Zera Emet, Yoreh De'ah*, no. 102; *Responsa Rav Pe'alim,* Vol. 2, *Even ha-Ezer*, no. 3; *PDR* 3:151, 5:322,328.

[51] *Tur Hoshen Mishpat* 420:17. Cf. *Piskei ha-Rosh, Bava Metsia* 6:9.

[52] *Mishnah Bava Kamma* 8:1.

[53] *Shulhan Arukh, Hoshen Mishpat* 420:16, *Rema*, ad. locum. Cf. *Rambam, Hilkhot Hovel u-Mazik* 2:6,9.

[54] Supra at note 42.

[55] *Shulhan Arukh, Hoshen Mishpat* 420: 38-39.

[56] *Responsa ha-Rosh,* Kelal 101: 1,8-9; *Responsa ha-Rashba ha-Meyuhasot la-Ramban*, 240; *Responsa Tashbetz*, Vol. 3, no. 204; *Responsa ha-Radvaz*, Vol. 3, no.480; *Shakh, Hoshen Mishpat* 207:24, 333:49; *Responsa Noda be-Yehuda, Mahadura Tinyana Yoreh De'ah*, no. 146; *Responsa Hatam Sofer*, *Even ha-Ezer*, no. 134,*Hoshen Mishpat*, no. 181; *Responsa Avodat ha-Gershuni,* no. 74; *Responsa Zera Emet*, supra n. 50; *Rav Pe'alim*, supra n. 50; *PDR*, supra n. 50.

Finally, punitive damages which may compensate above and beyond any damage incurred are meant to provide an incentive against repeating the behavior that caused the plaintiff's injury.[57] As such, punitive damages differ from compensatory damages which focus upon "making the victim whole." Here again, *dayyanim* have meted out punitive damages in cases of physical abuse of a wife.[58]

Regardless of whether one files a claim for emotional distress due to physical abuse or emotional abuse, marital relations are complex, emotive and subjective and therefore difficult to subject to objective scrutiny. Marriages are molded by mutual understandings and interchanges which can evoke different judgments whether a particular type of conduct should be labeled as emotional abuse. Nevertheless, given that in the past halakha has awarded recovery for suits dealing with broken engagements and defamation of character, we see no reason to exempt spousal relations from the ambit of halakhic scrutiny and potential monetary award. Determining what conduct is abusive is a very difficult inquiry in any context, yet this is a beit din's mandate.[59]

To award compensatory and punitive damages, the victim of abuse must demonstrate that the act(s) actually transpired. In the absence of a criminal conviction by a court,[60] a victim's allegation that the act transpired

[57] See supra text accompanying notes 28-41.

[58] *Otsar ha-Geonim*, *Ketubot, Responsa,* no. 477; *Responsa Havvot Yair*, no. 62.

[59] See "Emotional Distress supra n. 40. For a secular legal perspective, see Ira Ellman & Stephen Sugarman, "Spousal Emotional Abuse as a Tort?" 55 *Maryland Law Review* 1268 (1996).

[60] The assumption is that we can verify that the criminal judge did not accept bribes. Given that halakha will refrain from accepting a legal document prepared by a civil judge who accepts bribes, *a fortiori,* we would refrain from accepting a criminal verdict issued by such a judge who accepted bribes. Though *Rema, Hoshen Mishpat* 68:1 argues that we accept their documents unless we discover that the judge accepted a bribe, numerous authorities contend that we must perform our due diligence in ascertaining the judge's credibility. See *Shulhan Arukh, Hoshen Mishpat* 68:1; *Responsa Maharlbah* no. 127; *Responsa ha-Radvaz*, Vol. 1, no. 541;*Responsa Maharashdam, Hoshen Mishpat* no. 350.

Consequently, upon discovery, should the judge's credibility be confirmed, a beit din may refrain from investigating whether in fact the alleged abuse actually transpired. However, should the judge's track record evince a different conclusion, it would be incumbent upon beit din to independently assess the veracity of the allegation of abuse.

Others argue either based upon *dina de-malchuta dina* (the law of the kingship is law) or the assumption that a professional will proffer an informed and credible opinion rather than threaten his livelihood by offering bad advice, we would accept the verdict handed down by a judge without any further inquiry. See *Mordekhai, Gittin 324; Tumim, Shulhan Arukh Hoshen Mishpat* 68:2; *Responsa Beit Yosef, Ketubot 10*; *Responsa Hatam Sofer, Even ha-Ezer* no. 43; *Responsa Be'er Yitzchak, Even ha-Ezer, no. 5(5*).

is insufficient to establish a batterer's misconduct. Admission of guilt by the husband serves as adequate proof in order to grant an award.[61] Moreover, even if the husband admits the occurrence, if he claims that the wife instigated we do not necessarily believe the husband's allegation that his wife provoked the assault.[62] For the purpose of awarding damages, in the absence of a batterer's admission, optimally there ought to be two male witnesses who can attest to the occurrence of the event.[63] In the absence of two male witnesses, ineligible witnesses such as women may testify in matters dealing with assaults or insults,[64] and the testimony of the wife may be reliable if the husband's conduct toward his wife is known generally to be violent.[65] Consequently, in situations where an invalid witness such as a woman or minor is only present during commonplace as well as infrequent *nezikin* (torts),[66] their testimony is admissible in a beit din even if their testimony is contradicted by the batterer.[67] To put it differently, though a woman's

[61] *PDR* 15; 119,122; *Responsa Mishpetei Shemuel* (Werner), no. 23; File No. 032313884-21-1, archived by *ha-Din ve-Hadayan*, 8, page 5.

