

“By Us, This is Forbidden”

A Tale of Jewish Ethics and Indian Spices

What’s a Jew to do, when ethical teachings collide with common business practices? An intriguing tale from 19th-century India sheds light on an ongoing dilemma



In 1875, a Jewish pepper merchant named Yehezqel Gabbai, a resident of Bombay, wrote an urgent letter to his uncle, Abdallah Somekh, the leading rabbi of Baghdad, requesting his expert advice. The subject: business ethics and Jewish law. Rabbi Somekh’s response reflects the complexity of the issues raised by his nephew’s query, involving the norms of the Indian spice market and the nuances of halachah.

{ By **ZVI ZOHAR** and **NATHAN KATZ**

In the last quarter of the 19th century, the Jews of Bombay were a cultured and affluent community, numbering in the thousands. Iraqi Jews began to arrive in Bombay in the late 18th century. Their ranks swelled in the early 19th century, during the reign of the governor of Baghdad, Daoud Pasha, whose oppressive policies resulted in Jews seeking a more hospitable home.

The pasha's finance minister, Shaikh David Sassoon, *nasi* or president of Baghdad's Jewish community, fled Iraq in 1832 and made his way to Bombay, where he carved out a niche among the Parsis – as Zoroastrians are known in India – the indigenous Marwaris, and the British who dominated the city's import-export trade. He made a fortune in the opium business before expanding into shipping and textiles, employing tens of thousands of people. Shaikh Sassoon built his community's first synagogue, Maghen David, in 1861.

Under the leadership of Sassoon and his family, the Bombay community developed all the requisite features of Jewish life: a mikveh (ritual bath), schools, hospitals, a library, hostels, bakeries, groceries and butcher shops, Judaeo-Arabic was their spoken language and Middle Eastern culture dominated their cultural and social life.

The Indian rebellion against England in 1857 – called the “Indian Mutiny” by the British and the “First War of Independence” by Indians – brought about a shift in the Baghdadi emigrés' very identity: English gradually replaced Judaeo-Arabic as the language of the home, and starched collars and bowler hats became the fashion in place of turbans and kaftans. Bombay's Iraqi Jews sought a European identity for an important reason: being classified as “European” rather than “Asiatic,” much less “Indian,” had very tangible rewards in terms of social status, with higher wages, opportunities for education, and patronage in every sphere.

Many of Bombay's Jews prospered in commerce, whether as importers

of British goods, exporters of Indian commodities, industrialists, entrepreneurs or retail merchants. Networks among Jewish Baghdadi merchants in Bombay were expanded when pioneering family members, such as the sons of Shaikh Sassoon, set off to China and Japan to oversee enterprises in the Far East.

A Man of Moral Refinement

Our main character, Yehezqel Gabbai, was born in Baghdad in 1824, and emigrated to Bombay at the age of 18. In 1853, he married Aziza, daughter of the magnate Abdallah (Albert) Sassoon, and they had twelve children. He was a prominent businessman, dealing among other things in black pepper, a very precious commodity in those days, indigenous to the Malabar region on India's southwest coast.

Deeply devout, Gabbai frequently consulted his illustrious uncle on the proper conduct of life, according to halachah. When the answers arrived by post from Iraq, he meticulously copied out in his own hand his uncle's responses to his queries. After his death in 1896, the manuscript passed to his son, David Gabbai, leader of the Jewish community of Shanghai, where it remained until the dispersal of that community in 1953; it later came into the possession of a renowned scholar, Suleiman David Sassoon of England. In 1981, the manuscript was published in Jerusalem.*

In the halachic responsum we will be discussing, Rabbi Abdallah Somekh portrays his nephew – referred to throughout by the pseudonym “Reuven” – as a man known for his piety and devotion to Jewish law. He characterizes Reuven as a *ba'al nefesh*, a biblical term (Proverbs 23:2) interpreted by medieval rabbis to mean a person of religious conscientiousness and moral refinement. In

* *Sh'lot uTeshuvot Zivhei Tsedeq he-Hadashot* (Makhon Or haMizrah: Jerusalem, 1981).

Reuven's case, such refinement extends to his relations with God, with fellow Jews – and with all human beings.

In the case at hand, Reuven has become uncomfortable with regard to the ethical probity of his role as purchaser of peppers procured by others in Malabar. Recently, he has discovered that transactions in the pepper markets frequently involve ethically dubious practices, and he is concerned that by requesting his associate in Bombay to order pepper for him from the associate's contact in Malabar, he (Reuven) is party to unethical business practice.

