YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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This week’s shiurim are dedicated by Joseph and Phyllis Eisenman
in honor of Judah L. Eisenman

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**Shiur #01: Can the Mitzva of *Tzedaka* be Enforced?**

In general, *mitzvot* may be physically enforced even to the point of death; reluctant people can be physically compelled by *beit din* to perform *mitzvot* (a principle asserted by the *gemara* in *Ketuvot* 86a). However, there is one category of *mitzvot* that cannot be enforced: those *mitzvot* about which explicit reward is textually stipulated (*matan sekhara be-tzida*). For example (as the *gemara* in *Chullin* 110 illustrates), *kibud av ve-eim* cannot be enforced because the Torah explicitly promises long life for proper adherence to this mitzva. Presumably, *tzedaka* would also be classified as a mitzva of *matan sekhara be-tzida* and it should therefore be non-enforceable. This seems to be contradicted, however, by two *gemarot* (*Ketuvot* 49b and *Bava Batra* 8b) which describe Rav forcibly enforcing *tzedaka* collection from unwilling donors. How, then could Rava have enforced *tzedaka.* How can these *gemarot* be reconciled?

To solve the contradiction, some *Rishonim* “embrace” one *gemara* and “explain away” the other. For example, Rabbenu Tam claims that *tzedaka* CANNOT be enforced, as implied by the categorical statement of the *gemara* in *Chulin* inhibiting enforcement of *matan sekhara be-tzida*. Rava COULD not and DID not physically enforce *tzedaka* collection, but rather verbally COAXED charity from reluctant donors. Essentially, the gemara in *Chulin* about non-enforcement is accepted, while the *gemarot* in *Bava Batra* and *Ketuvot* are reinterpreted as merely describing tactics of CONVINCING, not of ENFORCING.

By stark contrast, Tosafot cites the Ritzva, who takes the opposite approach. Rava did indeed ACTIVELY AND PHYSICALLY enforce *tzedaka* collection, as described by *Ketuvot* and *Bava Batra*. The *gemara* in *Chullin* DID NOT prevent enforcement, but rather exonerates *beit* *din* from CULPABILITY if they CHOOSE not to enforce *mitzvot* of *matan sekhara be-tzida*. Since *beit din* is tasked with mitzva enforcement, it is held accountable for mitzva non-compliance. However, regarding *mitzvot* whose *sekhar* is clearly stipulated, beit din are not held accountable if they CHOOSE not to intervene. However, if they choose they MAY intervene, as Rava did, in the collection of *tzedaka* funds.

By contrast, several *Rishonim* attempt to RECONCILE the *gemarot* rather than simply “preferring” one *gemara* and reinterpreting the other accordingly. Some located alternate and independent reasons for enforcement of *tzedaka*. Indeed, the mitzva per se cannot be enforced because the *sekhar* is explicitly stated, but there are additional facets of *tzedaka* which allow enforcement. For example, Rabbenu Tam claims that municipal laws allow enforcement of *tzedaka* collection. Just as the town's residents must contribute to walls, patrols, and other municipal needs, they must also contribute to *tzedaka* collection. Rabbenu Tam suggests that *tzedaka* is a binding municipal responsibility ONLY in cities which have legally “placed it on the books,” but the Mordekhai claims that even without specific legislation, *tzedaka* obligations are incorporated as civic responsibilities that can be physically enforced. The mitzva of *tzedaka* is non-enforceable, but *tzedaka* is obligatory for reasons independent of the mitzva. Charity and welfare are integral elements of social and municipal responsibility, which are enforceable even if the mitzva component of *tzedaka* is not.

Alternatively, the Ritva (in his comments to *Bava Batra*, *Ketuvot*, and *Rosh* *Hashana*) claims that the mitzva of *tzedaka* is unique and enforceable because it benefits the poor person. Unlike “standard *mitzvot*” with explicitly stipulated *sekhar*, which cannot be enforced, this mitzva services the needs of another and therefore can be enforced. This novel idea is morally compelling but legally questionable on two fronts. First, the Ritva does not provide any precedent for the idea of legal enforceability based upon lateral beneficial outcome. While we certainly identify with the poor person’s needs and would accommodate or service those needs with all sorts of resources, STRICTLY LEGALLY speaking, *tzedaka* is a mitzva of *matan* *sekhar* *be-tzida* and should not be enforceable. Second, the classic example of non-enforceable mitzva of *matan sekhara be-tzida* – *kibbud av ve-eim* – ALSO services other people and yet is not enforceable. Evidently, the benefit of others IS NOT sufficient to enable enforcement of *matan sekhara be-tzida* *mitzvot*. Obviously, the comparable benefits of *kibud av ve-eim* and *tzedaka* can be evaluated and the *tzedaka* benefit may be deemed more compelling and concrete. However, the Ritva asserts his concept without precedent and without differentiating *tzedaka* from *kibud av ve-eim*.