[62] *Rema Even ha-Ezer* 154:3.

[63] Devarim 19:15; Tu*r, Hoshen Mishpat* 408; *Shulhan Arukh, Hoshen Mishpat* 408:1.

[64] *Responsa Maharam Mints*, no.. 6; *Darkhei Moshe, Tur, Hoshen Mishpat* 35; *Rema, Hoshen Mishpat* 35:14; *Tumim, Hoshen Mishpat* 35:9; *Responsa Noda be-Yehuda, Mahadura Tinyana, Hoshen Mishpat* no. 58; *PDR* 3:235, 244-245; *Responsa Mishneh Halakhot*, Vol. 5, no. 269; File No. 4564-24-1, Netanya Rabbinical Court, Shevat 8 5766. Cf. *Yam Shel Shlomo, Bava Kamma* 1:41; *PDR* 20:126, 21:240.

In Sephardic countries, ineligible witnesses would be unable to testify in *nezikin* [tort] cases. See *Responsa Hikkekei Lev, Shulhan Arukh, Yoreh De'ah*, no.47.

[65] *Beit Yosef* [in the name of *Ramban*], *Tur Even ha-Ezer* 74.

[66] R. Zalman Nechemiah Goldberg, *Mishpat Arukh* 35:14. n. 20.

[67] Even though women are invalid witnesses [see *Shulhan Arukh, Hoshen Mishpat* 35:14], nevertheless, should the *dayyan* feel that her words are trustworthy, he may rely upon them. See *Ketubbot* 85a; *Responsa Hatam Sofer, Even ha-Ezer*, Vol. 1, no. 94. In other words, a distinction is being made between *edut* (testimony) and *ne'emanut* (presumption of credibility). Nevertheless, many disagree and argue that the establishment of the truth can only be ascertained upon the testimony of valid witnesses. Hence, women are ineligible witnesses. See *Tur, Hoshen Mishpat* 15:4 and *Shulhan Arukh, Hoshen Mishpat*, 15:5.

However, during the time of Rabbeinu Tam, halakhic legislation was introduced that provided that in situations of assault and battery where males were absent, the testimony of two women would be accepted as trustworthy. See *Responsa Maharik*, Shoresh 180; *Responsa Terumat ha-Deshen*, no. 353; *Darkhei Moshe, Hoshen Mishpat* 35; *Rema, Hoshen Mishpat* 35:14; *Sma, Hoshen Mishpat* 35:30; *Bi'ur ha-Gra, Hoshen Mishpat* 35:28; *Tumim, Hoshen Mishpat* 35:25; *Netivot ha-Mishpat* 35: 19; *Arukh ha-Shulhan, Hoshen Mishpat* 408:2. Cf. others who argue that such testimony is acceptable only if the husband does not challenge its veracity. See *Pithei Teshuva, Hoshen Mishpat*, 35:11 in the name of *Kenesset Yehezkel*; *PDR* 20:126,134-135;21:240. Others argue in principle to reject this rabbinic legislation. See *Teshuvot ha-Rashba*, Vol. 2, no. 182; *Yam Shel Shlomo* supra

testimony is not viewed as *edut* (testimony) which a *dayyan* is obliged to accept and follow, nevertheless, a *dayyan* may recognize that her words possess veracity and rely upon her testimony as circumstantial evidence based upon the halakhic rule of " *kim li be-gaveih*" (judicial certitude).[68] In fact, in a recent beit din ruling, proof of a husband's assaults and threats was ascertained by the submission of testimony by invalid witnesses.[69]

However, there are authorities who reject a woman's testimony in matters of battery.[70] Nevertheless, there is another avenue open which may serve as a basis for validating a *nezikin* claim. In dealing with a wife who argues that her husband assaults her, and the husband denies the claim, Rabbi Issac Herzog writes,[71]

> …it depends upon the discernment of the beit din, and I remember that already Rashba writes…that if we follow formal law and comply with the laws of testimony and mandate two witnesses, we will never be able to render a din torah (decision), and we are familiar with what Rambam wrote that essentially everything is dependent upon the perception of the arbiters…and the primary concern is that the beit din…shall hear the parties' arguments…and if upon examination we find her claim to be truthful…we may conclude that the husband is a batterer.

Adopting this approach, even invalid witnesses are acceptable if we have reason to believe that such an event as they are describing has transpired.[72] And, in fact, a wife's friends' awareness of the husband's abusive

---

n. 64; *Mishkenot ha-Ro'im*, Ma'arekhet Ot Ayin. Whether the testimony of a relative or an enemy is admissible is subject to debate and see sources cited above.