Here is Yehezqel Gabbai's problem, as recounted by Rabbi Somekh: Reuven lives and works in Bombay, where a non-Jewish middleman regularly provides him with peppers from the city of Malabar. Reuven covers his expenses and pays him a commission. This middleman has a partner in Malabar, who purchases the peppers: both are non-Jews. The middleman writes to the partner in Malabar requesting a certain quantity of peppers, as measured by weight, at a pre-determined price. The partner buys the peppers and sends them to the middleman, who delivers them to Reuven.

In the city of Malabar, there are but two or three official pepper-weighers. Sometimes, when the peppers reach the middleman in Bombay, the actual weight received is either a bit more or less than what was ordered, paid for, and documented in the transaction. Reuven accepts whatever he gets from the Indian middleman, no questions asked. This is how things have been going on, year in and year out.

But now Reuven has discovered that the man in Malabar who does the buying, the partner of his middleman, has been bribing the pepper-weighers! Here is how the system works: After seller and buyer agree on a price per unit of pepper, the peppercorns are weighed to determine how many such units are changing hands. Only the accredited weighers may operate the scales and declare



the results, and it is customary to bribe them. If, for example, 100 units are on the scale, and the seller bribes the weigher, he will declare that there are 110 units, for which the buyer must now pay. However, if the buyer is bribing, the weigher declares 90, and the buyer pays for 90 units but gets 100.

“At the time Reuven heard that this is what they do,” writes Rabbi Somekh, “he said to the above-mentioned middleman that according to our norms [*etzleinu* = ‘by us Jews’] this is forbidden, for you are stealing and giving it to me.”



"If we don't bribe them, you'll lose money, you'll fire me, and there goes my livelihood."

To which Reuven's middleman replied: "Yes, we do pay off the weighers, but not so that they'll give you more than you pay for, but so they won't give you less. In other words, we bribe them to weigh *honestly*. If

we don't bribe them, you'll keep getting less, you'll lose money, you'll fire me, and there goes my livelihood. Besides, our bribery doesn't always work; sometimes the sellers keep close watch on the scales. Finally, what's it to you? We are not bribing anyone at your bequest. Rather, my partner and I are doing so at our own initiative, for otherwise we could not stay in business!"

Basically, the Indian middleman is telling the morally fussy Yehezqel Gabbai to stop mixing in. This is how things are done in the pepper trade. But Reuven is not persuaded.



Spice merchant, New Delhi, India. Photo by Einat Halfon, 2009.

He demands that the middleman write his partner in Malabar and instruct him to stop the bribery forthwith, because it is forbidden.

And the middleman, as quoted by Gabbai, replied: “I will do as you said. I will write to my partner that he should no longer do as he was wont to do, and no longer give bribes to the weigher. Just as you want.”

But Reuven does not believe that his non-Jewish middleman will actually do this. So the big question, concludes Rabbi Somekh, is this: “May Reuven continue to take peppers from this middleman, or not? For the Sons of Noah are commanded against stealing, and he is the cause of their stealing from the sellers. If so, is it forbidden or permitted?”

The Stumbling Block

Who are these “Sons of Noah”? *B’nei Noah* is an ancient term used to designate all people who are not Jews, underscoring their covenantal relationship with God and obligation to observe the “Seven Commandments to the Sons of Noah.” It is impressive that this is how Rabbi Somekh refers to the non-Jewish players in our pepper drama. Sometimes, Jewish halachic texts refer pejoratively to non-Jews as *ovdei avodah zarah*, meaning pagans or idolaters, people not party to “our” moral universe. Given the prominence of images in Hindu worship, it would have been understandable for both Gabbai and Somekh to refer to the two non-Jewish businessmen with whom Reuven is involved as *ovdei avodah zarah*. By opting for “Sons of Noah,” they display a recognition that Jews and Indian non-Jews are people who do occupy a common moral sphere – and who sin when they fail to fulfill its values.

Rabbi Somekh’s response to his nephew was lengthy. What follows are the broad strokes of his intricate train of argument, grounded in careful examination of halachic sources: the Talmud, Maimonides, the Shulhan Arukh, and the opinions of other

medieval and modern rabbis. The *responsum* follows a dialectical structure: Problem A is raised, discussed and solved; this leads to problem B, which is dealt with in a similar fashion, and so on until the final resolution. For convenience, we shall call the middleman “Ashok,” and his partner in Malabar, the man who buys the peppers, “Omar.”