The *Ketzot Ha-Choshen* also identifies a separate mechanism for enforcing *tzedaka* collection. He cites a *gemara* in *Ketuvot* (48a) that discusses forced collection of *tzedaka* funds from someone who has become mentally incapable and from whose estate funds may be appropriated to sustain his family. Obviously, this person is not OBLIGATED in the performance of the mitzva *(since he is legally disabled from mitzvot)*, yet his funds are forcibly appropriated. Evidently, the *Ketzot* reasons that an actual *shibbud* or monetary lien for *tzedaka* collection exists and is actionable. This is novel on two fronts. First, a *shibbud* is generally oriented toward a specific creditor who can legally prosecute the collection of a *shibbud*. In the case of *tzedaka*,however, there is no direct litigant who can personally collect this *shibbud*. *Tzedaka* is a GENERAL obligation toward poor people without a specific “target.” Can a *shibbud* exist regarding money that does not have this specific target (*mammon she'ein la tov'in*)? The second novel element is the notion that a *shibbud* can stem from an imposed mitzva. Typically *shibbud* emanates from contractual agreement, monetary transfer, or events which require compensation. Can a Torah imposed mitzva morph into a *shibbud*? If indeed it may, what other *mitzvot* yield the development of *shibbud*? (The *Ketzot* explores this question regarding the mitzva to return objects taken as collateral.)

A final strategy of some Rishonim is to discover enforceability WITHIN the actual mitzva of *tzedaka* DESPITE its being a *matan sekhara b’tzida*. The Ri suggests that although the *mitzvat asei* of *tzedaka* cannot enable enforceability, the accompanying *lo tasei* of“*lo te'ametz et levavekha ve-lo tikpotz et yadakha*” (“Do not stiffen your heart nor withdraw your hand [from giving]”) allow *tzedaka* to be enforced. In contrast, *kibud av ve-eim* is a stand-alone *asei* and cannot be enforced.

This position of the Ri must be placed in the context of an interesting Ramban in *Kiddushin* (34) about the dynamic between a *mitzvat asei* and an accompanying *lo tasei*. The Ramban theorizes that sometimes the *lo tasei* is merely a reinforcement of the *asei* rather than an independent principle. He asserts this about several *mitzvot* *asei*, including *ma'akeh, hashavat aveida*,and *shilu'ach ha-ken*. Although in each instance the Torah stipulates a *lo tasei* warning against violating the *asei*, in each case, the *lo tasei* is a subsidiary of the *asei*. Practically, then, those who are exempt from the *asei* are also exempt from the *lo tasei*, since the *lav* is ancillary and exists only if the *asei* is mandated. Presumably, if *tzedaka* would be built on this model (the Ramban in *Kiddushin* DOES NOT discuss *tzedaka*), the Ri's concept would be rejected. If the *asei* component is non-enforceable because of the *matan sekhara be-tzida* rule, then the *lo tasei* could not possibly invite enforcement as a distinct obligator. Presumably, the Ri understood the dynamic between the *asei* and *lo tasei* of *tzedaka* differently than the Ramban understood that same dynamic in the *mitzvot* of *shilu'ach haken*, *ma'akeh*, and *hashavat aveida*.

The Mishneh Le-melekh poses a similar theory to the Ri –that a *lo tasei* allowed Rava to enforce *tzedaka* – but identifies a very different *lo tasei*. The Torah prohibits someone from delivering *tzedaka* with an “evil eye” or while expressing disappointment or even displeasure. Obviously, such demeanor insults the recipient and ruins the mitzva. Some *Rishonim* (including the Ramban in his list of *mitzvot* *lo tasei* that the Rambam omitted #17) actually nominate this as one of the 613 *mitzvot*. According to the Mishneh Le-melekh, it was this prohibition (which is clearly autonomous) that allows enforcement of *tzedaka*. Even if the prohibitions of stiffening one’s heart or withdrawing one’s hand are merely supplementary and not the basis for enforcement, the separate prohibition of not contributing *tzedaka* with obvious displeasure – an autonomous *lo tasei* - can serve as the root of Rava’s imposed enforcement.