Others argue that the testimony is not accepted in order to extract money. See *Responsa Rash ha-Levi*, no. 38. Cf. *Maharik*, op. cit. and *Terumat ha-Deshen,* op. cit.

[68] *Ketubbot* 85a; *Rambam, Hilkhot Sanhedrin* 24:1-2; *Shulhan Arukh, Hoshen Mishpat* 15:5.

[69] File no. 022828867-21-1, July 11, 2000, Netanya Regional Rabbinical Court archived by *ha-Din ve-haDayan*, no. 2, 3.

[70] *Beit Yosef, Tur Hoshen Mishpat* 35;*Yam Shel Shlomo* ,supra n. 64*; Mishkenot ha-Ro'im*, letter ayin, section 65; *Hikkekei Lev*, supra n.64; *Tur, Hoshen Mishpat* 35; *Shulhan Arukh*, *Hoshen Mishpat* 35:14.

[71] Issac Herzog, "In the Matter of a *Get* Given under Duress [in Hebrew]," 1 *Ha-Darom* 3, 25 (5717).

[72] For additional posekim who would validate testimony from invalid witnesses when there is *"raglayim la-davar,"* (where the matter appears to be well-grounded), see *Otsar ha-Posekim*, *Even ha-Ezer*, Vol. 3, 22-23. Moreover, in situations of le-*migdar milta* such as abuse, the testimony of incompetent and/or ineligible witnesses is accepted. See *Teshuvot ha-Rashba* , Vol.3, no. 393, Vol 4, no.311; *Shulhan Aruch, Hoshen Mishpat* 2; *Responsa Beth Shlomo Hoshen Mishpat, no.* 2

relationship and the existence of health care findings lend credence to the maid's testimony.[73] Circumstantial evidence such as a health care professional's opinion[74] and polygraph findings which evaluate the psyche of the parties involved and thus attempt to determine the veracity of the parties' claims regarding an alleged abuse have been admitted in past cases.[75] Given that health care experts are concerned about their reputation and need to be compensated for their counsel, there is an assumption that they will submit credible findings.[76] Just as we accept a physician's findings that an expectant woman is in a life-threatening situation which justifies abortion or a physician's findings that a sick individual is in danger and therefore one can violate Shabbat for him or allow him to eat on Yom Kippur, analogously, we accept a health care professional's findings, including opinions of gentiles.[77] Moreover, pursuant to Rema's position,[78] psychologists and social workers who interview both the husband and the wife can assist in the fact-finding process regarding the stability of the marriage and the alleged incidents of abuse.[79] Finally, a husband's intimidating and demeaning behavior towards his neighbors and/or a husband's disruptive conduct vis-à-vis his wife during a beit din proceeding will lend credence to a wife's allegations that she is a victim of abuse.[80] In short, assuming that the allegation of physical violence can be proven either through the batterer's admission, two male witnesses, or through circumstantial evidence such as a health care professional's findings or a

[73] *Erekh Shai, Hoshen Mishpat* 421:6; Beit Din Decision Neve Dekalim-Gush Katif, Sivan 2 5762.

[74] There is an assumption that a professional will proffer an informed and credible opinion rather than threaten his livelihood by offering bad advice. See *Shulhan Arukh, Yoreh De'ah 114:5; Shakh, Yoreh De'ah* 155:3; *Responsa Hakham Tsevi*, no. 39; *Responsa Ein Yitshak, Orah Hayyim*, no. 17.

[75] *PDR* 11:328; File no. 4564-24-1, Netanya Rabbinical Court, 8 of Shevat, 5767. For differing opinions regarding the admissibility of polygraph findings in a beit din, see Eliav Schochetman, "The Use of a Polygraph in a Rabbinical Court, [in Hebrew]," 7 *Tehumin* 381 (5747); *PDR* 20:126.

[76] *PDR* 1: 33, 34; 235, 236

[77] *Shulhan Arukh*, *Hoshen Mishpat* 425:2; *Orah Hayyim* 328:31, 618:3. Clearly, there are distinctions which make each instance unique, but, nonetheless, the common denominator is that a professional opinion will be trusted and relied upon.

For the reliability of a gentile's professional opinion, see *Mordekhai, Gittin* 1:324; *Teshuvot ha-Rashba* Vol. 3:, no. 66; *Teshuvot ha-Rivash,* no. 493; *Responsa Be'er Yitshak*, *Even ha-Ezer* no. 5, anaf 4; Z. N. Goldberg, 4 *Kol Tsevi* 14, 28 (5762).

[78] *Rema, Even ha-Ezer* 74:10,154:3.

[79] File No. 4564-24-1, supra n. 75.

[80] *Teshuvot ha-Rashba ha-Meyuhasot le-Ramban*,no. 198; *PDR* 11:327, 12:92, 15:119.

husband's irate behavior interacting with third parties and with his wife in beit din proceedings,[81] there are grounds for a beit din awarding monetary relief to the abused wife. In our scenario, the wife's and maid's testimony that the assault transpired, third party testimony which attests to the violent character of the husband, and the testimony of a doctor regarding the husband's proclivity to battery are sufficient proof for the wife to argue that the events transpired.