Rabbi Somekh begins by stating that according to halachah, actions performed by one’s agent are as if performed by oneself. However, a gentile cannot be legally defined as “agent” for a Jew. Thus, in our case, Reuven cannot be regarded as operating by agent on the Malabar pepper market, because Omar is not defined as his agent.

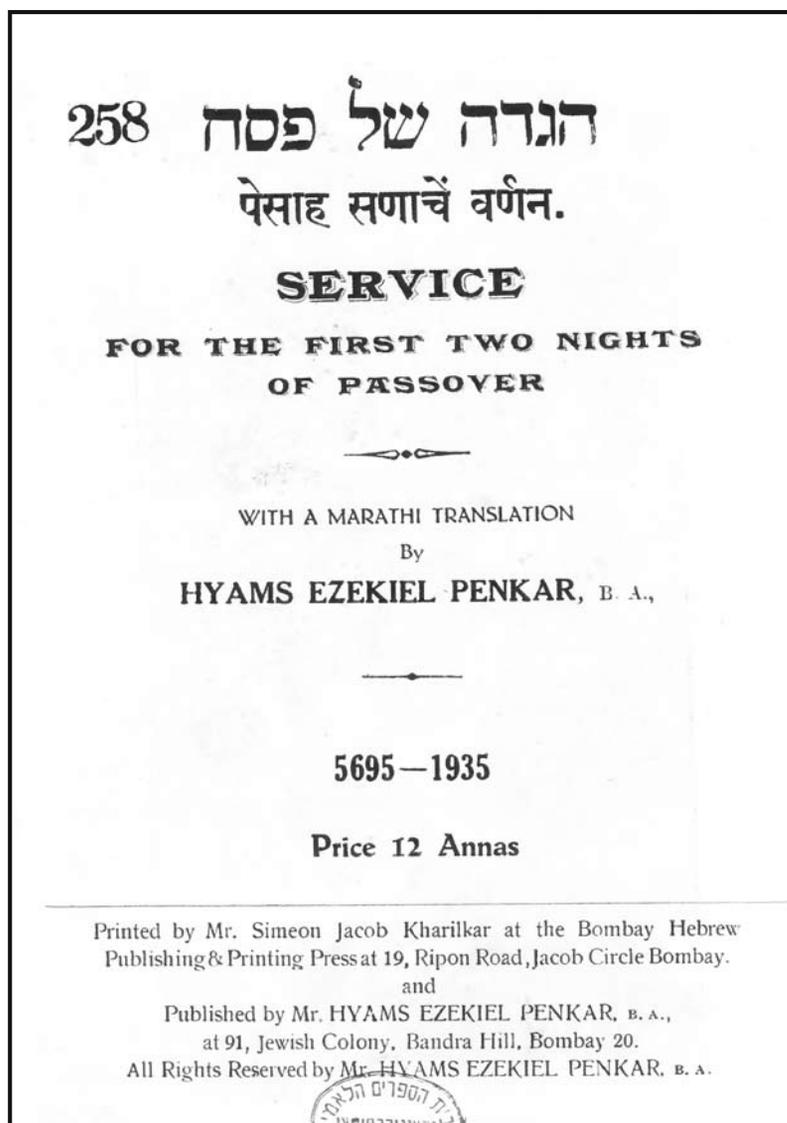
But – the rabbi quickly notes – this principle is true only in cases of positive acts, but not for negative acts. In other words, if a Jew delegates a gentile to perform a mitzvah, a commanded act, on his behalf, the action is not credited to the Jew. But if a gentile commits an *averah* (wrongdoing, a sin) on a Jew’s mandate, then the Jew is liable, and it is as if the Jew did it with his own hands. Thus in the case before us, since the gentile is stealing from the sellers, it is as if the Jew himself is stealing – an action completely forbidden by halachah.

However, Somekh notes, there is an additional factor that seems to release Reuven from liability: Omar was not acting upon Reuven’s instructions but rather directly contravening them. Reuven told Ashok to write to Omar and forbid him to give bribes. If Omar disobeyed, Reuven is not liable. Furthermore, a gentile cannot halachically be defined as the agent of another *gentile*. Thus, while Ashok the Bombay middleman might be viewed as Reuven’s agent had he been bribing the weighers, it was not Ashok but rather Omar of Malabar who is doing so. And since Omar is not (according to the Talmud) Ashok’s agent, there is no relevant link between Reuven and Omar, and Reuven bears no liability for Omar’s sins against the Noahide covenant.