In short, in the absence of two male witnesses, there are two different evidentiary standards which allow a *dayyan* to determine whether in fact the alleged abuse actually transpired. One relies upon the testimony of an invalid witness such as a woman and the other focuses upon a constellation of factors such as invalid witnesses, professional findings pertaining to the batterer and his known behavior in social interaction. Regardless of which standard is being invoked, the common denominator is well-expressed in the words of Rashba who states,[82]

> Every beit din according to the local matter and time in investigating the matter, if there were witnesses – man or even woman… and according to the perception of the beit din, his wisdom and sharpness will recognize the matter based on the facts, and they should search and undertake numerous enquires and this is hinted in what has been said, 'judge a truthful din to its veracity'..

Or Hatam Sofer, who observes, [83]

> It seems that the Torah did not require [two witnesses] except when the beit din did not know without the two witnesses. But a matter which is clear to them without having to trust witnesses is equivalent as if they observed it on their own. And just like if they saw the same matter the halakha would be handed down bereft of *edut*… similarly ,if at every stage the beit din knows clearly the matter without the trustworthiness of a witness, they are empowered to judge without testimony and it is not subsumed under the category of 'upon two witnesses'…

Regarding cases of spousal abuse, a recent beit din summarizes our conclusion,[84]

[81] File No. 9465-21-1, *Pelonit v. Peloni*, Netanya Regional Beit Din, February 14, 2007.
[82] *Teshuvot ha-Rashba*,Vol. 1, no. 1146.
[83] *Hatam Sofer,* supran. 67.
[84] File No. 4564-24-1, supra n. 75.

> Regarding violence between a couple that occurs in their home, it is almost impossible to bring valid witnesses. Therefore, it is incumbent upon beit din to rely upon ineligible witnesses, circumstantial evidence or documentation.

Upon determination that the incident of spousal abuse transpired, the beit din will determine whether a monetary award for *boshet/tsa'ar* is proper. Should a beit din determine that the claim is with merit, the wife would receive monetary relief from her husband.

Finally, if, during the marriage, the husband refuses to desist from physical and sexual violence, the wife is entitled to leave the marital home.[85] Lest one argue that halakha recognizes only two options (marriage or divorce) and rejects the possibility of marital separation,[86] Rema teaches us,[87]

> We neither coerce him to divorce her nor live with him.

On the contrary, the purpose of separation is to ease the tensions between the spouses and give each spouse time and breathing room to hopefully resolve their differences.[88] Consequently, *de facto* separation is legitimate.[89] The grounds for such separation are based upon the Talmudic logic of "a man cannot live with a serpent in the same basket" and "the purpose of our being is for life not for pain."[90]

Whether a wife who abandons the home is entitled to continuing support is dependent upon the reason for her departure from the marital home. Should she vacate the home due to the fact that the husband is delinquent in his marital duties such as his duty of spousal support, the wife would not be entitled to such remuneration. On the other hand, if the wife separates due to being abused, as is the case in our situation, she is entitled to ongoing maintenance as well as reimbursement for lodging expenses.[91]

[85] *Responsa Yaskil Avdi*, Vol. 6 *Even ha-Ezer* no. 45; *PDR* 11:327;

[86] For the halakhic recognition of marital separation, see *Teshuvot ha-Rosh*, Kelal 43:14; *Teshuvot ha-Rashba*, Vol. 4, no. 113; *Responsa Ta'alumot Lev*, Vol. 3, no. 20(4); *Yaskil Avdi*, ibid.

[87] *Even ha-Ezer* 77:3. See also *Rema, Even ha-Ezer* 117:11; *Shulhan Arukh* and *Rema*, *Even ha-Ezer* 70:12.

[88] See R. Hadayah's opinion found supra at note 85. Additionally, see *PDR* 1:77,78;3:299,319; *Responsa Tsits Eliezer*, Vol. 4, no. 21.

[89] For a precedent, see *Responsa Penei Moshe* Vol. 1, no. 55.

[90] *Ketubbot* 61a; 72a

[91] *Teshuvot ha-Rashba*, Vol. 7, no. 477; *Teshuvot ha-Rashba ha-Meyuhasot la-Ramban* no. 103; *Responsa Maharam of Rothenberg*, Berlin ed. no. 11;*Shulhan Arukh, Even ha-Ezer* 70:12; *Rema*, *Even ha-Ezer* 154:3; *Responsa Edut be-Ya'akov*, no. 36; *Responsa Maharit*, Vol. 1, no.113; *Responsa Vayomer Yitshak Even ha-Ezer*,

Procedurally speaking, all of these claims for spousal support and monetary relief for abuse along with the other end of marriage matters such as the matter of the *get*, parenting arrangements and division of marital assets are submitted to the beit din panel at the time of the hearing. Pursuant to the view of various decisors,[92] the overwhelming majority of the battei dins in the United States do not require a submission of a claim statement to the beit din and the opposing party prior to the hearing. However, there are a few battei din who endorse an opposing position[93] and mandate the submission of a claim statement as well as a defendant's reply prior to the hearing.

What is of crucial significance is the scope of the matters which are memorialized in the arbitration agreement signed by the parties which will fall within the scope of the beit din's jurisdiction. If the agreement is open-ended and states that "all differences and disputes relating to the end of marriage" are to be resolved, then all matters including spousal abuse will be addressed by the panel. If, on the other hand, a party, in this case the husband, insists that only certain matters be adjudicated by the panel, then if spousal abuse is not designated as a subject for beit din deliberation, then the alleged abusive wife should seek beit din and rabbinic counsel to deal with a husband's recalcitrance including, but not limited to receiving permission from the beit din's administrative staff or the beit din panel to have this claim resolved in civil court.[94]

---

no. 126; *Responsa Mor ve-Oholot Even ha-Ezer*, no. 10; *Responsa Penei Moshe*, supra n. 89; *Rabbi Abraham Kook, Responsa Divrei Yehezkiyyah*, *Even ha-Ezer*, 14,33; *PDR* 1:7,238;15:119, 11:327; *Responsa Tsits Eliezer* Vol. 4, no.21,18:58.

[92] *Shakh, Hoshen Mishpat* 11:1 (in the name of Be'er Sheva); *Responsa Shevut Ya'akov*, Vol. 1, no. 143.

[93] *Shakh, Hoshen Mishpat* 11:1; *Netivot ha-Mishpat* 11:1.Though these authorities mandate a submission of a claim statement only in response to a defendant's request, these battei din require the submission regardless of whether the defendant requests it or not.

Though pursuant to Shakh's posture there is no obligation upon the defendant to respond to the plaintiff's claim statement prior to the hearing, nevertheless, these battei din will mandate a defendant's written response to the plaintiff's allegations prior to the convening of the panel.

[94] Should the husband not agree to submit to a beit din's jurisdiction regarding his wife's claims of abuse, the wife should receive permission from a beit din to litigate spousal abuse and any other matters which the husband refuses to submit to beit din jurisdiction [except for the matter of the *get*] in civil court. See *Shulhan Arukh, Hoshen Mishpat* 26:2. For the recognition of a spousal abuse tort claim in American law, see "Emotional Distress," supra n. 59 at 257, n. 164.

Invariably, such claims of abuse may be submitted at the same time that a wife requests to be granted a divorce from her husband. Should the husband refuse to

In conclusion, addressing spousal abuse in eighteenth century Bulgaria, Rabbi Eliezer Papo writes,[95]

> It is proper for the leaders of the cities to impose sanctions upon violent individuals, in particular decadent people that hit their wives… Their breath should depart; those who treat the daughters of Israel as servants, trampling and assaulting them…and they have no shame in their actions and anyone who has the ability to impose sanctions ought to apply them…because a woman cannot live with a snake in the same place…

Historically, as we have shown, the beit din and/or rabbinic decisors have assumed this mission. As members of our self-respecting covenant faith community, we need to continue to bring such claims to our battei din and we need our *dayyanim* to offer monetary relief, if justified.

2.

In a hypothetical scenario, a grown Jewish man of 23 years of age appeared in a beit din proceeding to accuse a former teacher of repeatedly molesting him while attending yeshiva elementary school. "I remember him touching me," said the man, "He touched my private area." At age ten, he was raped repeatedly. He stayed quiet for thirteen years, stuffing the pain within himself. He got a job, got married, had kids and interacted with family and friends always with a smile on his face. But every step of the way, he carried with him the suffering of the ten year-old boy who was betrayed by his mentor. Eventually, the boy's pain became too much to bear and he demanded that a beit din direct the yeshiva to terminate his teacher's employment and advanced a *nezikin* claim against his teacher for causing him shame and pain. Upon hearing about the alleged abuse scandal and the convening of this beit din proceeding, two other Jewish male adults stepped forward and testified in beit din regarding their own experiences as alleged victims of abuse perpetrated by the same teacher while attending this yeshiva elementary school. Advocating verbal persuasion as the only vehicle for educating children, the teacher admitted

deliver a *get* and should a beit din render a monetary award and should the husband consent to grant a *get* provided that his wife waive her right to the award, such a deal will not pose any halakhic dilemma. See "Emotional Distress," supra n. 59 at 244-258 and this author's forthcoming monograph, *Rabbinic Authority: The Vision and the Reality* (2013).

[95] *Pele Yo'ets*, 1:5, 101.

during the proceeding, that he 'spared the rod' and refrained from touching and/or hitting his students.
Rambam states,[96]

> Anyone who assaults an honest (*kasher*) individual of Israel whether he is a minor or of majority age… in a disrespectful fashion (*derekh nitsayon*[97]) violates a negative commandment… even to raise one's hand against his neighbor; and one who lifts his hand, even though he has not hit him, is wicked.

Similar rulings were handed down by Shulhan Arukh and others.[98] Yet, under certain prescribed conditions, a teacher is permitted to hit a child for educational purposes.[99]

Based upon the teacher's admission, we are dealing with a case of alleged child abuse rather than an instance of a teacher touching his student for educational reasons. In the absence of a criminal conviction by a court,[100] the question is whether we can accept as *edut* (testimony) the information of alleged abuse provided by these three men in order to address certain monetary claims advanced by the victim?