But this is only the beginning. Reuven is not yet off the hook. He may not be liable for the sins of Omar in Malabar, but there remains a problem. The biblical metaphor, "Thou shalt not place a stumbling block in front of the blind" (Leviticus 19:14), was interpreted by the rabbis of late antiquity to mean: one is forbidden to cause another person to sin unwittingly, by providing the necessary conditions without which the sinful act could not occur. And since it is a sin for gentiles (the "Sons of Noah") to steal; and since Reuven's request for peppers is the cause without which Omar would not be stealing from the seller (by bribing the weigher); and since Omar (who is a gentile, simply following common practice in the Indian pepper trade) seems to be blind to the sinfulness of the act, then Reuven's request, from the point of view of Jewish law, places a stumbling block in front of Omar, which is strictly forbidden.

Is this the end of the story? Not remotely. According to halachah, a person is liable for "placing a stumbling block in front of the blind" only if his action is crucial in enabling that other person perform the sinful act. In the case at hand, this is not so, for Omar has *other customers*, and thus he will be bribing the pepper-weigher for their sake, even if Reuven does not purchase through him. Does this mean that Reuven may continue to place orders for peppers to be bought by Omar? Not so, opines Rabbi Somekh: *each act of theft is a distinct sin*, and each order placed by Reuven through Ashok to Omar creates a new and distinct "stumbling block" and thus is prohibited *per se*, no matter how many other customers also lead Omar to sin.

And yet – here we go again – further analysis of halachic sources reveals that the liability for placing a "stumbling block" extends only to an individual with whom one has a direct relationship. Reuven orders the peppers from Ashok, not from Omar. Thus, it is Ashok who is placing a stumbling block before Omar. Reuven is culpable neither



for Omar's sins, nor for the stumbling block Ashok is setting before Omar. Both these men are adult moral agents bearing individual responsibility before God for their own actions.

Aiding and Abetting

Let us pause to summarize. Rabbi Somekh has managed to find two reasons why his nephew, struggling to evaluate the praxis of the pepper trade according to the guidelines of his heritage, is not in violation of Jewish Law. First, Omar in Malabar is not Reuven's agent. Second, Reuven is not considered to be placing a stumbling block before Omar.

However, there is yet a third consideration that must be addressed. Talmudic law, Rabbi Somekh points out, holds that one may not *abet* sinful activity, even if one did not cause it and the sin could otherwise occur. This rabbinic prohibition may apply even to



Title page of a Pesach Haggadah with Maharati translation, printed in Bombay, 1935. National & University Library, Shapell Family Digitization Project.



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indirect encouragement and support, such as in the case under discussion. By expressing his intent to purchase the peppers, Reuven may be regarded by halachah as encouraging Omar to engage in bribery for the sake of pepper theft, thus abetting Omar's sinful acts.

Yes, Reuven instructed his middleman to tell Omar to desist, but he also assumes his instructions were ignored. In which case, a real transgression has occurred, Reuven has abetted it, and he must stop.

At this point, Rabbi Somekh's argument takes an interesting turn. Quite a few halachic authorities, he notes, do not acknowledge the existence of a Talmudic prohibition of "abetting" beyond the category of "placing a stumbling block." For example, the great Rabbi Moses Isserles (Cracow, 16th century) held that one should be lenient in such matters, to make it easier for Jews to engage in commerce where questions such as these arise. Whereas a "sensitive soul" (*ba'al nefesh*) may take stringencies (*humrot*) upon himself and refrain from such commerce, says Isserles, rabbis should not impose such pious stringencies on the general public.

Ordinarily, says Rabbi Somekh, he would go along with Rabbi Isserles's position, which is indeed a majority view (though some later authorities do take a harder line.) But since his nephew Reuven is a *ba'al nefesh*, a man who is scrupulous (*mahmir*) with regard to all observance of halachic norms, Rabbi Somekh will not grant him permission to take advantage of this lenient position advocated by Isserles.

Once again, however, Rabbi Somekh does not rest his case. What is the reason, he asks, for the rabbinic prohibition against abetting a sin, even when one neither requested nor caused it? He notes that many rabbinic authorities have argued that this derives from the biblical view that the entire Jewish people is regarded by God as a moral collective: all Jews may be punished because of sins committed by any one of them. Thus, it

is pragmatically reasonable to instruct Jews to refrain from even abetting sins that they neither requested nor caused. But God does not view Jews as morally culpable for the sins of gentiles (nor of Jewish apostates who have consciously removed themselves from the Jewish collective). If so, even a sensitive soul (*ba'al nefesh*) need not take upon himself the burden of responsibility for such sins.