A similar question was addressed by a *dayyan* in the mid-nineteenth century. In the year 1850, a teacher who was teaching in a town for a period of eight years was rumored to have engaged in homosexual liaisons with some of his students. A few of them who now had reached the age of thirteen spoke about his improper behavior. The teacher accepted upon himself "with swear and oath" that immediately after the close of the school year, he would move and seek employment elsewhere. His desire was to live and teach in Lvov. However, rumors of his alleged conduct spread to Lvov and a respected layman of Lvov requested R. Joseph

[96] *Rambam, Hilkhot Hovel u-Mazzik* 5:1-2

[97] Though this phrase means fighting in certain contexts in Tanakh, here it is understood to mean disrespect.

[98] *Shulhan Arukh, Hoshen Mishpat* 420:1; *Sefer ha-Hinnukh, Mitzva* 595; *Shulhan Arukh ha-Rav, Hilkhot Nizkei Guf ve-Nefesh*, 1.

[99] *Tosefta Bava Kamma* 9:11; *Shulhan Arukh, Hoshen Mishpat* 378:8; *Rema, Hoshen Mishpat* 378:9; this writer's "Corporal Punishment in School: A Study in the Interaction of Halakha and American Law with Social Morality," 37 *Tradition* 57 (Fall 2003) accessible at http://www.yutorah.org/lectures/lecture.cfm/744984/Rabbi_Dr_Ronnie_Warburg/Corporal_Punishment_in_School:_A_Study_in_the_Interaction_of_Contemporary_American_Law_with_Social_Morality.

Any halakhic dispensation to employ force within the context of a classroom is predicated upon the fact that secular law sanctions such behavior.

[100] See supra n. 60.

Shaul Nathansohn, who was the town's av beit din, to investigate and inquire into this matter.[101] Upon deliberation, R. Nathansohn received the testimony of two teenagers that alleged that this teacher had engaged in the aforementioned abusive behavior. The question posed to R. Nathansohn was whether the teacher ought to be disqualified from teaching.

R. Nathansohn's reply was that such a determination requires the testimony of two male witnesses. Though both witnesses were of majority age, nonetheless, given that their testimony related to incidents which transpired while they were minors, their present testimony is the testimony of minors.[102] Consequently, given that we are dealing with minors, generally speaking their testimony is invalid.[103] Nonetheless, invoking the Rema's view, their testimony was admissible and may be relied upon in cases involving battery where no male adults are present.[104] As such, upon reliance upon their testimony and for the children's welfare, R. Nathansohn precluded him from accepting a teaching position in Lvov.

Given that various decisors challenge the Rema's posture,[105] is there any other evidentiary basis for a teacher being dismissed or ineligible to teach children due to having been involved in alleged incidents of child abuse? In nineteenth century Izmir, Turkey, a rumor spread that a teacher had touched a student's private area. However, the incident could not be verified. Subsequently, another rumor spread that on Purim this teacher entered a home and molested a young boy in the same fashion. According to the rumor mill, this occurrence repeated itself in the same home on Pesach. In response to these rumors, the teacher argued that he never touched these boys. And, in fact, in his two visits to this home, alleged the teacher, there were numerous individuals in attendance; how is it possible that they didn't observe such conduct? The community was divided on whether to dismiss the teacher. Unable to corroborate that any of these incidents transpired, R. Hayim Palache would not mandate the teacher's dismissal.[106]

[101] *Responsa Sho'el u-Meshiv, Mahadura Kamma,* Vol.1, no. 185.

[102] *Shulhan Arukh, Hoshen Mishpat* 35:3. This ruling applies even if their testimony relates to others or to themselves. See *Shulhan Arukh ha-Rav, Yoreh De'ah* 1:42.

Though there are certain exceptions wherein we rely upon their testimony pertaining to events which occurred while being a minor, our instance is not one of them. See *Shulhan Arukh*, op.cit.

[103] *Shulhan Arukh, Hoshen Mishpat* 35:1.

[104] See supra, text accompanying n. 64 and 67

[105] See supra, text accompanying n. 64 and 67

[106] *Hikkekei Lev*, supra n. 64.

The import of R. Palache's position is clear. Lest an alleged pedophile lose his job and be publicly shamed for conduct which he or she never committed, it is incumbent upon beit din to critically investigate the allegations prior to rendering judgment. Addressing the alleged incident of a teacher molesting a young girl, R. Samuel de Medina (known by the acronym: Maharashdam) of sixteenth century Salonika in the Ottoman Empire states,[107]

> Since all of Israel is presumptively credible ('*be-hezkat kashrut*'), unless there are proofs or significant justifications ('*amatlaot*'), one cannot undermine a person's presumptive credibility.

In fact, a few years ago, within the context of a beit din setting, we addressed an allegation of a series of incidents of a teenager molesting a younger child. The *tovea* (plaintiff), namely the parent who appeared on behalf of his child who was the victim of the alleged abuse, submitted his claim demanding a remuneration of his costs for the psychological counseling that his child required due to these experiences.[108] However, the child neither appeared in front of the beit din nor was the *tovea* able to demonstrate in any shape or form to the panel that these incidents actually took place. Supporting documentation related to these incidents as well as information and invoices (and cancelled checks) from the health care professional were requested but never produced by the *tovea*. Moreover, the *tovea* failed to appear to hear the nitba's (defendant's) reply to the *tovea*'s allegations. As such, the beit din was unable to perform its due diligence regarding this matter and the panel denied the *tovea* any monetary relief.

In his extensive responsum spanning over twenty pages, R. Palache sets forth, among other matters, the evidentiary standard required in order to

[107] *Responsa Maharashdam*, *Yoreh De'ah* no. 141.

[108] Though generally a *ba'al din* (litigant) advances his own claims in beit din, nevertheless a minor who is a litigant may have his claims submitted by a parent or another party of majority age. See *Shulhan Arukh, Hoshen Mishpat 96,* 1-2, 108:6; *Netivot ha-Mishpat* 108:2; *Tumim, Hoshen Mishpat* 108:7. A parent or grandparent who submits a claim on behalf of his minor child or grandchild, respectively has the status of "an *apotropus* (guardian) appointed by a beit din." See *Responsa ha-Rosh Kelal* 87-88; *Responsa Maharmit*, *Hoshen Mishpat* no. 37.

The above conclusion is not to be construed as preempting the possibility that a minor may appear either as a plaintiff or defendant in a beit din proceeding. In fact, such a possibility clearly exists. However, the actual advancement of claims will be performed by his guardian or another adult who appears with him at the proceeding.

For a beit din's authority to award recovery of therapy bills, see supra text accompanying notes 25-41.

terminate a pedophile from employment. Rejecting the Rema's posture which argued for the admissibility of ineligible witness testimony by minors in cases of *nezikin,* R. Palache offers another standard. He concludes that, in the absence of two male witnesses who observed the conduct, an abuser could be dismissed from a school's employment if four conditions obtain. First, the child, the victim of abuse, has to be intelligent and of upstanding character. Second, the child must not bear any animosity or hatred for the alleged abuser. Furthermore, the child's experience has to be corroborated by at least two more children who experienced abuse by this teacher. Finally, the abusive behavior must have happened in a place where no people were present who could testify to the alleged event. Assuming that, after intensive inquiry, the beit din arrives at the conclusion that they are dealing with an event which occurred in private with at least three different children who are intelligent and do not harbor any animosity towards the alleged pedophile, there are grounds for the teacher's dismissal. In R. Palache's mind, the introduction of these conditions is based upon the beit din's empowerment to act *le-migdar milta,* namely to have the evidentiary guidelines to address a pressing societal problem.[109]

Another evidentiary stance suggested by R. Palache is to rely upon the testimony of ineligible witnesses and *"kala de-lo pasik"* (a persistent rumor). He distinguishes between this type of rumor from *"a rinnun be-alma*," (a rumor) which does not serve as a means to arrive at corroborating the transpiring of the alleged incident.[110] R. Eliyahu ben Hayyim (Ranah) suggests that there are two conditions which have to be obtained in order for the rumor to be labeled a "*kola de-lo pasik"*. First, the rumor must have been heard by many individuals and not have subsided. Second, one must ascertain the source of the rumor. If, upon discovery, we find that the initiator of the rumor is an enemy of the alleged abuser, such a rumor will be discounted.[111]

Alternatively, based upon our foregoing presentation of the evidentiary standards employed to verify instances of spousal abuse, a *dayyan* may rely upon the testimony of an invalid witness such as a minor, when accompanied by other factors such as circumstantial evidence, including

[109] See supra, text accompanying notes 28-40.

[110] For others who will mandate testimony of two witnesses and not rely upon *rinnun be-alma*, see *Teshuvot Ri Megash*, no. 95; *Teshuvot ha-Rambam*, Blau ed., no. 111; *Rema*, *Orah Hayyim* 53:4.

[111] Teshuvot Ranah Vol. 2, no. 41. See also, *Responsa Mayim Amukim* Vol.2, no. 52; *Responsa Hatam Sofer, Orah Hayyim*, no. 25; *Magen Avraham, Orah Hayyim* 53:7; *Bi'ur Halakha, Orah Hayyim* 53:25.

but not limited to professional health care findings and polygraph testing in order to determine whether child abuse has transpired. In the absence of the testimony of two witnesses, cases of child abuse, similar to spousal abuse, may be resolved by utilizing alternative evidentiary guidelines.

In our scenario, depending upon which approach a beit din would adopt to determine whether abuse has actually occurred, a beit din is obligated to critically inquire into the credibility of the victims of abuse, their testimony, persistent rumors and/or the circumstantial evidence which may serve to ascertain the veracity of the alleged event. Should the beit din ascertain that such an event transpired, it can then decide if there is a justification for employment dismissal and/or the rendering of monetary awards based upon claims of *boshet/tsa'ar*, recovery of fees for therapy etc.

In conclusion, in addressing the relationship between a parent and a child, Rabbi Uziel aptly notes,[112]

> Neither the sons nor daughters of a man belong to him in the manner he owns his monetary assets.