"But our heart," continues Rabbi Somekh, "still does not permit us to say that this is permissible." Some authorities, including Maimonides, hold that Jews do have such a preventive obligation toward gentiles. This is also the position of Rabbi Joseph Caro, 16th-century author of the definitive halachic code, the *Shulhan Arukh*. That is to say: Jews should regard themselves as part of a moral collective including all human beings – all those expected by God to follow the Noahide Covenant.

After further consideration of rabbinic sources, Somekh continues to uphold the crucial moral insight advocated by Maimonides and Rabbi Joseph Caro, but circumscribes the limits of its practical application. A Jew's moral and religious responsibility to protect a gentile from sin by even indirect abetment of such negative activity applies to all gentiles with whom he is in personal contact. It does not apply to persons beyond that circle. Thus, here, Reuven's indirect moral responsibility does extend to Ashok, but not to Omar. Moreover, writes Somekh, it can be argued that even if such a moral responsibility does extend beyond the first circle of gentiles, it does so only when the prohibited act will *definitely* (not just possibly) occur.

In our case in Malabar, Ashok himself has stated that not infrequently the bribe does not work: "For it is not always possible for the operator of the scales to steal. Since sometimes the sellers are violent, and stand near the scale-operator, and he is unable to steal anything. . . This happens not infrequently, that the sellers pay close attention to the scales, and he is unable to steal."

In the end, the vagaries of the Indian marketplace offer supplementary support for the main pillar of Somekh's argument: moral responsibility to prevent others from sin *does* extend to both Jews and gentiles – but only to those gentiles with whom he has first-hand contact, or to those farther removed whose sin is not merely possible, but clear-cut. And so, concludes Somekh:

May Reuven eat and be merry, and order his agent to obtain peppers for him, and there is no ground for any concern at all, from any perspective. And may God continue to enlighten our eyes in the understanding of His Torah; Amen, may it be His will.

What are the insights we can derive from this *responsum*? First, let us consider Yehezqel Gabbai. Although operating in a cultural context very different from that of his Jewish upbringing, Gabbai does not opt for a relativistic position: in Rome do as the Romans do. Rather, he assumes that his own religious and moral culture is relevant *for him* across geographical and political divides – and includes certain (Noahide) norms that are relevant to *all* human beings, whether they realize this or not. He therefore thinks that his uncle, Rabbi Somekh, although resident in Baghdad, thousands of miles away from Bombay, can advise him on these issues.

For his part, Rabbi Somekh accepts the basic premises of Gabbai's request for instruction. His advantage over Gabbai is his expertise in halachic sources, and his ability to apply this expertise to real-life dilemmas. His expertise has led him to the recognition that on most topics there is no such thing as *the* halachic position. Furthermore, real-life situations are not simple, but complex: a halachic question must therefore be dealt with by unpacking it into its constituent components, and analyzing each one separately. Only by doing so can one hope to arrive at a clear and sound position. Somekh's dialectical methodology is constructed so as to take into account both the variety of

halachic voices and the complexity of the case at hand.

At all stages of his analysis, Rabbi Somekh consistently refrains from taking the easy way out by choosing the more convenient of the available halachic views. Positing that Reuven is a *ba'al nefesh*, he advocates that more weight be given to the more stringent position. Clearly, to be a *ba'al nefesh* in such matters is to seek the high moral ground. Rabbi Somekh's overall view is that a Jew is simultaneously a member of more than one moral community. As a Jew, he bears collective responsibility for the actions of all other Jews, and this has halachic implications governing his relations with them. As a member of the larger human community, he also bears responsibility for norms entailed by the Noahide Covenant. He cannot be the direct or even inadvertent cause of transgression against these norms by any human being with whom he is in direct interaction.

A Jew bears collective responsibility for the actions of all other Jews.

But Somekh ultimately rejects the view that an individual's moral responsibility to prevent others from sin extends *ad infinitum* to actions by all moral agents with whom the individual is linked by intermediate actors. And there the matter rests.

Are the guidelines proposed by Rabbi Abdallah Somekh appropriate for contemporary business dealings? However we answer this intriguing question, we would do well to appreciate the seriousness and care with which this 19th-century Iraqi Jewish sage dealt with the ethical issues raised by his nephew from Bombay.

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