A fortiori, it behooves a parent, sibling, principal, rabbi, teacher, health care professional and the like to hearken to Rabbi Uzziel's words and protect the bodily and emotional persona of our children and grandchildren while simultaneously servicing their educational and psychological needs. We can expect no less. The dismissal of rabbis and teachers from our synagogues and yeshivot and administrative staff from our youth organizations due to the perpetration of child abuse and the awarding of damages for mental anguish gives symbolic as well as pecuniary recognition of the significance of a child's integrity. If a decision regarding employment termination of an alleged batterer and/or claims for recovery of medical/therapy services rendered, loss of work time and/or emotional stress by victims of abuse require beit din intervention, so be it.

Similarly, the opportunity to file an action in beit din regarding spousal abuse provides a communal recognition of the intrinsic value of human dignity by formally acknowledging its alleged violation.

The addressing of these issues should be a collaborative effort of *dayyanim* as well as health care professionals who will assist the beit din panel. During the past twelve years, I have witnessed firsthand how child psychologists and experts in child abuse have been "the light at the end of the tunnel" in dealing with parenting arrangements for children of

[112] *Mishpetei Uziel, Even ha-Ezer*, no. 91.

divorced families. We should expect no less in seeking their counsel regarding child and spousal abuse cases.

Some battei din employ a vetting process. In other words, upon receiving a claim, the administrative staff of the beit din will decide whether the claim will be heard by a panel of *dayyanim* or not. For example, though there are grounds for mandating honoring and respecting a parent,[113] nonetheless, the staff may choose to refrain from accepting such a claim initiated by a parent for beit din resolution. Or, though there may be grounds for filing *leshon ha-ra* (defamation) suits against individuals,[114] the beit din policy may limit the acceptance of such claims to cases involving media communications and labor relations. In our opinion, the parameters of the beit din vetting process regarding alleged abuse should be held to the minimum. Abuse cases, due to halakhic intricacies which we have briefly outlined, varying evidentiary standards and inquiries, and the societal need to address this ongoing issue in the Jewish community, require that a beit din's administrative staff accept each and every case provided that the alleged victim submit in writing some supporting documentation corroborating his or her claim.[115]

The majority of administrative staffs of battei din usually accept any and every type of case brought to them and leave it to the discretion of the *dayyanim* to decide whether a particular matter is justiciable. Consequently, the decision whether to address such claims is in the hands of *dayyanim* rather than administrators. At the end of the day, there are advantages and disadvantages for implementing a vetting process.[116]

On the other hand, a beit din's decision to refrain from hearing claims of abuse effectively bestows upon the injurer a form of 'halakhic entitlement' to cause the injury. Perceived weakness of the beit din may only lead to increased violation and debasement of halakha because others have done it with impunity. Unlike other legal systems, in halakha, there is generally no statute of limitations in advancing such claims. Even if the

[113] *Sefer ha-Hinnukh*, no. 33; *Rema, Hoshen Mishpat* 97:16; *Shakh*, ad. locum 1; *Sma, Hoshen Mishpat* 107:2.

[114] *Rema, Hoshen Mishpat* 420:38; *Bi'ur ha-Gra, Hoshen Mishpat* 420:56; *Netivot ha-Mishpat* 38:2.

[115] Generally, those battei din which employ a vetting process require a plaintiff's claim statement and a defendant's response and those who refrain from engaging in this process do not require a claim statement. See text accompanying notes 92-93.

[116] For a recent U.S. Supreme Court endorsement of a vetting process pertaining to civil lawsuits in federal courts, see *Ashcroft v. Iqbal*, 556 U.S.662, 129 S. Ct. 1937 (2009). Some of the same arguments which support and/or question the merits of this judgment equally apply to whether a beit din should employ a vetting process.

alleged act of abuse was perpetrated twenty or forty years, a beit din is empowered today to hear such claims.[117] Failure to deliberate upon these claims may undermine communal trust in rabbinic authority in general and in rabbinical courts in particular. We hope that our articulation of these claims will allow battei din to live up to their mission of addressing openly the issues of the Jewish community.

[117] *Shulhan Arukh, Hoshen Mishpat* 98:1; *PDR* 10: 363,368. Though these sources deal with non-payment of an outstanding debt such as a loan, the continuing right to advance a claim equally applies to a *nezikin* claim which potentially may translate into an outstanding debt if so determined by a beit din. Even if secular law invokes a statute of limitations regarding such claims, halakha sanctions the advancement of such claims. See *Responsa Mishpetei Uzziel, Hoshen Mishpat,* no. 28:8; *Responsa Minhat Yitzchak,* Vol. 3, no.134.

For possible exceptions to this rule, see *Teshuvot ha-Rosh*, Kelal 79:13 (end); *Shulhan Arukh, Hoshen Mishpat* 98:2; *Rema Hoshen Mishpat,* no. 104:2 in the name of *Rashba*; *Sma*, ad. locum 7 in the name of Ramban; *Responsa Hatam Sofer, Hoshen Mishpat,* no. 78. All these sources which deal with non-payment of conventional monetary debts such as failure to make a loan repayment ought to be applied in advancing a *nezikin* claim.